

**The Rule of Law, the Courts and the British Economy**  
**Lord Hodge, Deputy President of the UK Supreme Court<sup>1</sup>**

My theme today is the contribution of the rule of law to the British economy and the role which the courts, the legal profession and businesspeople play in upholding the rule of law in changing circumstances. The significance of the role of London in the provision of international legal services is well known. I will suggest that the pre-eminence of English law is partly the result of our economic history and the way in which the common law has developed. I will also argue that the continued collaboration between the judiciary, the legal professions, the business community, the Government, and Parliament in adapting our law to social and economic changes should continue to play a vital role in preserving this country's reputation as a rule of law nation and as a place where international business can be transacted and where legal disputes can be resolved.

London's position as a leading centre of international legal services is in part a product of history. As you will hear, the Guildhall where we meet today features more than once in that history. That history illustrates the great strengths of our commercial law: freedom of contract, party autonomy, certainty, and flexibility. Those attributes have been developed in large measure by a judiciary who have been supportive of commerce and have sought to develop legal rules that reflect the changing realities of commercial practice. Today, we are a rule of law society; we have world-leading commercial courts with specialist expertise, arbitral tribunals with similar expertise, and a critical mass of expert commercial lawyers in London. These qualities have made English law popular internationally as the governing law for commercial transactions, and this jurisdiction as a place for resolving disputes in our courts and arbitral tribunals.

*The link between the rule of law and economic development*

The link between the rule of law and economic development is clear. Economic value is created when individuals, businesses and organisations transact with each other. Law provides predictability and confidence for commercial parties to transact, lowering transaction costs,

increasing the volume of the transactions and enabling complex arrangements to be put in place. In this way the law supports the creation of economic value. It is a critical platform on which other economic activity rests.<sup>2</sup>

The importance of good governance through a commitment to the rule of law is widely recognised as underpinning economic prosperity. Scholars have identified the central role that legal institutions play in enabling long-term development, above and beyond other factors that are associated with economic success. The quality of a country's legal institutions – in particular, the independence and competence of its judiciary - are important to investment levels, innovation, and an economy's GDP growth.<sup>3</sup>

Countries where local interests, especially the government, are seen to have a home advantage in their courts, find it harder to secure inward investment. A British Institute for International and Comparative Law (BIICL) study highlights the importance to businesses of the impartiality or neutrality of the English courts along with procedural effectiveness as important factors in attracting businesses to use English law.<sup>4</sup> Some of the countries for which the Judicial Committee of the Privy Council (JCPC) serves as the final court of appeal have cited attracting foreign investment as a reason for retaining the JCPC.<sup>5</sup>

Shakespeare, writing in 1600,<sup>6</sup> well understood how the rule of law underpinned economic success in the international arena:

“The Duke Cannot deny the course of law;  
For the commodity that strangers have  
With us in Venice, if it be denied,  
Will much impeach the justice of the state,  
Since that the trade and profit of the city  
Consisteth of all nations.”

The continued confidence of others in the quality and independence of justice in the United Kingdom and the robustness of our legal institutions is demonstrated by the fact that so many foreign companies and foreign governments choose to write their contracts in English law and

to resolve their disputes here.

### Magna Carta, London and the Guildhall

Turning to history, Magna Carta, written in 1215, is now remembered for its early statements on the rule of law in clauses 39 and 40. But the thirteenth clause of Magna Carta recognised the role of London. It declared that “*The city of London shall enjoy its ancient liberties and free customs, both by land and water.*”

The City of London has played an important role in the development of the rule of law, particularly in the field of commerce. Commercial law owes much of its development to cases concerning the international businesses conducted in London, and its history discloses the role of businesspeople in the creation of that law. This is not to suggest that businesspeople actually made our commercial law but rather that judges, who make the law, have long been receptive to concepts and usages which businesspeople developed.<sup>7</sup>

### The ancient courts

In the past, law was administered in the City by institutions which were not always courts in the modern sense. We are here today in the Guildhall. The dominant court in Angevin London, the Husting, was situated here, where it met weekly.<sup>8</sup> Other courts in medieval London included the “folk-moot”, the sheriffs’ court, presided over by the mayor, and subordinate ward courts administered by aldermen.<sup>9</sup> According to an early thirteenth-century source, there were three chief folk-moots a year, at Michaelmas, Christmas and Midsummer. By the sixteenth century, there were nine courts at the Guildhall.<sup>10</sup> Not all of these were courts of law; some were courts of administrative divisions, the wards.<sup>11</sup>

Over time, the City also delegated jurisdiction to new courts. Among these were the courts of the various city trade companies. The importance of these formalised subordinate jurisdictions can easily be underrated. In some periods perhaps one in seven adults living in the city were members of a company, and it is probable that the contribution made by the companies as a whole to the resolution of commercial and even personal disputes was significant.<sup>12</sup>

### *The law merchant and courts of piedpowder*

By late medieval times many disputes among merchants were heard in the courts associated with fairs and markets and in the municipal courts of the principal commercial cities and towns.<sup>13</sup> It is from here that the term “law merchant” arises. Medieval lawyers frequently used the term law merchant in speaking of the law followed in these courts and they may have understood this as something distinct from the common law. Perhaps the clearest example of this usage is in the Statute of the Staple of 1353, which directs that actions involving merchants coming to the staple “*shall be ruled by the law merchant, of all things touching the staple, and not by the common law of the land, not by the usage of cities, boroughs, or other towns*”.<sup>14</sup>

In common with the legal disputes that occupy courts in London today, the law merchant was international in character. The maritime courts, the courts of the fairs and markets, and the staple courts determined disputes involving foreigners not by English domestic law but according to the general law of nations based on mercantile codes and customs.<sup>15</sup> The Carta Mercatoria, granted by Edward I in 1303, required tribunals to have an equal number of English and foreign merchants as jurors.<sup>16</sup>

The characteristics of these commercial courts were speed in adjudication, and a relative freedom from technical rules of evidence and procedure that often plagued the common law courts. There was also an acceptance that the customs of merchants generated rights which required international recognition and which should be interpreted in a broadly uniform fashion, with an overriding requirement of good faith.<sup>17</sup>

One of the most famous of these medieval commercial courts were the “courts of piedpowder”. Coke suggested that these courts came to be called 'piedpowders' because at those courts “there shall be as speedy justice done . . . as the dust can fall from the foot”.<sup>18</sup> Blackstone referred to them as “the lowest, and at the same time the most expeditious, court of justice known to the law of England”.<sup>19</sup> Formalities were avoided, few excuses for non-appearance were allowed, and an answer to the summons was expected within a day, often indeed within an hour. They were not specialised commercial courts, but rather local courts of general jurisdiction held at

fairs and markets.<sup>20</sup>

### Arbitration

Arbitration also flourished in this period. Arbitration is now often presented as an alternative means of dispute resolution to more formal court-based processes, but arbitration and mediation are almost certainly older than court-based litigation. Indeed, from Anglo-Saxon times<sup>21</sup> to the present day arbitration has often been seen as preferable to the courts.

By the mid-seventeenth century the reference of cases to arbitration was being formalised by the courts. The first English legal treatise on arbitration was published,<sup>22</sup> and the Arbitration Act 1698 was enacted. It enabled any submission to arbitration to be made a rule of 'any court of record', so that in case of disobedience to the arbitration a party would become subject to proceedings for contempt, upon motion; the only defence was to be misbehaviour by the arbitrators. The procedure was much favoured by Lord Mansfield in the following century.

Sir Ross Cranston's scholarship has shown that the courts in the period of 1830-1970 generally adopted a hands-off approach to matters such as the internal affairs of market organisations and the decisions of arbitrators appointed to settle disputes between their members.<sup>23</sup> Indeed, when disputes arose, these were settled in the bulk of cases by the trade itself. Only a very small proportion of arbitrations ever ended in court, often because the arbitrators referred them, and the judges generally decided those cases in a commercially friendly way.<sup>24</sup>

### Common law courts and the commercial law

The common law courts also regularly dealt with international commercial matters from the earliest times.<sup>25</sup> For example, published excerpts of thirteenth and fourteenth century Exchequer plea rolls show a large number of actions to collect mercantile debts, including cases involving city tradesmen and merchants, as well as well-known medieval merchant firms such as the Society of the Frescobaldi. They could involve disputes over large amounts of money.<sup>26</sup> The large proportion of foreign names in the rolls of the Common Pleas bears witness to the international character some of the business going on in the City.<sup>27</sup>

Although the proceedings of the central courts could be formalistic and protracted, they were nevertheless building up a body of law applicable to commercial transactions. In so doing they were often required to give decisions in accordance with the law merchant and for that purpose regularly sought expert evidence from the merchants themselves. Thus modern scholars have tended to reject the traditional, rather romanticized, view of the medieval English law merchant as a separate corpus of law and to regard it instead as 'the factual matrix within which certain types of contract are made'<sup>28</sup> and its rules as largely procedural in character, offering speedy justice and the relaxation of technical requirements of pleading and evidence.<sup>29</sup>

In the fifteenth and sixteenth centuries most of the business of the merchant courts was taken over by the Court of Admiralty, which continued to recognise the *lex mercatoria*. But in the seventeenth century the commercial jurisdiction of the Admiralty Court was itself taken over by the common law courts.

#### *Sir Edward Coke, Sir John Holt, and Lord Mansfield*

The decline of the Staple Courts and the Court of Admiralty was largely due to Sir Edward Coke, whose efforts resulted in the acquisition by the common law courts of most of the country's commercial litigation, until the fusion of all the royal courts in the 1870s. The adaptation of the common law to the requirements of the merchants and the eventual integration of the *lex mercatoria* into the common law was carried out in the late seventeenth and eighteenth centuries by two outstanding commercial lawyers, the Chief Justices Sir John Holt and Lord Mansfield, who presided over a period of enormous economic and social change.<sup>30</sup>

Building upon the earlier labours of Chief Justice Sir John Holt, who had laid the foundations of the law relating to negotiable instruments, bailment and agency, Lord Mansfield in his thirty two years as Chief Justice completed the incorporation of the law merchant into the common law, thereby earning himself the accolade of 'founder of the commercial law of this country'.<sup>31</sup> Lord Mansfield's shaping of English law enabled it to serve – and to further – the great changes that led directly to the Industrial Revolution.<sup>32</sup>

I say that Lord Mansfield completed the “incorporation” of the law merchant into English law, but Professor Rogers has rightly described the process of incorporation as misleading. The task faced by judges in the seventeenth and eighteenth centuries was not to adopt ready-made rules from some source outside the ordinary English law. Rather, the categories of legal system had to be reworked so that they would accommodate new economic conditions and new transactions at a time when Britain was becoming a significant commercial player. What the English judges 'incorporated' into the common law was commercial practice, and by doing so, they composed commercial law.<sup>33</sup>

Lord Mansfield used to try cases here in the Guildhall with a special jury comprising experienced merchants, whose opinions he greatly valued and whom he frequently invited to dine with him in order to develop a clearer understanding of prevailing commercial practice.<sup>34</sup> Special juries existed before Mansfield’s time, but he saw how they could be used to ascertain mercantile practices that could be brought into the common law.<sup>35</sup> Again we see the role of businesspeople in shaping our commercial law.

Mansfield’s greatest achievement was to construct a more certain and settled system of principles and rules upon which merchants, lawyers and judges could rely. In a marine insurance case in 1774 he said: “*In all mercantile transactions the great object should be certainty: and therefore it is of more consequence that a rule should be certain, than whether the rule is established one way or the other: because speculators in trade then know what ground to go upon.*”<sup>36</sup>

By the time of his retirement, any special rules of the law merchant had become fully absorbed into the common law, so that a century later the draftsman of the Bills of Exchange Act 1882 and the Sale of Goods Act 1893 was able to provide in both statutes that “*the rules of the common law, including the law merchant*” should continue to apply to bills of exchange and contracts of sale respectively.

The commercial law that was developing in Britain at this time had an international reach, attributable to Britain's leading role in the period in trade, banking, shipping and insurance, and the outward-looking nature of the actors involved. Commercial parties, wherever they were, often had to comply with the rules of the markets in London and other British commercial hubs. English law was both global and local. First-mover advantage means that many standard form contracts first drawn in Britain in this period still apply to dealings in a considerable volume of trading in commodities like grain and cotton.<sup>37</sup>

### *The Commercial Courts*

In 1895, the Commercial Courts were established. The business community had called for a specialised system of tribunals for commercial cases (as already existed in France and Germany) for some time. Many merchants, dismayed by unnecessary delays, technicalities and costs of commercial litigation in the Queen's Bench Division and a loss of flexibility and sensitivity to trade usage, had already begun to migrate to new forms of commercial arbitration, including the London Chamber of Arbitration set up by the City of London Corporation. The new Commercial Court was staffed by judges having knowledge and experience of commercial practice, with procedural rules conducive to the expeditious and flexible handling of commercial litigation.

In the present day, the Commercial Court, along with the Chancery Division, Admiralty Court and Technology and Construction Court have been consolidated into a single building, the Rolls Building, which is the largest specialist centre for the resolution of financial, business and property litigation anywhere in the world.

The Financial List, which began operating in October 2015, provides specialist adjudication for claims which either principally relate to a broad list of financial markets matters and be for more than £50 million or equivalent, or require 'particular expertise in the financial markets' or raise 'issues of general importance to the financial markets'. The Financial List provides for a "test case procedure", which is designed to avoid costly and time-consuming litigation, through providing a mechanism for authoritative guidance before disputes have arisen.

The first test case was the Covid-19 business interruption insurance case, brought by the FCA to determine whether certain policies covered loss arising from certain effects of the pandemic. It was estimated that, in addition to the particular policies chosen for the test case, the outcome of the litigation would affect approximately 700 types of policies across over 60 different insurers and 370,000 policyholders. It would affect tens of thousands of businesses and potentially hundreds of thousands of employees. The test case was commenced on 9 June 2020. After a hearing in the High Court, the case was permitted to “leapfrog” to the Supreme Court, so that we could provide urgent and authoritative guidance on the issues raised. By 15 January 2021, the Supreme Court had delivered judgment.

### *The characteristics of English commercial law*

So what is the nature of the commercial law which has emerged from this history?

Sir Ross Cranston has identified the following philosophical underpinnings of English commercial law as it developed in and after the 19<sup>th</sup> century.<sup>38</sup>

The first is freedom of contract. Contract law developed rapidly in the nineteenth century in England to accommodate the changing economy. Broadly, notions of fairness and equality of exchange coupled with liability based on reliance or receipt of benefit were replaced by notions of the expressed will of the parties, and liability grounded on promises. In English law, you tend to get what you bargained for, and parties are held to their bargains.

Another dimension of freedom of contract is party autonomy. Commercial parties were empowered to make their own rules, institutions, standard form contracts and private arrangements for settling disputes. They could design, in largely unfettered manner, the arrangements they desired for their commercial transactions.<sup>39</sup> Legislation intruded little, if at all, on commercial transactions.<sup>40</sup>

The second is certainty. I have already quoted Lord Mansfield’s famous statement that “*in all*

*mercantile transactions the great object should be certainty*". As another judge put it, the strict application of rules was not to be whittled away "by introducing unnecessary exceptions... under the influence of sympathy-evoking stories... [H]ard cases can make bad law."<sup>41</sup> This is a corollary of party autonomy. Furthermore, legal rules should be expressed as bright line rules which parties can readily understand and, if necessary, contract out of. Assured predictability for commercial parties allows them to plan their affairs in the way they think best.

A further component of this principle is the tendency of English commercial law to keep equitable doctrines at bay. In the twentieth century Lord Atkin was a forthright opponent of equitable niceties blurring the bright-line rules of English commercial law.<sup>42</sup> Commenting on the Sale of Goods Act in *In Re Wait* in 1927 he stated: "It would have been futile in a code intended for commercial men ... [if] at the same time it was intended to leave, subsisting with the legal rights, equitable rights inconsistent with, more extensive, and coming into existence earlier than the rights so carefully set out in the various sections of the Code."<sup>43</sup>

I would also add that the system of precedent, by which lower courts follow the decisions of higher courts, and apex courts only depart from their decisions in exceptional circumstances, generally ensures that the English common law system a stable and certain environment for commercial decision-making. The principle of stare decisis – or standing by what has been decided – is a fundamental principle of the common law. It makes the law transparent, stable and predictable.

A third principle is that the law should be flexible to accommodate commercial reality, and the reasonable expectations, needs and developments of market participants. As Lord Goff famously said in an extrajudicial writing: "[Judges] are there to give effect to [businessmen's] transactions, not frustrate them; we are there to oil the wheels of commerce, not to put a spanner in the works, or even grit in the oil."<sup>44</sup>

These principles were not always consistently applied in case law. But each of these principles remains a touchstone of modern English commercial law, and vital to its enduring international

appeal. Each was based expressly on the perceived needs of the commercial community.

In Sir Ross Cranston's view, English commercial law should not be viewed as an autonomous system of rules and principles created and imposed on commercial parties by courts, but as made in large part by commercial parties themselves. English commercial law enabled commercial and financial institutions and associations to draw their rules and standard contracts to their own design. This private law-making, sometimes with the assistance of lawyers, was innovative, developing new techniques which were set out in contractual form and widely adopted in commercial practice. The technique could then be tested in court, either as a test case or as a result of insolvency or fraud.<sup>45</sup>

One example of the test case is the history of hire purchase. The Hire Traders' Protection Association funded litigation in the House of Lords to establish (in broad terms) that hire purchase was different from sale.<sup>46</sup> Its success set hire purchase on its expansive path as an alternative avenue to sale in the distribution of manufactured goods. On the back of the instalment credit system it approved, the motor car became as transformative in the twentieth century as the railways had been in the nineteenth.

### *The present day*

Today, English law and English courts are regarded as a system that commercial parties can trust – a “gold standard”,<sup>47</sup> and “international public utility”.<sup>48</sup> They offer certainty and predictability. A critical factor is that our judiciary is of the highest quality and integrity and is independent of government influence. That helps us punch above our weight in international commerce and international dispute resolution when compared with larger economies, particularly those where the state or the ruling party exercises control over its commercial businesses.

### *The work of the Supreme Court*

Many of the commercial cases heard in the Supreme Court involve international litigants, both corporations and States. We decide commercial cases in our capacity as the Judicial Committee

of the Privy Council, which remains the final court of appeal for many Commonwealth countries, particularly those in the Caribbean, and also many important offshore financial centres like Jersey, Guernsey, Cayman and the BVI. Those jurisdictions provide us with many important and precedent-setting commercial, company and insolvency law disputes

But the cases heard by the Supreme Court represent only a tiny sample of the huge number of transactions governed by English law and of the disputes heard in our courts and arbitral tribunals. They give only a small sense of the economic activity which English law underpins. So let me provide some figures.

### *The economic activity underpinned by English law*

A recent analysis by LegalUK highlighted that in 2018-2019, English law governed around £80 billion of gross written insurance premiums in the London market; £250 billion of global M&A deals; US\$11.6 trillion of global metals trading; and €661.5 trillion of global derivatives transactions.<sup>49</sup> English law is the governing law of choice for maritime contracts, a sector that contributes over £15 billion annually to the UK economy. English law secures 7% of the global legal services fee revenue of US\$ 713 billion. The UK is the second largest legal services market in the world and the largest in Europe, where it accounts for a third of all Western European legal services fee revenue.<sup>50</sup> The UK legal services sector generated a trade surplus of £5.9bn in 2019.<sup>51</sup> London is ranked as the second leading financial centre in the world by revenue, second only to New York. Legal services are an integral part of the financial and professional services ecosystem. Major firms are drawn to London to access our world-class legal services.

London's commercial courts continue to attract high numbers of international users. In 2021, all of the cases in the Financial List, and 74% of the cases in the Commercial Court, were international in nature.<sup>52</sup> London remains the world's preferred centre for arbitration, a position that it shares with Singapore, in a 2021 survey.<sup>53</sup> In 2019, English law governed 40% of global corporate arbitrations.<sup>54</sup> The number of civil disputes resolved through arbitration, mediation and adjudication in the UK exceeded 43,000 in 2020.

Within the UK London leads the way, but other cities such as Belfast, Birmingham, Bristol, Cardiff, Edinburgh, Glasgow, Leeds, Liverpool, Manchester and Newcastle are highly

respected for both their legal services expertise and their contribution to the UK's legal training and education sector and serve to distribute the economic impact of the sector across all regions and nations of the UK.

### *The future*

The unique position of English law in international commerce is in part the result of the “first mover advantage” which I have mentioned. It is in part the result of the way in which commercial law developed in England, and especially in London. It is in part the product of continued legal innovation by businesses, the legal profession, the courts, and Parliament. It is in part the continued presence of a critical mass of highly skilled legal professionals in London and other major legal centres in the UK. But the common law is a product which is available to be, and is being, adopted by others. Commercial litigation and arbitration are geographically mobile and there is growing international competition to attract such business. Lord Reed recently drew attention to the development internationally of commercial courts operating in English and applying the common law, which are often staffed by retired senior UK and other common law judges of the highest calibre.<sup>55</sup> At one level this is to be welcomed as it is an international manifestation of the quality of English law and common law judges, an exemplar of so-called soft power. Some of those courts may serve local and regional needs without detriment to London. But others are, or may develop to be, in competition with the UK for the dispute resolution business which might otherwise come to London.

Dame Elizabeth Gloster, the chair of LegalUK, and David Gauke, a former Lord Chancellor, have described English law as a platform suffering from the “free rider problem”.<sup>56</sup> Anyone can use it without paying, with the result that its value is difficult to quantify and its promotion is unfocused. LegalUK is working to remedy that lack of focus. The Lord Chief Justice and Master of the Rolls have also both encouraged the Government to bring together the relevant departments and stakeholders to ensure the country benefits to the full extent from the economic benefits that English law brings.<sup>57</sup>

The tools are there to be used. The commercial courts remain innovative and open to new initiatives. We have innovative and commercially minded lawyers in both branches of the legal profession. The Law Commissions are available to research and propose legal reform, such as the London Commission's recent proposals to update the law of arbitration.<sup>58</sup> Parliament in

recent years has enacted important legislation reforming company law and insolvency law, and regulating competition and financial services. Inter-departmental and stakeholder coordination as advocated by LegalUK and senior judges will assist.

Opportunities exist to increase the value of English law to the UK economy by its application as the main governing law in new growth markets. For example, promoting the use of English law in Fintech fits with the UK government's strategy to attract more technological innovations into the financial services sector and the UK's position as a pre-eminent financial centre.

One of the greatest attributes of the common law is its ability to react quickly to the new whilst providing predictability and stability. Digital assets provide an example of such a novel technology to which the law will have to adapt to maintain the UK's status as a leading global jurisdiction. We have seen how English law was adapted to underpin the economic changes during the period of the Industrial Revolution. Technological developments such as AI and digital assets may bring similarly transformative changes to our economy, possibly at great speed.

English law can provide the legal foundation for the use of digital ledger technology and digital assets internationally. That is happening through the work of the courts, which have delivered a number of recent judgments in this field.<sup>59</sup> It is happening through the work of other bodies, such as the Law Commission and the LawTech Delivery Panel's UK Jurisdiction Taskforce. The former has published a report on Electronic Trade Documents and is currently undertaking a project on Digital Assets. The latter has published an authoritative statement on the status of cryptoassets and smart contracts in English law, as well as digital dispute resolution rules, which are intended to be used for and incorporated into on-chain digital relationships and smart contracts.<sup>60</sup> Other bodies have produced authoritative guidance.<sup>61</sup> Several judges, and in particular the Master of the Rolls, are strong advocates for ensuring that English law is a world-leading platform for such technological innovation.<sup>62</sup>

The potential of digital assets, enhanced computing power and artificial intelligence to change our economy and society poses a challenge to all countries' legal systems. It is a challenge and an opportunity which the laws of the UK should address.

### Conclusion

Law and commerce are intertwined. Their relationship is mutually supportive and reinforcing. The rule of law; a high-quality, independent judiciary; the swift and cost-effective resolution of disputes; clarity and certainty in the law applicable to commercial transactions; support for arbitration: these features underpin commerce. Commerce, and the flow of cases arising from commercial transactions, sustain and improve commercial law. Commercial actors and lawyers have been the driving force in making commercial law. The relationship has been a remarkably successful one. The rule of law and the robustness of all legal and public institutions which contribute to our stability are necessary components of commercial success in a democratic country.

Our courts and the judiciary are widely respected internationally, for their expertise, knowledge of the markets, their incorruptibility and their independence. The national and international trust in our judiciary, and the flexibility and resilience of English law are vital to our prosperity and our international reputation. But the maintenance of the unique position of English law will depend not only on the judges but on the legal profession and innovative businesspeople in the City and others. With the cooperation of law reform bodies, the Government, and Parliament, we can look to the future with confidence.

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<sup>11</sup> I am very grateful to my Judicial Assistant, Tom Watret for his assistance in research for this paper.

<sup>2</sup> LegalUK, The Economic Value of English Law (October 2021) (<[The-value-of-English-law-to-the-UK-economy.pdf \(legaluk.org\)](#)>), p 5.

<sup>3</sup> Social Market Foundation, Law and the Open Economy (November 2021) (<[Law-and-the-open-economy-Nov-2021.pdf \(smf.co.uk\)](#)>), p 12-13.

<sup>4</sup> BIICL, Risk and Return: Foreign Direct Investment and the Rule of Law (<[49\\_risk\\_and\\_return\\_fdi\\_and\\_the\\_rol\\_compressed.pdf \(biicl.org\)](#)>) p 6.

<sup>5</sup> D Artesi, The Privy Council and the Commonwealth (Counsel Magazine, 31 January 2022) (<[The Privy Council and the Commonwealth | COUNSEL | The Magazine of the Bar of England and Wales \(counselmagazine.co.uk\)](#)>)

<sup>6</sup> William Shakespeare, The Merchant of Venice (1600), III.iii.24-32.

<sup>7</sup> JH Baker, The Law Merchant as a Source of English Law”, in W Swadling and G Jones (eds), the Search for Principle: Essays in Honour of Lord Goff (1999), p 95.

<sup>8</sup> Hudson, The Oxford History of the Laws of England: Volume II, 871-1216 (OUP, 2012), p 818-820.

<sup>9</sup> Hudson, above, p 818.

<sup>10</sup> The Common Council, the Hallmote, the Court of Orphans, the Chamberlain’s Court for Apprentices, The Hustings, the Mayor’s Court, the Court of requests, the Sheriff’s Court and the Wardmote.

<sup>11</sup> Tucker, Law Courts and Lawyers in the City of London 1300-1550 (CUP, 2010), p 87.

<sup>12</sup> Tucker, above, p 89.

<sup>13</sup> Rogers, The Early History of the Law of Bills and Notes, Chapter 1: The Central Courts, Commercial law and the Law Merchant (CUP, 2009).

<sup>14</sup> Rogers, above, p 20.

<sup>15</sup> Goode and McKendrick on Commercial Law (Penguin, 6<sup>th</sup> ed, 2021), para 1.02.

<sup>16</sup> Goode and McKendrick, above.

<sup>17</sup> Goode and McKendrick, above.

- <sup>18</sup> Coke, *Fourth Part of the Institutes of the Laws of England*, 272. The term most likely referred to the dusty feet (in French, *pieds poudres*) of those who frequented the markets - C. Gross, *The Courts of Piepowder*, (1906) *The Quarterly Journal of Economics*, 231, at 231.
- <sup>19</sup> Blackstone's *Commentaries on the Laws of England* (1768), Book III, chapter II, p. 278.
- <sup>20</sup> Rogers, above, pp 24-25.
- <sup>21</sup> There is said to be a reference to arbitration in the late seventh century laws of Hlothere and Eadric: Baker, *Collected Papers* (Vol 1), *From Lovedays to Commercial Arbitration*, p 433.
- <sup>22</sup> "Arbitrium Redivivum: or, the Law of Arbitration" (1694).
- <sup>23</sup> Cranston, *Making Commercial Law Through Practice: 1830-1970* (CUP, 2021), p. 125.
- <sup>24</sup> Cranston, *Making Commercial Law Through Practice*, above, p. 375.
- <sup>25</sup> Rogers, above, p. 15.
- <sup>26</sup> Such as a case concerning the sale of wool to a company of Florentine merchants in which the sum in issue was £840, the equivalent of £725,804.51 in 2021, according to the Bank of England's inflation calculator (<[Inflation calculator | Bank of England](#)>).
- <sup>27</sup> Rogers, above, p. 15.
- <sup>28</sup> JH Baker (above), p 96.
- <sup>29</sup> Baker, *The Law Merchant and the Common Law Before 1700*, (1979) 38 *CLJ* 295 at 301; Goode and McKendrick, above, para 1.05.
- <sup>30</sup> Goode and McKendrick, above, para 1.06.
- <sup>31</sup> *Lickbarrow v Mason* (1787) 2 *Term Rep* 63 at 73, per Buller J.
- <sup>32</sup> Poser, *Lord Mansfield: Justice in the Age of Reason* (McGill-Queen's University Press, 2013), p 221.
- <sup>33</sup> Rogers, above, p 252.
- <sup>34</sup> Poser, above, pp. 227-228.
- <sup>35</sup> Poser, above, p. 227.
- <sup>36</sup> *Vallejo v Wheeler* (1774) 1 *Cowp* 143, at 153. (Although it must be pointed out that Lord Mansfield could see both sides of the coin – in another case, *Alderson v Temple* (1768) 4 *Burr* 2235, 2239, he showed a different concern: "*The most desirable object in all judicial determinations, especially in mercantile ones (which ought to be determined upon natural justice, and not upon the niceties of the law) is to do justice.*")
- <sup>37</sup> Cranston, *Making Commercial Law Through Practice*, p 39.
- <sup>38</sup> See speech by Sir Ross Cranston, *The Rule of Law: Good for the Economy?*, (June 2018); Cranston, *Making Commercial Law Through Practice*, pp 30-60.
- <sup>39</sup> Cranston, *Making Commercial Law Through Practice*, p 31.
- <sup>40</sup> Cranston, *Making Commercial Law Through Practice*, p 35.
- <sup>41</sup> *Cebora SNC v SIP (Industrial Products)* [1976] 1 *Lloyd's Rep* 271, at 279, per Sir Eric Sachs.
- <sup>42</sup> Cranston, *Making Commercial Law Through Practice*, pp 43-45.
- <sup>43</sup> [1927] 1 *Ch* 606, 635-636.
- <sup>44</sup> Goff, *Commercial Contracts and the Commercial Court* [1984] *LMCLQ* 382.
- <sup>45</sup> Cranston, *Making Commercial Law Through Practice*, p 292.
- <sup>46</sup> *Helby v Matthews* (1895) *AC* 471.
- <sup>47</sup> Reynolds et al, *The value of English common law for new "special zones": a case study of two contrasting examples*, (2022) *Trusts & Trustees* 82, at p 88.
- <sup>48</sup> Wood, *Why English law?* (January 2019).
- <sup>49</sup> LegalUK, *The Economic Value of English Law* (October 2021), above, p 1.
- <sup>50</sup> TheCityUK, *Legal Excellence – Internationally Renowned* (December 2021) (<[legal-excellence-internationally-renowned-uk-legal-services-2021.pdf](#) (thecityuk.com)>)
- <sup>51</sup> LegalUK, *The Economic Value of English Law* (October 2021), above, p. 14.
- <sup>52</sup> *The Commercial Court Report 2020-2021* (<[The Commercial Court Report 2020-2021](#) (judiciary.uk)>)
- <sup>53</sup> In the 2021 International Arbitration Survey produced by White & Case LLP and the Queen Mary University of London School of International Arbitration (available at <[https://arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021\\_19\\_WEB.pdf](https://arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf)> last accessed 14/06/2022) London was identified by respondents as the "most preferred" seat for arbitration (jointly with Singapore).
- <sup>54</sup> LegalUK, *The Economic Value of English Law* (October 2021), above, p 5, p 21.
- <sup>55</sup> Lord Reed, *London International Disputes Week Keynote address* 11 May 2022. He also drew attention to the establishment of English language commercial courts in several centres in the EU which can take advantage of the UK's exclusion from the Lugano Convention since Brexit.
- <sup>56</sup> Gauke, *English law boosts our economy, so let's promote it abroad* (*The Times*, 3 February 2022).
- <sup>57</sup> Lord Burnett, *Blackstone Lecture* (February 2022); *Speech by the Master of the Rolls* (July 2022) *Master of the Rolls* (<[Speech by the Master of the Rolls: The economic value of English law in relation to DLT and digital assets | Courts and Tribunals Judiciary](#)>).

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<sup>58</sup> Review of the Arbitration Act 1996 Consultation Paper CP 257 (September 2022).

<sup>59</sup> For example, *HDR Global Trading Limited v Georgi Shulev and another* [2022] EWHC 1685 (Comm) (1 July 2022); *Tulip Trading Limited v Bitcoin Association for BSV and others* [2022] EWHC 667 (Ch) (25 March 2022); *Fetch.AI Limited v Persons Unknown* [2021] EWHC 2254 (Comm).

<sup>60</sup> Legal Statement on Cryptoassets and Smart Contracts (<[https://35z8e83m1ih83drye280o9d1-wpengine.netdna-ssl.com/wp-content/uploads/2019/11/6.6056\\_JO\\_Cryptocurrencies\\_Statement\\_FINAL\\_WEB\\_111119-1.pdf](https://35z8e83m1ih83drye280o9d1-wpengine.netdna-ssl.com/wp-content/uploads/2019/11/6.6056_JO_Cryptocurrencies_Statement_FINAL_WEB_111119-1.pdf)>) (accessed 29 June 2022).

<sup>61</sup> For example the Law Society, in collaboration with the Tech London Advocates (TLA) Blockchain Legal and Regulatory Group have published “Blockchain: Legal & Regulatory Guidance” (Second Edition – January 2022) (<<https://www.lawsociety.org.uk/topics/research/blockchain-legal-and-regulatory-guidance-second-edition#download>>) (accessed 29 June 2022).

<sup>62</sup> See for example recent speeches by the Master of the Rolls, above, and by the judge in charge of the London Circuit Commercial Court, Judge Pelling (<[Speech by Judge Mark Pelling QC: Issues in crypto currency fraud claims | Courts and Tribunals Judiciary](#)>).