# Maxims, Principles and Legal Change: Maritime Law in Merchant and Legal Culture (Low Countries, 16th Century)*)

In the course of the sixteenth century, in the Low Countries maritime law was changing. At first, damages caused during maritime transport ("averages") were compensated on the basis of customs of limited scope and calculation, starting from "facts and figures". From the 1550s onwards, legal scholars developed new views; they revised norms, some of which came from below, while others were imposed by the sovereign. Both in legislation and in jurisprudential commentaries, the Roman rules of general average were revived. The legal authors made use of a more principled, humanistic method of interpretation. Their views did not contradict mercantile opinions; instead, merchants called for necessary adjustments of the law. The changes in doctrine and legislation responded to developments in the organization of the maritime industry. Although the legal scholars could have doubts about the older rules and how to reconcile them with a principled approach, their contribution to updating the rules was crucial.

Key Words: maritime law, lex mercatoria, ius commune, legal humanism, gross average

## Introduction:

For the Middle Ages and the early modern era, it has often been stated that merchants resorted to their own rules, which were enforced by their peers. Traders preferred to have their disputes settled amicably, by way of arbitration, or before specialized merchant courts, instead of waging litigation in official courts. According to this narrative, the *lex mercatoria* of traders was independent and fundamentally different from the law that was applied in central and municipal courts[1]). For maritime affairs, a universal *lex maritima* would have included solutions that were practised in maritime trade across jurisdictions, among sailors and without endorsement from public administrators and judges[2]). Traditional histories on the *lex mercatoria* and *lex maritima* usually conclude that state formation mechanisms of the early modern period effectively resulted in disappearance of the customary merchant law, because it was replaced with legislation[3]).

Over the past years, many of these views have been challenged[4]). For example,

*) This article was written with the support of the European Research Council (Consolidator Grant AveTransRisk nr 724544 and Starting Grant CLLS nr 714759). I thank Edda Frankot, Maria Fusaro, Guido Rossi, Louis Sicking, Maurits den Hollander, Gijs Dreijer, Remko Mooi and Marta Lupi for their comments on earlier drafts of this paper. Remarks are welcome at d.deruysscher@tilburguniversity.edu.

[1]) See, for example, Harold J. Berman, Law and Revolution: The Formation of the Western Legal Tradition, Cambridge (MA) 1983, 347. For a critical appraisal of this story see Emily Kadens, The Myth of the Customary Law Merchant, in: Texas Law Review 90 (2012) 1153–1206.

[2]) For example, William Tetley, The General Maritime Law: the Lex Maritima with a brief Reference to the Ius Commune in Arbitration Law and the Conflict of Laws, in: Syracuse Journal of International Law and Commerce 20 (1994) 105–146.

[3]) Francesco Galgano, Lex mercatoria, Bologna 2001, 71; Carlos Petit, Handelsrecht und Rechtsgeschichte, in: Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung [ZRG Germ. Abt.] 136 (2019) 321–337, 321–323 and 336–337; L.E. Trakman, The Law Merchant, The Evolution of Commercial Law, Littleton (CO) 1983, 8–9.

[4]) With regard to the *lex maritima* see Albrecht Cordes, Lex Maritima? Local, regional, and universal maritime law in the Middle Ages, in: Wim Block-

scholars have discovered that the merchants' tactics of resolving disputes by way of mediation were often acknowledged, even promoted, by public authorities[5]). Also, traders typically went to state and local courts to enforce debts and property rights[6]). However, the intertwinement of mercantile practice and official law has remained understudied. Here, the sixteenth-century Low Countries provide ample materials to analyse the malleability of maritime custom from this perspective. From around 1550, Dutch jurists took the normative ideas that were common among sailors and merchants, and combined these with new legislation and the academic legal traditions. As a result, they crafted solutions that were compatible with both the contents of statutes and mercantile practice. It has been hypothesized that academics of law in the early modern period merely 'translated' mercantile custom in their commentaries[7]), but the Low Countries provide a contrary example.

A new manner of interpreting law was crucial in this regard. The humanistic method of emendation, newly adopted by jurists, exposed reason in legal texts on the basis of scrutiny of manuscripts, but also in reference to principles underlying rules[8]). The humanist scholars did not replicate commentaries on sources of Roman law that had been made by the late medieval legal scholars but, rather, sought to uncover the "true meaning" and "pure" contents of rules[9]). This method of interpreta-

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mans *et al*. (eds.), The Routledge Handbook of Maritime Trade Around Europe, 1300–1600, Abingdon 2017, 69–85; Edda Frankot, Of Laws of Ships and Shipmen, Medieval Maritime Law and its Practice in the Towns of Northern Europe, Edinburgh 2012.

[5]) For example, Amalia D. Kessler, A Revolution in Commerce, The Parisian Merchant Court and the Rise of Commercial Society in Eighteenth-Century France, New Haven 2007, 31–33; K.O. Scherner, Formen der Konfliktlösung im Handels- und Seerecht in Nürnberg, Hamburg und Leipzig zwischen 1500 und 1800, in: Albrecht Cordes/Serge Dauchy (eds.), Eine Grenze in Bewegung, Private und öffentliche Konfliktlösung im Handels- und Seerecht, Munich 2013, 117–140, 124–129.

[6]) John Edwards/Sheilagh Ogilvie, What Lessons for Economic Development Can we Draw from the Champagne Fairs?, in: Explorations in economic history 49 (2012) 131–148; Oscar Gelderblom, Cities of Commerce: The Institutional Foundations of International Trade in the Low Countries, 1250–1650, Princeton 2013, 102–140.

[7]) Jean Hilaire, Réflexions sur l'héritage romain dans le droit du commerce au Moyen Age, in: Tijdschrift voor Rechtsgeschiedenis 70 (2002) 213–228, 223–224; Vito Piergiovanni, Courts and Commercial Law at the Beginning of the Modern Age, in: idem (ed.), The Courts and the Development of Commercial Law, Berlin 1987, 11–21, at 19–21; Vito Piergiovanni, Diritto commerciale nel diritto medievale e moderno, in: Digesto delle Discipline Privatische, Sezione commerciale, vol. 4, Turin 1989, 333–345, 343; for a more nuanced appraisal see Alain Wijffels, Business Relations Between Merchants in Sixteenth-Century Belgian Practise-Orientated Civil Law Literature, in: Vito Piergiovanni (ed.), From lex mercatoria to commercial law, Berlin 2002, 255–290.

[8]) Harold J. Berman, Law and Revolution, II: The Impact of the Protestant Reformations on the Western Legal Tradition, Cambridge (MA) 2006, 156–175; G. Strauss, Ideas of Reformatio and Renovatio from the Middle Ages to the Reformation, in: Thomas A. Brady/Heiko A. Oberman/James Tracy (eds.), Handbook of European History, 1400–1600: Later Middle Ages, Renaissance and Reformation, vol. 2 Leiden 1995, 1–30, 21–22.

[9]) See the quote by Ulrich Zäsi in Peter Stein, Legal Humanism and Legal Science, in: Tijdschrift voor Rechtsgeschiedenis 54 (1986) 297–306, 299.

tion was not exclusively textual and could be used for analysis of any type of law; humanist scholars could search for logic in merchants' customs as well, for example. This method allowed legal authors to both change and bend concrete legal solutions towards consistency, taking the rationale that was detected as underpinning them as their point of departure.

Starting with references in merchant manuals and jurists' writings and proceeding to rules on damages incurred during maritime transports (so-called averages[10]), this article will examine mercantile culture at the end of the fifteenth century in ports of the Low Countries. It will argue that maritime contracts and questions were still very much focused on facts and figures. In regard of damages and compensation, a number of such rules of thumb existed[11]); they had the form of maxims known by merchants, and they pointed to factual situations of loss to be compensated. Municipal courts imposed these customs and other simplified rules. However, from the 1550s onwards, legal scholars advanced new views, some arising from below, others having been imposed by the sovereign who purported to centralize the control of the merchant fleet of the Low Countries. Both in legislation and scholarly writings the Roman rules on general average (in Digest 14,2) were resuscitated in tandem with a more principle-based humanistic method of interpretation. Along with mercantile opinions which recognized the need for reform, the scholars' outsider positions facilitated adjustments. Changes were taking place in the economy and in the organization of the maritime industry, and legal writers crafted solutions in response thereto. Even though these academic authors could vacillate over the rationale of older rules, and on how to reconcile them with a principled approach, their contribution in updating these sets of rules was vital.

Averages and the law:

'General average' (also 'gross average') had its roots in the High Middle Ages. It was an arrangement that imposed the sharing of damages which had been made to save a ship during a sea journey accident. A maxim that was known in the fifteenth-century Low Countries stated that '*werping is averij*' (jettison is average)[12]). If the master had jettisoned merchandise in order to lift the ship from a sandbank, the damages of the lost merchandise were compensated under the general average rule. Also the cutting of the mast or cables, as well as a slipping anchor[13]), were occa-

[10]) Average(s) (Old Dutch: *averij*) are damages that occur during maritime transports.

[11]) The number of mercantile customs that were applied was generally limited; see Dave De ruysscher, From Usages of Merchants to Default Rules: Practices of Trade, Ius Commune and Urban Law in Early Modern Antwerp, in: The Journal of Legal History 33/1 (2012) 3–29, 6–7 and 28; idem/Jeroen Puttevils, The Art of Compromise, Legislative Deliberation on Marine Insurance Institutions in Antwerp (c. 1550–c. 1570), [Bijdragen en Mededelingen voor de Geschiedenis der Nederlanden] BMGN-Low Countries Historical Review 130/3 (2015) 25–49, 39–40 and 45; David Ibbetson, Law and custom: insurance in sixteenth century England, in: The Journal of Legal History 29 (2008) 291–307, 293.

[12]) As is seen from cases of jettison being labeled 'gross average', see, for example, City Archive Antwerp ("FelixArchief") [CAA], Notariaat 3133 fol. 305v (28 June 1535, calculation of averages).

[13]) CAA Notariaat 3132 fol. 9r (1535). One Portuguese and one Biscayan merchant were owners of merchandise in the ship; for the account of the incident see also

sions to practise general average for compensation. Merchants having goods in the ship had then to pay a rateable portion of the damages that had been suffered during the trip by their fellow merchants or by the ship owner. This followed from the conviction that the damages had been inflicted with the purpose of saving the ship, and that as a result all having stakes in the venture had profited from the damaging actions.

'Common average' (also called 'petty average') entailed the pooling of costs related to the journey, such as custom duties and tolls that were levied during the expedition and which were typically advanced by the shipmaster[14]). They were after arrival paid for by the merchant-owners of the cargo. 'Common costs are shared' was another informal rule in the maritime industry of the Low Countries of the later 1400s[15]). By contrast, damages were considered 'particular average' if no general or common average applied. This meant that the costs had to be borne by the merchant-owner of the merchandise alone – or his insurers, if the costs were caused by the realization of a maritime risk ('fortune of the sea'). The notion of 'particular average' seems to have emerged later than the former two concepts: general and common average[16]).

The legal developments with regard to general average in continental North-Western Europe have been studied in detail, for example, by Götz Landwehr[17]) and Edda Frankot[18]); the scholarly comments on the Lex Rhodia passages in texts of Roman law have received lots of attention as well[19]). Common average has been analyzed less, though scrutiny of which costs were considered as common does shed light on the perceptions concerning the communality of the shipping venture as well. Moreover, the interactions between scholarly interpretation, statutes and mercantile norms for the above-mentioned topics have not been explored.

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Jan Albert Goris, Étude sur les colonies marchandes méridionales (portugais, espagnols, italiens) à Anvers de 1488 à 1567, Leuven 1925, 635–637.

[14]) Early legislation on costs for maritime journeys emphasizes that the merchant-owners had to 'return' those costs to the shipmaster; see, for example, Recueil des Ordonnances des Pays-Bas, 2nd série vol. 6, Brussels 1906, 3–13: princely statute (19 January 1550 New Style) art. 17. New Style refers to the transposition of the date to the New Year's Style, which replaced the Easter Style in the Low Countries only from January 1576 onwards; see Egied I. Strubbe/Leon Voet, De chronologie van de middeleeuwen en de moderne tijden in de Nederlanden, Antwerp 1960.

[15]) CAA Notariaat 3132 fol. 9r (1535).

[16]) Johan P. van Niekerk, The Development of the Principles of Insurance Law in the Netherlands from 1500 to 1800, Cape Town 1998, vol. 1, 64.

[17]) Götz Landwehr, Die Haverei in den mittelalterlichen deutschen Seerechtsquellen, Hamburg 1985.

[18]) Frankot, Of Laws (fn. 4); Edda Frankot, Medieval Maritime Law from Oléron to Wisby: Jurisdictions in the Law of the Sea, in: Juan Pan-Montojo/Frederik Pedersen (eds.), Communities in European History: Representations, Jurisdictions, Conflicts, Pisa 2007, 151–172.

[19]) For recent assessments see Jean-Jacques Aubert, Dealing with the Abyss: The Nature and Purpose of the Rhodian Sea-Law on Jettison (Lex Rhodia de iactu, D 14.2) and the Making of Justinian's Digest, in: John Cairns/Paul du Plessis (eds.), Beyond Dogmatics: Law and Society in the Roman World, Edinburgh 2007, 157–172; Emmanuelle Chevreau, La Lex rhodia de iactu, in: Tijdschrift voor Rechtsgeschiedenis 73 (2005) 67–80; Dominique Gaurier, La Lex Rhodia de Jactu et son commentaire par Jacques Cujas, in: Annuaire de droit maritime et océanique 15 (1997) 180–187, 16 (1998) 311–334, and 17 (1999) 71–116.

The categories mentioned, as well as the succinct norms that were known in Dutch maritime environments with reference to these categories, were rooted in mercantile practice, but they were reproduced in judicial practice and in legal texts as well. In the later Middle Ages, municipal authorities of ports in the Low Countries (Bruges, Sluis) wrote down the rules that were used for maritime accidents and contracts. In the late thirteenth or early fourteenth century a compilation was drafted, presumably in the Bruges region, which was a slight adaption of the Rôles d'Oléron (dating before 1286)[20]). These so-called Vonnissen van Damme[21]) exist in several manuscripts, the contents of which are not always identical[22]). It is uncertain to what extent the differences reflected mistakes or intentional adjustments; moreover, it is unknown whether and to what extent the rules found in these different versions were used for settling disputes[23]). A copy diverging in some respects from the Vonnisse was the so-called Ordonnantie[24]), dating from the second half of the fourteenth century, and which may have been used in ports in the county of Holland[25]). The Golden Book of Kampen[26]) (early fifteenth century) was another collection of rules relating to maritime affairs which was distinct from the three mentioned compilations[27]).

All these collections of rules contained the brief maxims regarding general and common average that were known in practice. As was the case in mercantile culture, in these compilations cases were not approached systematically from a principle-based perspective, rather through single instances for which merchants had to share costs and damages. Even then, the collections mentioned only enumerated in detail those cases for which damages had to be shared.

The case-to-case approach and limited scope of the rules, both in mercantile custom and the compilations, emerged largely independently from the tradition of Roman law. This is evident from the fact that in Netherlandish seelaw there was, for example, no rule for ransoms paid to privateers. Such payments were to be refunded by the merchant-owners according to D. 14,2,2,3 of the Roman Digest[28]). There is no comparable rule in the Rôles d'Oléron, the Vonnissen van Damme or the Ordonnantie. The earliest example of a provision on general average for ransom – albeit only for

[20]) Karl-Friedrich Krieger, Ursprung und Wurzeln der Rôles d'Oléron, Cologne 1970, 40–42, 71.

[21]) Jean-Marie Pardessus, Collection de lois maritimes antérieures au XVIII$^{e}$ siècle, vol. 4, Paris 1837, 19–29.

[22]) Frankot, Of Laws (fn. 4) 37.

[23]) The designation 'Vonnissen' (judgments) does not necessarily hint at the rules being established in lawsuits. It has generally been accepted that they were used as precedents, even though there is no evidence of this practice; see Dirk van den Auweele, Het Brugse zeerecht, schakel in een supranationaal geheel, in: Valentin Vermeersch (ed.), Brugge en de zee, van Bryggia tot Zeebrugge, Antwerp 1982, 145–155, 223.

[24]) Pardessus (fn. 21) 29–36.

[25]) Frankot, Of Laws (fn. 4) 14–16; M.Th. Goutsmit, Geschiedenis van het Nederlandsche zeerecht, The Hague 1882, 52–96.

[26]) This collection has not been published. Two versions are kept in the Municipal Archives of Kampen: Stadsarchief Kampen, Stadsbestuur Kampen (inv. 00001) 6 and 14.

[27]) Frankot, Of Laws (fn. 4) 27–45.

[28]) Digesta Iustiniani augusti, Theodor Mommsen (ed.), vol. 1, Berlin 1870, 419.

the case of arrest of a ship in a foreign port – occurs in the Golden Book of Kampen, dating around 1430[29]). The first references to ransom to privateers – actually under the name of 'general average' – date from the middle of the sixteenth century.

Throughout the fifteenth century it seems that situations in which a ship had been saved, but under circumstances which were not mentioned in the maxims and compilations elaborating on them, were not considered as general or common average. This notion can be inferred from the fact that – both for fifteenth-century Bruges and sixteenth-century Antwerp – the first case of general average involving costs, due to a successful fencing of an attack by privateers, was brought in the Antwerp municipal court in 1555[30]). All known cases of general average, dealt with in the Bruges court of aldermen during the 1400s, are concerned with jettison, cutting the mast, or a slipping anchor[31]), notwithstanding privateering, which in the later fifteenth and early sixteenth century was ubiquitous in the North Sea. Reservations to consider the mentioned costs as covered under general average persisted for a long time.

In 1488, Maximilian of Austria, the prince and King of the Romans who held all the duchies and counties of the Low Countries in personal union on behalf of his son Philip the Fair, established an Admiralty in Veere; the princely statute doing so stated that the Admiral had jurisdiction over '*affrètement de navires*' (cases of freight)[32]). In practice, the competence of his central court of the Admiralty to hear cases on 'averages' was rather minimal. At the end of the 1400s, disputes on general and common average were in most cases brought in the municipal courts of Bruges and Antwerp. These courts imposed the maxims of merchants while leaving the factual calculation of damages to merchants, acting as average adjusters[33]).

Even though the courts of Antwerp and Bruges were courts of lower jurisdiction, judges often had an academic profile. Yet the rules imposed were taken from practice, even though these rules were changed as well. The maxims of merchants concerning averages were sometimes considerably altered. For example, in the 1520s and 1530s, it was common at Antwerp to calculate general average on '*goed en schip*' (goods and ship). For the latter, i.e. the ship, a portion of the freightage (i.e. the remuneration which the captain received for his work) was taken[34]). The Vonnissen van Damme mention that the shipmaster could opt either the value of the ship or the freightage as basis for his contribution to the merchants whose goods had been damaged[35]). At Antwerp, however, it seems that freightage was always chosen. Moreover, not the total sum of freightage negotiated for all mer-

[29]) Frankot, Of Laws (fn. 4) 31; Goutsmit (fn. 25) 308.
[30]) CAA Vierschaar 1244 fol. 60v–61r.
[31]) Henry L.V. De Groote, De zeeassurantie te Antwerpen en te Brugge in de zestiende eeuw, Antwerp 1975, 13–18.
[32]) Louis Sicking, Neptune and the Netherlands: state, economy, and war at sea in the Renaissance, Leiden 2004, 72. The developing research of Gijs Dreijer (University of Exeter, Vrije Universiteit Brussel) will shed light on the jurisdiction of the Dutch Court of Admiralty in average cases.
[33]) CAA Vierschaar 1235 fol. 26v (1517); State Archives Antwerp, Notariaat 522 fol. 25 (1523); CAA Notariaat 3133 fol. 146; CAA Privilegiekamer 640 fol. 148v (1540).
[34]) CAA Notariaat 3131 fol. 305v (28 June 1535); *ibid.* 3133 fol. 9r (1535).
[35]) Pardessus (fn. 21) 23 (art. 8).

chandise counted, but rather a percentage of it[36]). In sixteenth-century Antwerp freightage was determined as a fixed fee per unit of merchandise[37]), which explains this method of calculation. In his treatise on averages of the early 1560s (see further below), the Dutch jurist Weytsen hints at the fact that shipmasters often preferred not to estimate the value of their ship because this could be contested by the merchants, and a dispute of that kind would harm the shipowners. Therefore, it was customary – according to Weytsen – to take, in the process of defining the contribution of the captain, half the value of the ship plus half the value of the total freightage[38]). Even though this rule was not applied in Antwerp, the rules imposed by the Antwerp court may have had the same rationale. As will be explained further on, from the 1530s at the latest, the Antwerp rules attest a trend of considering averages on the basis of principles which resulted from a combination of academic appraisals and new circumstances.

The minimal princely legislation at the end of the 1400s stands in stark contrast to the legislative efforts made half a century later. In January 1550 (New Style), an initial princely statute regulating maritime matters was issued by Emperor Charles V[39]). Another statute of July 1551 provided a legal framework for general and common average[40]). Both statutes were the result of a programme to protect the merchant fleet which was suffering from constant attacks by French and Scottish privateers[41]). The princely governmental institutions pressed for compulsory convoys. They should be provided and paid by the owners of shipped cargo[42]). This coincided with a strict attitude towards marine insurance. Even though marine insurance had been practised in Bruges since the third quarter of the fourteenth century, and at Antwerp since the 1520s, the princely authorities – not without reason – considered marine insurance speculative and prone to litigation[43]).

With regard to averages, the statute of 1551 did not merely confirm or paraphrase the norms that were known in merchants' circles. In the later 1540s, drafts of statutes had been given to merchants and shipping guilds at Bruges and Antwerp to ask for their advance comments. Merchants, masters and shipowners respectively urged for legal recognition of both marine insurance and general average[44]). The legisla-

[36]) In both cases (see Fn. 34) a low sum was added to the active side of the calculus for 'the ship' (50 and 22 pound Fl. respectively). The value of the ship was obviously calculated as a percentage of the freightage, which was, in the second instance, exactly 10 percent of the value of the cargo. In the first case, the amount corresponds to the 'penning sixteen' (6.25 percent) of the cargo, that is, after deducting the crew's goods.

[37]) Wilfried Brulez, De firma della Faille en de internationale handel van Vlaamse firma's in de 16de eeuw, Brussels 1959, 161–164.

[38]) Quinten Weytsen, Tractaet van avarien, Harlingen 1646, fol. 7v.

[39]) Recueil vol. 6 (fn. 14) 3–13: princely statute (19 January 1550 New Style).

[40]) Recueil *ibid.* 163–177: princely law (19 July 1551).

[41]) De ruysscher/Puttevils (fn. 11) 34.

[42]) Sicking, Neptune (fn. 32) 252–253, 264–265, 287.

[43]) De ruysscher/Puttevils (fn. 11) 35.

[44]) Louis Sicking, Los grupos de intereses marítimos de la Península Ibérica en la ciudad de Amberes: La gestión de riesgos y la navegación en el siglo XVI, in: Jesús A. Solórzano Telechea/Michel Bochaca/Amelia Aguiar Andrade (eds.), Gentes de mar en la ciudad atlántica medieval, Logroño 2012, 167–199, 169 and 177.

tive council of the prince followed suit. Yet in their protests against the taxation of convoys, merchants argued that insurance and general average provided sufficient protection already; they opposed the duties levied to pay for the mandatory convoys. This resistance brought about friction because the central authorities stuck to their views as well[45]). However, it seems that at the same time merchants welcomed legislation because there was confusion as to the informal rules applying both to marine insurance and general average[46]). The application of the aforementioned maxims was subject to debate in many situations, particularly in circumstances that had been emerging rather recently.

Legal tracts and merchant manuals:

A valuable source for the processes of formulation of maritime law in the sixteenth-century Low Countries is Quinten Weytsen's "Een Tractaet van Avarien" (Treatise of average), written in the early 1560s. Quinten Weytsen (dec. 1565) was a councillor in the Court of Holland and a lawyer by training. Before taking up his position in the Court of Holland, he was alderman-judge at Middelburg (Zeeland), which had made him well-acquainted with maritime issues[47]).

Weytsen's treatise was written for a mercantile audience but was at the same time engaging with the doctrine of jurists that had been written since the twelfth century. Weytsen refers in multiple instances to passages in the Corpus Iuris Civilis and was clearly inspired by a humanistic legal method. But he did not lock himself up in an ivory tower.

In this regard, Weytsen's treatise stands in stark contrast to another contemporary tract *ad rem nauticam* by Pieter Peck (Peckius), published in 1556[48]). Peck, a law professor at the university in Leuven, endeavoured in writing sophisticated comments on passages of the Corpus Iuris Civilis, mainly on the parts referring to the Lex Rhodia, while demonstrating his humanistic skills. In doing so, he was interacting mainly with scholars that aimed for a linguistic understanding of the Roman legal sources, not with legal practitioners, merchants or sailors. Even though Peck sometimes refers to legal sources other than Roman law or comments thereon, his work is a learned, academic exercise and not an attempt to present a consistent set of rules suitable for maritime practice[49]).

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[45]) Louis Sicking, Les marchands espagnols et portugais aux Pays-Bas et la navigation à l'époque de Charles Quint: gestion des risques et législation, in: Publications du Centre Européen d'Etudes Bourguignonnes 51 (2011) 253–274; idem, Stratégies de réduction de risque dans le transport maritime des Pays-Bas au XVIe siècle, in: Simonetta Cavaciocchi (ed.), Ricchezza del mare – ricchezza dal mare, secc. XIII–XVIII: Atti della Trentasettesima settimana di studi, 11–15 Aprile 2005, 2 vols. Florence 2006, 795–808; see also Jan Craeybeckx, De organisatie en de konvooiering van de koopvaardijvloot op het einde van de regering van Karel V, in: Bijdragen tot de Geschiedenis der Nederlanden (1949) 179–208.

[46]) De ruysscher/Puttevils (fn. 11) 39–40.

[47]) Gijs Dreijer/Otto Vervaart, Quinten Weytsen, Een Tractaet van Avarien, in: Pro Memorie: bijdragen tot de rechtsgeschiedenis der Nederlanden 21 (2020) 38–41, 38.

[48]) Pieter Peck, Commentaria in omnes pene iuris civilis titulos ad rem nauticam pertinentes, Leuven [1556].

[49]) Dave De ruysscher, Pieter Peck, Ad rem nauticam, in: Serge Dauchy *et al*. (eds.), The Formation and Transmission of Western Legal Culture, 150 Books that Made the Law in the Age of Printing, Heidelberg 2016, 110–113.

Weytsen's work has not received much scholarly interest heretofore. His treatise is nonetheless very important for three reasons. First, because of its timing: It was written shortly after another princely statute from 1563, had been issued[50]). This statute was an elaborate maritime law containing 70 articles on freightage, liabilities, general average and marine insurance. It lists 13 articles on average. Weytsen grappled with legal issues that had been left open in the 1563 statute as well as under the preceding 1551 law, and which had been solved with customary norms. His treatise demonstrates efforts to reconcile the new legislation with those informal rules and is also a valuable source of legal information for the period preceding 1563. Secondly, Weytsen's tract is relevant because of the author's very clear and precise style. Weytsen consistently starts chapters with definitions. Yet, in contrast to Peck's treatise, Weytsen also elaborates on the practical problems. For general average, Peck goes no further than to rephrase the rules mentioned in the Roman source texts, while Weytsen shows in detail how the general average compensation is ■to be■ calculated, and he refers to mercantile practices. Thirdly, in an effort to harmonize divergences, Weytsen underpins his positions with references to the purpose of rules. In that regard, Weytsen's treatise evokes a picture of how legal scholars, using a humanistic method, crafted rules combining usages, legislation and the judicial practices emanating from the municipal courts.

Weytsen's work was not published until rather late, even though it may have circulated in manuscript versions early on. A first printed edition from 1617[51]) was quickly reprinted in 1631 and 1646. In 1672, in Amsterdam, a Latin translation was made with comments by Simon van Leeuwen[52]). In 1703, an Amsterdam printer produced a French translation which he published together with bylaws on marine insurance and average of Rotterdam, Amsterdam and Middelburg[53]). Weytsen's treatise was also reprinted regularly from the 1630s onwards as part of a collection called Zee-Rechten (Sea laws), which not only included the 1551 and 1563 princely statutes but also the Law of Wisby[54]).

In order to highlight Weytsen's originality, a comparison can be made with contemporaneous monographs pertaining to the genre of the *ars mercatoria*. In 1590, for instance, the merchant manual "Tresoir van de maten" (Treasury of measures)

[50]) Weytsen died in 1565, see Abraham J. van der Aa *sub* Quintijn Weytsen, Biographisch woordenboek der Nederlanden vol. 20, The Hague 1877, 171–172. When Weytsen refers to the 6 pound demarcation for costs of pilotage, see Weytsen, Tractaet (fn. 38) fol. 2v, he is clearly quoting that princely statute of 30 Oct. 1563, ch. 4 art. 9.

[51]) Leiden s.n. [1617].

[52]) Quinten Weytsen, Tractatus de avariis: id est, communi contributione mercium rerumque in navi repertarum ad sarciendum damnum bonis mercatorum sive nautarum quorundam ultro illatum eum in finem ut vita, navis, ac reliqua bona salva evadant, Amsterdam 1672.

[53]) Traité des avaries fait par Quintin Weytsen, autrefois conseiller de la cour de Hollande: Avec les ordonnances pour les asseurances & avaries des villes d'Amsterdam, de Rotterdam, & de Middelbourg; comme aussi l'ordonnance & les instructions pour la Chambre de desolation de la ville d'Amsterdam, Traduit du hollandois, Amsterdam 1703.

[54]) For example, 't Boeck der Zee-Rechten, Inhoudende: Dat hoochste ende oudste Gotlandtsche Water-recht dat de ghemeene Cooplieden ende Schippers geordineert ende gemaeckt hebben tot Wisbuy …, Middelburg 1637.

was published in Amsterdam by an unknown author[55]). Despite its place of publication, its contents clearly reflect the mercantile practices of Antwerp. Following the upheaval of the Dutch Revolt, many merchants had left the Southern Low Countries, and Antwerp in particular, taking refuge in the North, and often at Amsterdam. These immigrants naturally brought with them their business expertise. The author of Tresoir was possibly one of them. The Tresoir is different from Weytsen's tract because it provides primarily very factual information for traders. For instance, the Tresoir contains ample sections on currencies, weights and measures and on some types of contract and instruments used among merchants, such as bills obligatory (i.e. acknowledgments of debt to bearer). It also has a small section on marine insurance and general averages.

Liquid merchandise, minted money and general average:

When Weytsen wrote his treatise, there was a clear lack of legal certainty for the theme of averages. The divergence in rules, and opinions, is especially obvious with non-typical cases. The author of the Tresoir, for example, warns about insurance of liquid merchandise for which 'average applies'[56]). It is clear that the author hints at general average, but this implication makes the advice rather peculiar. In fact, it seems that in the middle of the sixteenth century it was a practice not to include liquid and perishable merchandise (as well as minted money, see below) in calculations of general average. This may have been the rule at Bruges and Antwerp and, furthermore, may have received corroboration from the judges of these cities' courts. For the aforementioned types of cargo, these rules were most probably rooted in problems of evidence: How could the shipmaster prove that the jettisoned foodstuffs had not expired before they were thrown overboard? Even more so, one could easily assume that the discarded merchandise had been perished already. Amounts of money could be inflated afterwards as well.

The goods mentioned were not taken into account for determining the compensation; and if jettisoned, such items could not be compensated in general average. To Weytsen it seems normal that damages to leaked and spilled goods are not refunded in average. He means both general and common average[57]). However, he then diverges from – what he calls – the 'custom' to extend this to merchandise that is liquid and perishable (but not spilled or expired). For as much as damage to such goods followed from being jettisoned and not from their condition prior to jettisoning, Weytsen accepts the application of general average. For goods on deck that were splashed because of jettisoning other goods, compensation was given. Thus, Weytsen tried to reconcile the aforementioned custom with the principles of general average, also – yet not exclusively – in reference to the Lex Rhodia[58]). He clearly reasoned

[55]) Tresoir vande Maten, van Gewichten, van Coorn, Lande, vande Elle ende natte Mate, oock vanden Gelde ende Wissel, ende ander practijcquen ende vergaderinhen, seer profytich ende ghenoechlijck, Amsterdam 1590.

[56]) *Ibid*. 140.

[57]) Weytsen, Tractaet (fn. 38) fol. 3r.

[58]) In particular Digest 14,2,4,2. This fragment, which is not about liquid or perishable merchandise, states that one has to distinguish between the causes of damages inflicted to goods in the ship that resulted from jettisoning others. If damages to the goods in the ship were not due to the fact that they were left uncovered, for example, and if they cost more than the contribution asked from the merchant-owner for

from the principle of general average and derived therefrom the rule that also liquid and perishable merchandise (if not spilled or expired) was entitled to general average if it had undergone damage because of jettisoning, of these goods or of others[59]).

It is clear that underlying Weytsen's efforts of analysis was the fact that different types of perishables could be aboard ships. The English Company of Merchant Adventurers, for example, allowed the loading of foodstuffs and bulk goods on board their wool-exporting vessels and vehicles that were not the 'appointed ships' (i.e. the ones that were by the Company for sailing to Antwerp and Bergen op Zoom). In the sixteenth century selected it was envisaged that these goods were 'free from freightage' and also not subject to the tax regime for imports to the Low Countries[60]). Limited amounts of victuals could be stored on ships, serving as necessities for the crew. From the late fifteenth century, bulk transports of grain to Flemish and Holland ports had become more common[61]). For those shipments persisted – nonetheless – the customary rule that perishables, including grain, were not compensated in general average. It is likely that Weytsen was primarily reasoning with the later type of transport in mind – for which he accepted general average.

The princely statute of 1563 did not mention how liquid or perishable goods were to be treated in general average. The author of the Tresoir was hinting at the new approaches also found in Weytsen's treatise. Maybe the Tresoir was based on Weytsen's view that perishable and liquid goods could be brought in general average. However, even though Weytsen accepted general average as a principle, he also implicitly advised to insure liquid merchandise, because damages during a storm to merchandise that was not jettisoned could easily be considered particular average[62]); the author of the Tresoir did exactly the opposite, that is: warning insurers not to insure liquid goods because they were under general average.

With regard to minted money that was jettisoned during a storm, Weytsen refers to the 1563 princely statute which stated that coins could only be compensated in general average if, at the time of jettisoning, the amount was known by the shipmaster and supposedly verified[63]). Weytsen mentions a legal dispute at Antwerp in which some merchants had claimed from the other merchants in the expedition damages for coins, pearls and gemstones that had been thrown overboard. According to Weytsen, the claimants had submitted a legal opinion supporting this position, but their adversaries had brought up a legal statement stating the contrary. The Antwerp City Court had nonetheless decided in favour of the claimants. In 1548, however, this judgment was annulled by a higher court, most probably the Council of Brabant[64]). Weytsen stuck with the Antwerp solution, arguing that if the requirements for gen-

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the averages to the jettisoned merchandise, then the damages to the goods on board should be compensated in general average.

[59]) Weytsen, Tractaet (fn. 38) fol. 3r–v.

[60]) Oskar de Smedt, De Engelse natie te Antwerpen in de XVI[de] eeuw (1496–1582), vol. 2, Antwerp 1954, 247.

[61]) Raymond van Uytven, Politiek en economie: De crisis der late XVe eeuw in de Nederlanden, in: Belgisch Tijdschrift voor Filologie en Geschiedenis 53 (1975) 1097–1149, 1111–1113.

[62]) Weytsen, Tractaet (fn. 38) fol. 3r–v.

[63]) Pardessus (fn. 21) 61–103 (ch. 4 art. 5).

[64]) Weytsen, Tractaet (fn. 38) fol. 4r–v.

eral average were met, coins (and gems) were to be compensated in general average (and contribute as well).

There was a minor parallel with marine insurance in which valuables could be insured, provided that they were mentioned in the insurance contract in detail. The same applied for foodstuffs (perishable goods) and liquid merchandise. This rule, which may have existed in practice before, was for the first time imposed in legislation with the princely statute of October 1570 (art. 4), but some earlier merchant manuals implicitly refer to the rule as well. In his 1563 guidebook on bookkeeping, published in Antwerp, Valentin Mennher added some examples of entries reflecting the payment of a premium for marine insurance. These entries were for the insurance of wine, as says the insurance contract. The letter manual by Gabriel Meurier that was published in Antwerp in 1558 contains a 'best-practice' marine insurance contract[65]). The contract contains some clauses that were quite common around 1558, such as references to the customs of Antwerp and London and, moreover, to insurance for the perils of man and sea. This seems to tie in with the rule. Nevertheless, there are also some strange parts in Meurier's contract. For example, the composition of insured freights was usually not listed in detail[66]): Meurier's text of the agreement mentions "cuivre, toyles, cire & autres marchandises" (copper, cloth, wax and other merchandises). However, in another publication I have warned about inferring rules from merchant manuals[67]). A comparison with contracts of marine insurances signed at Antwerp shows that the nature of the merchandise that was insured was often not detailed[68]). The aforementioned contract examples were indeed rather a matter of advice than a reflection of practice. All this allows the conclusion that insurance contracts did not commonly list the nature of the merchandise insured, but that listing them was nonetheless considered advisable, especially for valuable and perishable goods, so as to ensure their compensation by insurers.

The merchant manual of the Tresoir proposed another rule than Weytsen had, even though both linked general average to marine insurance. Weytsen was careful not to consider insurance as a substitute for general average, referring to the insurer's responsibility for both general and particular average. By contrast, the author of the Tresoir considered them mutually exclusive, although in that respect he advised, rather poorly because of the unclear practices, to not insure because general average applied.

All this came after an earlier customary appraisal of certain goods as being exempted both from freightage and taxes (that is, minted money, perishable goods). In one passage, Weytsen states that coins – before the 1563 law – did not contribute in general average. He refers to the fact that cargo of coins was not taxed, and he

[65]) Gabriël Meurier, Formulaire de missives, obligations, Quittances, letters de change, d'asseurances, & plusieures Epitres familières, messages, requêtes, & instructions notables …, Antwerp 1558, fol. 13r–14v.

[66]) De Groote (fn. 31) 99–100.

[67]) Dave De ruysscher, How Normative were Merchant Manuals? Of Customs, Practices, Techniques and … Good Advice (Antwerp 16th Century), in: Heikki Pihlajamäki *et al.* (eds.), Understanding the Sources of Early Modern and Modern Commercial Law: Courts, Statutes, Contracts and Legal Scholarship, Leiden 2018, 144–165.

[68]) *Ibid.*

states that 'generally speaking, for what no toll is paid, no average is paid'[69]). Weytsen clearly refers to minted money and not to bullion, for which tolls had to be paid and which could be compensated in general average[70]). He then adds that 'when no freightage is paid, no average applies'[71]).

Even so, there are clear indications that this practice was changing towards a generalized freightage for all cargo. The 1551 princely law contained several articles that imposed payment of the freightage if the damages to goods of the merchant-owner were due to the latter's liability (art. 44). More generally, the idea was: If the ship sails, freightage has to be paid. Then the damages to goods can be compensated in general average, but they cannot be deducted from the freightage as long as the master has not been negligent (art. 40, 42). In some regards, though, the older views simmered through. If liquid merchandise had been spilled, even without any liability on the part of the master, the merchant-owner could abandon these goods and refuse to pay the portion of freightage for them (art. 42 *in fine*). This shows that in mid-century the older idea (that freightage was only payable on the condition of safe arrival of the cargo) had not completely been eradicated. This rule was abandoned in some jurisdictions since the beginning of the fifteenth century, for example Kampen[72]), though seems to have survived in others. The princely legislation of 1551 and 1563 clearly broke with these customs by imposing payment of freightage even if the merchandise had not arrived, when the result of exceptional circumstances. This may reflect a policy consideration that the shipmaster should not be discouraged to jettison merchandise when the ship was in distress. As the above-mentioned Antwerp rules on freightage demonstrate, the idea that freightage was due in any case was accepted there already in the 1530s; this is clear from the fact that a percentage of the total freightage was used to determine the indemnity of general average.

Considering all of the above, Weytsen's views aimed at bringing the sections of recent legislation in alignment with mercantile practice. Moreover, all this points to fundamental shifts within the conceptions of taxation and freightage in maritime transports.

Another example concerns Weytsen saying: 'Costs of pilotage is common average'[73]), but then struggling to explain that some costs of pilotage can actually be general average (when the pilot saves the ship). According to the legislation (of 1563 (ch. 4 s. 9), costs of pilotage over 6 pounds Fl. were presumed to be general average (high costs, hence high risk). It is clear that Weytsen went back and forth between a categorization based on acts and types of merchandise, on the one hand, and principles on the other. The older rules of thumb are stated first ('coins do not contribute in general average …'), followed – in the same sentence – by arguments based on the

[69]) Weytsen, Tractaet (fn. 38) fol. 4r.
[70]) Weytsen *ibid*.
[71]) *Ibid*. This may have referred to personal belongings (except those carried on the body) and goods not mentioned in the charter party contract (jewels, money); see William Welwood, An Abridgement of all Sea-laws … , London 1636, 137–138. Also, for some goods *nationes* of merchants negotiated a 'freightage free' portion for which no tolls were paid; see one example in De Smedt 2 (fn. 60) 217–218: Merchant Adventurers, 1517.
[72]) Frankot, Of Laws (fn. 4) 42.
[73]) Weytsen, Tractaet (fn. 38) fol. 2r.

contemporary principles ('… if jettisoned in order to save the ship, will be compensated in general average').

Shifting conditions and legal change:

In the thirteenth century, it was common to charge tolls on ships. The tolls imposed were often "*geleiden*" (convoys) which were envisaged to be charges for the protection granted by the lord overseeing the waters through which the ship travelled[74]). However, since the 1300s it had become more normal to demand taxes for cargo. Such custom duties differed according to the type of merchandise and were calculated on the value of the merchandise. This new approach required inspection of ships and the weighing of goods[75]). Labels became less rigid, custom duties could be categorized as toll (*theloneum*) or *geleiden*[76]). By the turn of the fifteenth century, tolls on ships were still levied[77]), but taxes on cargo had become the most important[78]). It was then that common average involved a difficult calculation, and Weytsen refers to a "*retule*" (*rotula* or detailed account) to be made after the journey in order to distribute the costs over the merchant-owners[79]).

Moreover, when cargo rather than ships was taxed, it became less logical that the master payed for averages as well. Weytsen emphasized that – in contrast to general average – costs of common average had to be paid by the merchants (according to the value of the merchandise) and not by the master[80]). This constitutes a remarkable opinion considering that the 1563 princely statute at one point imposes the master's contribution in common average (for costs of pilotage, if below 6 pound Fl., ch. 4 art. 9)[81]). In this regard, Weytsen seems to have followed older average usages that applied at Antwerp, where the ship did not contribute in common average (first mentioned in 1535)[82]).

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[74]) Roel Zijlmans, Troebele betrekkingen, Grens-, scheepvaart- en waterstaatskwesties in de Nederlanden tot 1800, Hilversum 2016, 267.

[75]) Remnants of the older approach can be found in customs and tolls lists of the city of Mechelen, dating of 1412; see Archives Départementales Lille [ADL], B 219, bylaw 19 January 1412 (New Style) fol. 22v: duties on a 'ship of salt'. At Antwerp, in the early fifteenth century, a *geleide* of 'one marcpenny' was paid for each ship passing through the Honte, see ADL, B 219, bylaw 1430s–1440s fol. 118v.

[76]) Herman van der Linden, Tollen van de hertog van Brabant te Leuven in de 14de eeuw, in: Bulletin de la commission royale d'histoire 99 (1935) 89–104.

[77]) Examples are the *Roertol* and *geleide* on the Honte, both levied in Antwerp, and the *Roergeld* levied at Middelburg, which were both tolls differring per type of ship, see De Smedt 2 (fn. 60) 231–233.

[78]) For example, the *Andriesgulden*, which was a tax levied on English cloth (per piece) imported in the Low Countries after 1496, see De Smedt 2 (fn. 60) 237–238. After 1540, it became usual to raise a tax as a percentage of the value of shipped merchandise, see De Smedt *ibid.* 238–239. For an analysis of the 'hundreth penny' of 1543 see Jeroen Puttevils, Klein gewin brengt rijkdom in, De Zuid-Nederlandse handelaar in de export naar Italië in de Jaren 1540, in: [Tijdschrift voor Sociale en Economische Geschiedenis] TSEG Low Countries Journal of Social and Economic History 6/1 (2009) 26–52.

[79]) Weytsen, Tractaet (fn. 38) fol. 2v.

[80]) Weytsen, Tractaet (fn. 38) fol. 2v.

[81]) Maybe common average wasn't practised when the ship did not arrive safely, see Charles Molloy, De Jure maritimo et navali, or a Treatise of Affaires Maritime, and of Commerce, London 1676, 282.

[82]) CAA Notariaat 3133 fol. 9r (1535).

The transition from common average as shared among merchants and the master to being directed towards the merchants may have had to do only with the fact that the master became an agent[83]). If the master was a partner and received a part of the profit, as was the case in the late medieval arrangements such as the *colleganza* (Venice) or the Hanseatic *wederlegginge*[84]), his sharing the costs of the expedition was normal.

There are indeed indications that in the first decades of the sixteenth century, the organization of shipping in the Low Countries was changing. Accumulation of capital at Antwerp resulted in the fact that merchants invested in larger ships; they were rented out[85]). The master was under these circumstances an employee of the shipowners and of the lessees; the master could have a stake in the ship, though not in the commercial venture for which the ship was chartered[86]). Therefore Weytsen's comment shows that he hesitated between a literal interpretation of the law (common average is shared over both the merchandise and the ship) and a newly emerging approach (common average is of concern only for the merchant-owners, not the master or the shipowners). It is striking that the 1563 statute opted for the older rather than the newer solution.

The end result of the changes was a legal framework that took the detachment of the master from the merchant-owners of the cargo for granted, but which was more complex than the fifteenth-century rules had been. It explains why the shift in practices and normative views, which resonated in the newly crafted legislation, ultimately had to be harmonized in the writings of legal authors.

The complexity is evident when taking into account that under the new rules on general average, freightage had to be paid for the jettisoned goods. The money of freightage was then put into the active side of the calculus of indemnity. It may have been that in the late fifteenth century jettisoned goods were not taken up in the calculation[87]). The reason may be that in the contrary case, the merchant having lost merchandise would have had to pay extra for his own loss[88]). This was in fact a straightforward solution which may have been very practical. Weytsen reflects on

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[83]) Frankot, Of Laws (fn. 4) 8 dating this in the fifteenth century.

[84]) Albrecht Cordes, Spätmittelalterlicher Gesellschaftshandel im Hanseraum, Cologne 1998.

[85]) Guido Asaert, Hollandse bezoekers in de haven van Antwerpen voor 1585, in: Neerlandia 89 (1985) 103–114, 111–112; D. Ormrod, Institutions and the Environment: Shipping Movements in the North Sea/Baltic zone, 1650–1800, in: Richard W. Unger (ed.), Shipping and economic growth, 1350–1850, Leiden 2011, 135–166, at 137; Louis Sicking, Réduction de risques (fn. 45) 805–806.

[86]) Frankot, Of Laws (fn. 4) 8. For examples of how common it was for Antwerp merchants to charter ships, shipmasters included, see Brulez (fn. 37) 526–527: period of 1582–1594.

[87]) This older rule may resonate in Welwood (fn. 71) 138. Yet later on in England, apparently, the jettisoned goods were also taken into account, see Molloy (fn. 81) 283.

[88]) For example, four merchants have merchandise in the ship (A, B and C for the value of 100, as well as D for the value of 500), and goods of A, valuing 50, are jettisoned. In that case A would have a loss of 56.25 if the jettisoned goods are considered, and of 55.89 if the jettisoned goods are not taken into account in the basis. The freightage is irrelevant because it was deducted from the valuation price of the merchandise.

this possibility but reaches the opposite conclusion. He clearly favours the principle that those who have put goods in a ship participate in the risk and therefore should be put on equal footing with the other merchant-owners. As a measure of clemency, Weytsen points to the Roman solution of putting a cap on the contribution by the merchant-owner who had lost goods in jettison. If his contribution would be unequally high, considering his damages, then he should not contribute or rather to a certain amount only[89]). The 1551 (art. 40) and 1563 statutes (ch. 4 art. 6) stuck to the calculation on the basis of the lost merchandise, too. What made the addition even more complex is that for all the goods contributing in general average (lost and arrived) the costs had to be deducted from their value, and that also freightage counted as cost (ch. 4 s. 6). This calculus of course referred to the new idea that freightage was also due for the jettisoned merchandise.

Conclusion:

All this amounts to a picture of rules and principles of both mercantile and academic origins, that were cut and pasted together through the efforts of jurists. The interpretative work of legal writers was generally helpful because they aimed for coherence and because their level of detail allowed for solutions to concrete problems. The interpretations of jurists came after a two-fold change: First, ties between merchant-owners and masters became more un-personal, and the ship was less the *locus* of communal interests than before. Correspondingly, maritime trade would be out-sourced and grew larger in scale. These developments quickly eroded the earlier assumptions that could no longer be held. The ruling norms did no longer correspond to reality. Secondly, in response to changing conditions, the customary rules of thumb of mercantile practice were turned into rules based on principles.

The new ideas were first adopted in the judicial practice of municipal courts and then trickled into legislation. The increase in detail that came with the officialization of maritime norms was an improvement from the former rules of thumb amongst circles of merchants. The latter were often not detailed enough to solve disputes. However, it was only the jurists' methods that allowed for the thorough embedding of legal change within existing frameworks. The informal nature of rules of thumb did not allow for legal change as swiftly and thoroughly as did legislation, foremost in the writings of legal scholars. Even so, this achievement came at a cost. Coherence in legal thought could yield complexity in calculations and even be economically less advantageous. In this respect, it is telling that the principled idea that jettisoned goods had to be taken into the calculus of the indemnity of general averages was less beneficial for the merchant-owner who suffered damages than the older rule had been for him.

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89) Weytsen, Tractaet (fn. 38) fol. 3r.

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