



الإبحار عبر الزمن: إرث الفينيقيين في القانون التجاري البحري

Sailing Through Time: The Phoenician Legacy in Maritime Commercial Law

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Abstract:

The evolution of maritime legal doctrines, predating the Roman system, has been a complex journey shaped by diverse civilizations. Among them, the Phoenicians emerge as the foremost seafaring nation in antiquity, influencing not only commerce but also leaving an indelible mark on the development of maritime jurisprudence.

Statement of the Problem: How did the Phoenicians significantly influence the genesis and development of maritime law, particularly in the domains of international and private commercial law, in the context of regulating human dominion over the seas?

Aim of the Paper: This paper seeks to comprehensively explore the pivotal role of the Phoenicians in shaping international maritime law. By delving into their maritime expertise, legal acumen, and innovative approaches to commerce, the aim is to unravel the intricate legal landscape governing Phoenician trade practices.

Method: Employing a historical methodology, the research navigates through the dynamic interplay of legal principles within public and private

commercial issues. The exploration encompasses the influence of Phoenician law on global trade regulations, focusing on the Lex Mercatoria, international maritime law, free ports, Metal money, bills of exchange, and insurance.

Expected Findings: Anticipated findings encompass a multifaceted understanding of Phoenician contributions to international maritime law. Insights into public and private commercial Phoenician rules will provide a perspective on the foundations of contemporary legal frameworks in global maritime commerce.

Keywords: Bill of Exchange – Free ports – Insurance – Lex Mercatoria – Money.

المستخلص:

تطورت المذاهب القانونية البحرية قبل النظام الروماني، ومرت برحلة معقدة شكلتها حضارات متنوعة. ومن بين تلك الحضارات، برز الفينيقيون كأسياد البحار في العصور القديمة، حيث أثروا ليس فقط في التجارة، بل أيضاً تركوا بصمة لا تنسى في تطوير القانون البحري.

بيان المشكلة: كيف أثر الفينيقيون في نشأة وتطوير القانون البحري، خاصة في مجالات القانون التجاري الدولي والخاص، في سياق تنظيم سيادة الإنسان على البحار؟

هدف البحث: يهدف هذا البحث إلى استكشاف الدور المحوري الذي لعبه الفينيقيون في تشكيل القانون البحري الدولي. من خلال استكشاف خبراتهم البحرية وفهمهم القانوني وأساليبهم المبتكرة في التجارة، يهدف البحث إلى فك رموز السياق القانوني الذي يحكم ممارسات التجارة الفينيقية.

منهج البحث: باستخدام المنهج التاريخي، يستكشف البحث التفاعل الديناميكي بين المبادئ القانونية في القضايا التجارية العامة والخاصة. وبالتالي، يشمل البحث تأثير القانون الفينيقي على تشريعات التجارة العالمية، خاصة فيما يتعلق بدورهم في تنظيم ليكس مركاتوريا، القانون الدولي البحري، المرافئ الحرة، العملات النقدية، الكمبيالة، والتأمين.

النتائج المتوقعة: من المتوقع أن تشمل النتائج فهماً متعدد الجوانب لمساهمات الفينيقيين في القانون الدولي البحري. يوفّر هذا التحليل للقوانين التجارية الفينيقية العامة والخاصة رؤية حول أسس الأطر القانونية المعاصرة في التجارة البحرية العالمية.

كلمات مفتاحية: الكمبيالة - الموانئ الحرة - التأمين - ليكس مركاتوريا - النقود.

Introduction:

Maritime legal doctrines predate the Roman system, evolving rather than

originating. The genesis of maritime law, emerging with human dominion over the seas, required regulations for utilization. The initial nation promulgating these rules remains an unresolved historical question.

Limited speculation is possible in this context. Despite the proficiency of Egyptian seafarers and their maritime legal traditions, both specific to the field and within the broader legal framework, have been obscured by the passage of time. While the ancient Code of Hammurabi, originating in the 22nd century B.C., provides insights into early legal considerations related to maritime collisions and compensation for leased watercraft, it is the Phoenicians who notably distinguish themselves as the preeminent seafaring nation in ancient times. Their maritime proficiency and legal sophistication have left a lasting imprint on the development of maritime jurisprudence¹.

It is said that, while other nations often focused on destruction, the Phoenicians were builders. They may not have been original inventors, but they excelled at adopting and spreading innovations from other cultures. Their significant contribution lies in their role as educators and promoters of progress. Hence, in antiquity, the Phoenicians stood out as the preeminent and pioneering commercial society². Undoubtedly, the Phoenicians cultivated a maritime trade of such magnitude that it found few rivals until

¹ LIBINGIER (C.-S.), The Maritime Law of Rome, Juridical Review, Vol. 47, no. 1, 1935, pp. 1-32, p. 2.

² WILLIAMS (H.-S.), Historians' History of the World, New York: The Outlook Company, 1904, p. 329.

the Middle Ages. This naturally peace-loving and astute race stood in stark contrast to their offspring, Carthage. Carthage's commerce, in contrast, was enforced through coercive means and ultimately met its demise at the hands of Rome¹.

Originally, the Phoenicians' nation spanned about 120 miles in length and 20 in breadth along the eastern edge of the Mediterranean Sea, featuring a coastline with numerous recesses forming excellent bays and harbors. In the hinterlands, towering forests on mountain ranges provided abundant resources for ship construction².

Accordingly, the Phoenicians, centered around Tyre on the Mediterranean coast from the Island of Aerad to Mount Carmel, epitomize opulence and wealth. Tyre and Carthage symbolize prosperity, underscoring the thriving currents of commerce and substantial wealth accumulation³.

Credited with pioneering maritime technology and sparking seafaring trade, the Phoenicians expanded their voyages incrementally, reaching Sicily, Sardinia, Greece, Gaul, and Spain. Fearlessly crossing the Mediterranean

to the Atlantic, they discovered Great Britain. Phoenicia's maritime dominance and commercial prowess endured for over 1,600 years before Christ's birth⁴.

Moreover, Phoenician traders and seafarers embarked on epic voyages that took them to the far reaches of the world, spanning from the Black Sea to Cadiz⁵. This is why in the 10th century BCE, the Phoenicians, credited with founding numerous cities along the Mediterranean shores, established institutions and legal principles that have come down to us through the Romans⁶. Their colonial ventures held significant import, with the most illustrious being the establishment of Carthage, a colony stemming from the Phoenician city of Tyre. As a result, the historical narrative of ancient Phoenicia's territory is a tapestry of enduring richness. Renowned as skilled traders and masters of the Mediterranean Sea, the Phoenicians left an indelible mark⁷. Even our modern alphabet finds its origins in the ingenuity of Phoenician traders, who

¹ LAYTON (B.), Notes on the history of commerce and commercial law. 1. Antiquity, University of Pennsylvania Law Review and American Law Register, 1913, Vol. 61, no. 7 (May, 1913), pp. 431-440, p. 431.

² DEAN (A.), History of Civilization, Albany, N.Y, McGill Guide 9th ed., 1868, p. 642.

³ LAYTON (B.), Notes on the history of commerce and commercial law. 1. Antiquity, University of Pennsylvania Law Review and American Law Register, 1913, Vol. 61, no. 7 (May, 1913), pp. 431-440, p. 431.

⁴ POTTER (G.-S), Sources Growth and Development of the Law Maritime, Yale Law Journal, vol. 11, no. 3, 1901-1902, pp. 143-152, p. 144.

⁵ ELLIOTT (C.), Purple Pasts: Color Codification in the Ancient World, Law and Social Inquiry, Vol. 33, no. 1, Winter 2008, pp. 173-194, p. 178.

⁶ LEBATTEUX (P.), Les origines de la copropriété, AJDI, 2006, pp. 519-526, p. 522.

⁷ POLOJAC (M.), Province of Syria and the Law School in Berytus (English Language), Ius Romanum, Vol. 2022, no. 2, 2022, pp. 350-362, p. 351.

likely devised it as a means to catalog their merchandise¹.

For these reasons, the early trade period witnessed a vast volume of maritime traffic. For instance, Tyre boasted a population exceeding one million, while Carthage had around seven hundred thousand inhabitants. Even in the five centuries preceding the common era, the Mediterranean coastlines were adorned with colonies and trading outposts, extending from one end to the other. The maritime commerce of the Mediterranean has established a consistent body of customs dating back at least 5,000 years prior to the present day².

This vast scope of trade conducted by the Phoenicians necessitated the establishment of a system of commercial law. Hence, the continuity of trade on such a grand scale relied heavily on the establishment and rigorous enforcement of such legal norms³.

Therefore, the Phoenicians, often referred to as "Mer-Chants", showcased a remarkable approach to maritime trade that went beyond mere commercial transactions. Their success rested on a dual strategy aimed at enchanting other populations into purchasing their merchandise. On one front, they developed the "Phonetics",

designed for universal understanding. In reality, the Phoenicians are credited with the invention of phonetic spelling, known as Phoenician spelling, which involved the pronunciation of each successive sound separately. They also pioneered the creation of letter symbols corresponding to individual sounds⁴. This linguistic innovation allowed them to meticulously identify and label each product, fostering a buyer's ability to distinguish between various items⁵.

Complementing this linguistic prowess, the Phoenicians employed incantations or formulae to orchestrate, invigorate, and promote their trading activities. Initially, they established a comprehensive framework for international trade, particularly within the Mediterranean. This involved imparting and advocating the principles of open trade along maritime routes to diverse populations and civilizations in the ancient world. While this cultural dissemination benefited traders broadly, it notably favored the Phoenicians, who dominated international sea trade.

Furthermore, the Phoenicians instituted a practical framework equipped with tools they invented or adapted. These tools aimed to persuade, streamline, and formalize deals with fellow traders or customers, including the introduction of monetary systems,

¹ POLOJAC (M.), Province of Syria and the Law School in Berytus (English Language), *Ius Romanum*, Vol. 2022, no. 2, 2022, pp. 350-362, p. 351.

² GORMLEY (W.-P.), The Development and Subsequent Influence of the Roman Legal Norm of Freedom of the Seas, *University of Detroit Law Journal*, Vol. 40, no. 5, 1963, pp. 561-596, p. 566.

³ GORMLEY (W.-P.), The Development and Subsequent Influence of the Roman Legal Norm of Freedom of the Seas, *University of Detroit Law Journal*, Vol. 40, no. 5, 1963, pp. 561-596, p. 566.

⁴ BUCKMINSTER FULLER (R.), KUROMIYA (K.), *Critical path*, St Martins Press, 1981, p. 75.

⁵ SCOTT (J.-C.), The Phoenicians and the formation of the Western word, *Comparative civilizations review*, Vol. 78, no 78, 2018, pp. 25-40, p. 28.

bills of exchange, and insurance. The subsequent exploration of various concepts and tools initiated by Phoenician traders, albeit not exhaustive, reveals their pivotal role in establishing the foundations of international maritime law and influencing its evolution. Their influence permeates nearly every trade rule, from Arbitration (A) to Zones of free trade (Z), underscoring their enduring impact on the global commerce landscape.

Amidst this historical observation, a critical question arises: How did Phoenician law influence and shape the evolution of maritime law, intertwining with both international and private commercial dimensions?

Trough employing a historical methodology, we delve into the dynamic interplay of legal principles within the realms of international and private commercial issues. The first chapter, titled "Navigating Legal Waters: Exploring International Commercial Issues in Law," scrutinizes the intricate legal landscape governing international aspects of commerce. We navigate through historical and contemporary legal frameworks, examining the profound influence of Phoenician law on global trade regulations. Shifting our focus to private commercial matters, the second chapter, "Unraveling Legal Complexities: Examining Private Commercial Issues in Law," meticulously dissects the nuanced intricacies within Phoenician legal

innovations. Here, we unravel the legal complexities surrounding instruments of payment, bills of exchange, and insurance—foundational elements that shaped the private dimensions of maritime law. Together, these two chapters offer a comprehensive exploration of Phoenician law's role in both public and private facets of commercial legal frameworks, providing invaluable insights into the evolution of maritime law.

1. Navigating Legal Waters: Exploring International Commercial Issues in Law

In this segment, we navigate the complex domain of global commercial matters, illuminating pivotal legal facets that mold the landscape of international trade and commerce. Within this exploration, we dissect three pivotal sections: Lex Mercatoria (1.1), International Maritime Law (1.2), and Free Ports (1.3).

1.1. Lex Mercatoria: Evolution and Influence on Commerce Through the Ages

In essence, *lex mercatoria* is characterized as a transnational legal system based on the trade practices of the international business community. Not originating from national legislation or adjudication, it does not fall under the category of international law¹.

Hence, there exists a "universality of the customs of the sea", transcending both time and space. These laws, arising from merchants without state or jurist intervention, find their roots in maritime

¹ VOLCKART (O.), MANGELS (A.), Are the Roots of the Modern Lex Mercatoria Really Medieval?, Southern Economic Journal, Vol. 65, no. 3, 1999, pp. 427-450, p. 430.

customs that started with the Phoenicians¹.

Said differently, *lex mercatoria* denotes principles and customary rules governing merchants and traders, attributed to the Phoenicians, predating formal nation-state laws. Consequently, a prior phase in the evolution of *lex mercatoria* involved ancient and rudimentary commercial customs and practices that governed the transactions of civilizations like the Phoenician traders².

It is important to stress that ancient navigation, initially driven by factors like poverty, necessity, courage and the love of plunder, has evolved into organized commerce grounded in mutual trust, replacing lawless piracy. The Phoenicians played a pivotal role in this field. In this transformative era, Tyrian vessels dominated the Mediterranean, and their maritime laws passed to Rhodes and influenced the Romans³.

It is worthwhile to mention that the extensive maritime codes of Phoenicia

and Carthage have vanished⁴. It is said that Cato the Elder likely played a role both in the destruction of Carthage and in the dissemination of Latin grammar⁵. Hence, regrettably, while no written code from the enterprising Phoenicians of the eastern Mediterranean has survived to this day, the code of another maritime people from the same region, the Rhodians, is frequently cited as one of the earliest. It is worth highlighting that Rhodes was originally a Phoenician colony⁶. This code is often regarded as the foundation for the maritime laws of ancient Greece and Rome when they ventured into maritime endeavors⁷.

Subsequently, it was developed by the Arabs and eventually refined by Italian merchants during the Middle Ages. It then spread to Western countries through significant international trade fairs⁸. As a result, this merchant's law is

¹ HATZIMIHAİL (N.-E.), *The Many Lives-and Faces-of Lex Mercatoria: History as Genealogy in International Business Law, Law and Contemporary Problems*, Vol. 71, no. 3, 2008, pp. 169-190, p. 178.

² ODUNTAN (G.), *The Reimaginarium of Lex Mercatoria: Critique of the Geocentric Theory about the Origins and Episteme of the Lex Mercatoria*, *Manchester Journal of International Economic Law*, Vol. 13, no. 1, April 2016, pp. 63-80, p. 64.

³ Anonymous, *The monthly review, or, Literary journal*, Vol. 59, Becket and Porter, Booksellers, 1809, p. 454.

⁴ GORMLEY (W.-P.), *The Development and Subsequent Influence of the Roman Legal Norm of Freedom of the Seas*, *University of Detroit Law Journal*, Vol. 40, no. 5, 1963, pp. 561-596, p. 565.

⁵ LEBATTEUX (P.), *Les origines de la copropriété*, *AJDI*, 2006, pp. 519-526, p. 522.

⁶ UKATTAH (C.), *Trade and General Average: The Correlation between Commerce and Maritime Concepts*, *Loyola Maritime Law Journal*, Vol. 15, n. 1, 2016, pp. 51-84, p. 55.

⁷ ROBINSON (G.-H.), *An introduction to American admiralty*, Vol. 21, I. 1, 1935, pp. 46-83, p. 46. See also, KHALİL (A.), *The New Lex Mercatoria in the Sudanese Legal System*, *Arab Law Quarterly*, Vol. 29, no. 1, 2015, pp. 1-30, p. 3.

⁸ DONAHUE (C.), *Medieval and Early Modern Lex Mercatoria: An Attempt at the Probatio Diabolica*, *Chicago Journal of International Law*, Vol. 5, no. 1, 2004, pp. 21-37, p. 22.

a foundational element of modern commercial law¹.

Due to this, many market institutions, including various types of contracts, trading instruments, and quite possibly even the concept of money itself, were not creations of formal states but rather the brainchildren of groups of enterprising traders. In numerous instances, traders have adapted or created political and legal tools to cater to the demands of commerce. The *lex mercatoria*, or Law Merchant, stands out as the most prominent example, a legal framework with an intricate relationship with the state, and possibly conceived entirely by private individuals in search of enforceable trade customs².

1.2. Navigating Legal Waters: The Evolution of Public International Maritime Law

The *Lex mercatoria* operates as a set of trading principles serving as the international law of commerce. In contrast, public international maritime law, commonly referred to as the Law of the Sea, encompasses the legal principles governing activities in international waters. This legal

framework comprises a collection of conventions, regulations, and treaties designed to address nautical matters and oversee the operations of maritime organizations³.

The foundations of public international maritime law were laid by the Phoenicians some three millennia prior to the birth of Christ⁴. Naturally, maritime law, possibly the earliest form of commercial law, owes a considerable debt to the Phoenicians and their mariners, who, voyaging through routes by way of Rhodes or Carthage, charted courses across the expanse of the western Mediterranean⁵. In this vein, global trade has been a reality dating back to the era of the Phoenicians⁶.

In fact, it has been proposed that the origin of the first genuinely "universal" maritime law can be traced to the Phoenicians, spreading west and north alongside the expansion of commerce⁷. While no concrete record of this "Phoenician Sea law" exists, some argue that the extensive scope of Phoenician trade necessitated the development of a comprehensive international law system.

¹ MOLINEAUX (C.), *Applicable Law in Arbitration The coming convergence of Civil and Anglo-Saxon Law via Unidroit and Lex Mercatoria*, *The journal of world investment and trade*, Vol. 1, I. 1, 2000, pp. 127-135, p. 129.

² SANDEFUR (T.), *Does the State Create the Market - And Should It Pursue Efficiency*, *Harvard Journal of Law & Public Policy*, Vol. 33, no. 2, 010, pp. 779-806, p. 785.

³ KAGAN (J.), *What Is Maritime (aka Admiralty) Law, and Why Is It Important?* 2022. Available on: www.investopedia.com/terms/m/maritime-law.asp

⁴ CUSICK (R.), *Navigable Waters and Admiralty Jurisdiction*, *Western reserve law review*, Vol. 7, I. 1, 1955, pp. 72-77, p. 72.

⁵ TERRE (F.), *Présentation, Petites Affiches*, n. 237, 2003, p. 44.

⁶ AMAN (A.), *Symposium: The U.S.-Japanese Trade Relationship: An Interdisciplinary Approach to the 1990's: Preface*, *Cornell International Law Journal*, Vol. 22, I. 3, 1989, pp. 371-373, p. 371.

⁷ UKATTAH (C.), *Trade and General Average: The Correlation between Commerce and Maritime Concepts.* *Loyola Maritime Law Journal*, Vol. 15, no. 1, 2016, pp. 51-84, p. 56.

Concerning public maritime law, it can be inferred, drawing from the preceding context, that the high seas, serving as the principal route for maritime commerce, were relatively open to legitimate mariners during the pre-Roman era. Nonetheless, some degree of control was necessary to manage the Mediterranean due to the persistent threat of pirates and marauders. Policing the seas was a continuous challenge, a duty assumed by early Phoenicians and Greek city-states¹.

More generally, we observe that the notion of the open seas has a long historical lineage, tracing back to the maritime journeys of the Phoenicians, Greeks, and Romans. According to this concept, navigation could expand as demand and capabilities required².

Therefore, Phoenician cities formed protective alliances, even after being conquered by Assyrians, Babylonians, and Persians. They tried to convene a congress for addressing shared issues and establishing a federation. However, this endeavor faltered due to the intense rivalry between Sidon and Tyre, both vying for political dominance³.

Importantly, there was no concerted effort to exclude others from using the sea, unlike the practices observed in the medieval period. It was only with the

ascent of the medieval city-states that the concept of "exclusive sovereignty" or *Mare Clausum*, distinct from mere regulation, began to be asserted⁴. Certainly, with the growth of the Roman Empire, the Romans recognized certain benefits in regulating navigation. As a result, a "*Mare Nostrum*" system gradually emerged in the Mediterranean, subjecting non-Roman vessels to various forms of restrictions⁵.

1.3. From Phoenicians to Present: The Evolution of Free Ports and Trade Zones

A free port refers to a zone encompassing a whole port and its adjacent areas, where goods of foreign origin can enter without incurring customs duties, or with minimal tariffs, whether intended for re-export or local use. Said differently, a free port, located within a country, operates outside the country's customs territory. Firms can import, store, process, and re-export goods within the free port, bypassing regular tax and customs regulations⁶.

In the present day, over one hundred thirty-five nations administer tax-exempt trade zones (FTZs). Globally, there are in excess of three thousand five hundred of these designated zones and subzones. The origins of these free trade zones can be traced back to the era

¹ GORMLEY (W.-P.), *The Development and Subsequent Influence of the Roman Legal Norm of Freedom of the Seas*, University of Detroit Law Journal, Vol. 40, no. 5, 1963, pp. 561-596, p. 567.

² ALEXANDER (L.), *The ocean enclosure movement: Inventory and prospect*, San Diego law review, Vol. 20, 1983, pp. 561-594, p. 562.

³ PHILLIPSON (C.), *International Law and Custom of Ancient Greece and Rome*, Macmillan and Co., 1911, p. 1.

⁴ GORMLEY (W.-P.), *The Development and Subsequent Influence of the Roman Legal Norm of Freedom of the Seas*, University of Detroit Law Journal, Vol. 40, no. 5, 1963, pp. 561-596, p. 567.

⁵ ALEXANDER (L.), *The ocean enclosure movement: Inventory and prospect*, San Diego law review, Vol. 20, 1983, pp. 561-594, p. 562.

⁶ SULLIVAN (E.), *Protection to Native Industry*, London, Edward Stanford, 1870, p. 22.

of the Phoenicians, who innovated the concept of international free trade zones.

Certainly, the historical roots of free ports trace back to the era of Phoenician traders who, due to assaults and capricious levies, sought refuge in Mediterranean ports like Tyre, Carthage, and Utica, which assured the secure transport of goods¹. In reality, the annals of history, the free trade zone served as a strategic instrument of dominant commercial forces. Its roots can be traced to the era of ancient Phoenicians, where the paramount assurance provided to foreign traders visiting Tyre and Carthage was safe passage².

Subsequently, the Phoenicians established FTZs with the aim of exerting economic and political influence. Throughout history, expansive urban free zones and entrepôts, such as those found in Gibraltar, Hamburg, and Singapore, have operated for centuries, facilitating unrestricted storage and trade along secure commercial routes³.

It is worthwhile to mention that FIZs represent a contemporary industrial adaptation, serving as a response to Free Trade Zones, and drawing inspiration from the timeless idea of free ports.

2. Unraveling Legal Complexities: Examining Private Commercial Issues in Law

Within the confines of this part, we embark on a meticulous examination of private commercial issues, peeling back layers of legal intricacies that define the landscape of commerce. This exploration encompasses three critical sections: Instruments of Payment (2.1), Bill of Exchange (2.2), and Insurance (2.3).

2.1. Navigating Transactional Terrain: Exploring Instruments of Payment in Commercial Law

In this part, we dissect the multifaceted landscape of instruments of payment, unraveling the intricate mechanisms that facilitate transactions in the realm of commerce. The exploration unfolds across three distinctive sections: Barter System (2.1.1), Metal money (2.1.1), and Earnest Money (2.1.3).

2.1.1. Barter system

The Phoenicians, renowned as one of history's most industrious and pioneering commercial peoples, abstained from using currency in their extensive maritime trade endeavors. Instead, they relied on a barter system where goods were exchanged based on their equivalent value in weighed metals⁴.

¹ AMADO (J.-D.), Free Industrial Zones: Law and Industrial Development in the New International Division of Labor, University of Pennsylvania Journal of International, Business Law, Vol. 11, no. 1, 1989, pp. 81-150, p. 89.

² TIEFENBRUN (S.), U.S. Foreign Trade Zones of the United States, Free-Trade Zones of the World, and their Impact on the Economy, Journal of International Business and Law, Vol. 12, I. 2, 2013, pp. 149-222, p. 166.

³ TIEFENBRUN (S.), U.S. Foreign Trade Zones of the United States, Free-Trade Zones of the World, and their Impact on the Economy, Journal of International Business and Law, Vol. 12, I. 2, 2013, pp. 149-222, p. 151.

⁴ GEVA (B.), From Commodity to Currency in Ancient History--On Commerce, Tyranny, and the Modern Law of Money, Osgoode Hall Law Journal, Vol. 25, no. 1, 1987, pp. 115-158, p. 127.

Thus, in the initial phases of Phoenician civilization, bartering served as a prevalent method of trade. Small towns functioned as cohesive entities engaging in commerce with other enterprises, exchanging surplus goods that were in abundance on one side and required by the other party¹.

In this vein, before the embrace of the metal currency, Phoenician trade with external entities operated primarily through financial agreements or trade pacts that defined specific terms of exchange. These agreements, specifying equivalencies in raw materials, played a crucial role in facilitating commerce, particularly in dealings with expansive and intricate economies such as Egypt, Babylonia, or Cyprus². For instance, the initial commercial interactions of various nations, where Tyrian goods were directly swapped for Spanish products³.

Acquiring precious metals stood as a paramount goal for the Phoenicians. While a significant portion of their land trade relied on barter, they esteemed precious metals as the ultimate focus of

their commercial endeavors. These metals symbolized value, and, akin to other early commercial states, they deemed ownership of these metals more crucial than the commodities themselves⁴.

2.1.2. Metal money

The assertion is made that in 1500 B.C., the Phoenicians transitioned from trading cattle to pioneering the creation of metal money. Initially, they fashioned iron half-rings resembling a pair of bull's horns, often mistakenly identified as bracelets in contemporary times⁵.

Regardless of the veracity of this claim, the Phoenicians were ahead of their time, employing money as the foundation for their trade with other nations⁶. Accordingly, the Phoenicians comprehended the concept of "hard money" and prospered throughout their existence by actively pursuing the most resilient forms of monetary assets available⁷.

In situations of uncertainty, it is noteworthy that the robust monetization of Phoenician commercial networks is

¹ Anonymous, How the Phoenicians adopted hard money. Available on: sir-t.medium.com/how-the-phoenicians-adopted-hard-money-834511a52d34#:~:text=Some%20of%20the%20goods%20used,mainly%20of%20bulk%20of%20silver.

² TISDELL (C.), SVIZEERO (S.), Economic Theory, Phoenician Pre-coinage External Trade, Changes in the Economic Surplus and its Appropriation - An initial Perspective, Working paper n. 80, The University of Queensland, 2019, pp. 1-33, p. 18.

³ DEAN (A.), History of Civilization, Albany, N.Y, McGill Guide 9th ed., 1868, p. 655.

⁴ DEAN (A.), History of Civilization, Albany, N.Y, McGill Guide 9th ed., 1868, p. 654.

⁵ BUCKMINSTER FULLER (R.), KUROMIYA (K.), Critical path, St Martins Press, 1981, p. 74.

⁶ WILLIAMS (H.-S.), Historians' History of the World, New York: The Outlook Company, 1904, p. 340.

⁷ Anonymous, How the Phoenicians adopted hard money. Available on: sir-t.medium.com/how-the-phoenicians-adopted-hard-money-834511a52d34#:~:text=Some%20of%20the%20goods%20used,mainly%20of%20bulk%20of%20silver.

emphasized. Furthermore, the observation persists that a variety of 'proto-currency' forms were actively in circulation in the Levant, tracing their origins back to no later than the 8th century BCE¹. In this regard, in Phoenicia, metals with standardized weights were utilized as currency for local trade². In fact, in this period and beyond, the Phoenicians unequivocally minted and employed their own coinage³.

In fact, the historical use of silver as currency by the Phoenicians becomes evident when examining the trading regions. More generally, regions closer to Phoenicia adopted silver as money earlier, while those farther away did so later, depending on their commercial ties with the Phoenicians⁴. It is in this context that the early roots of modern banking can be traced back to the practices of the Phoenicians and Babylonians⁵.

Therefore, it is understood that the Phoenicians abandoned the practice of

bartering and embraced a unified medium of exchange, predominantly centered around silver coins. The impracticality of the bartering system becomes evident when considering its feasibility only on a small scale, particularly during the earlier stages when the Phoenician economy was relatively limited in size⁶.

2.1.3. Earnest money

The term "earnest" in English corresponds to the "arra" in Roman law and the "arrhes" in French civil law, with its roots traced back to a Phoenician origin through the influence of the Greek language⁷. Distinctively, the tradition of employing "earnest money" as a legally binding deposit, known as arrhabon or arrha, finds its roots in a Semitic language. This linguistic choice underscores a clear

¹ PAPPAS (E.), You give me letters instead of money? Commercial transactions in the Near East and the Western Mediterranean ca. 1100-600 BCE: social innovation and institutional inhibition of Phoenician commerce, *Revista do Museu de Arqueologia e Etnologia*, Vol. 28, 2017, pp. 1-30, p. 1.

² GEVA (B.), From Commodity to Currency in Ancient History--On Commerce, Tyranny, and the Modern Law of Money, *Osgoode Hall Law Journal*, Vol. 25, no. 1, 1987, pp. 115-158, p. 125.

³ READ (F.), The Origin, Early History, and Later Development of Bills of Exchange and Certain Other Negotiable Instruments, *Canadian Bar Review* 4, no. 7 (September 1926), pp. 440-459, p. 443.

⁴ WILLIAMS (H.-S.), *Historians' History of the World*, New York: The Outlook Company, 1904, p. 341.

⁵ HOURWICH (I.), The Evolution of Commercial Law, *American Bar Association Journal*, Vol. 1, No. 2, 1915, pp. 70-76, p. 72.

⁶ Anonymous, How the Phoenicians adopted hard money. Available on: sir-t.medium.com/how-the-phoenicians-adopted-hard-money-834511a52d34#:~:text=Some%20of%20the%20goods%20used,mainly%20of%20bulk%20of%20silver.

⁷ HEBERT (P.-M.), The Function of Earnest Money in the Civil Law of Sales, *Loyola Law Journal* (New Orleans), Vol. 11, no. 3, 1930, pp. 121-149, p. 121.

connection to Near Eastern practices, notably those of the Phoenicians¹.

In this regard, earnest money, a deposit by a buyer, signifies commitment to a transaction, commonly seen in real estate. Typically required by the seller, it is applied to the purchase price but may be forfeited if the buyer defaults or breaches contract terms².

Hence, in merchant classes, early sales principles have historical support for the enduring need for consideration in enforcing contracts. The concept of earnest money, from ancient mercantile nomads, exemplifies this. Babylonian merchants recognized its necessity, a practice transmitted by Phoenicians to Greece, then adopted by Rome. This historical continuum underscores the lasting importance of considerations in contracts, rooted in ancient trade practices³.

2.2. Phoenician Pioneers: Navigating Trade and Finance with Bills of Exchange

The challenges of the primitive monetary system in caravan trade were addressed during the 9th and 8th centuries B.C.E. Merchants in Babylonia and Chaldea utilized clay-inscribed bills of exchange, resembling

drafts denominated in silver or copper weight. These instruments efficiently reduced the transportation challenges of bulk primitive money in land-based trade, especially on routes prone to robbery, offering a practical solution to issues of bulk and the assessment of precious metal quality in payments⁴.

The Phoenicians were renowned as skilled navigators, travelers, and merchants, actively engaging in money lending and currency exchange. As they journeyed through diverse regions across the known world, particularly in the pursuit of trade, it is conceivable that their impact significantly contributed to the widespread adoption of the aforementioned Babylonian and Chaldean negotiable instruments⁵.

In this context, the Phoenician monetary practices suggest a market-based commerce using written accounts as a currency substitute. Significantly, literacy's expansion assumed an institutional role in the transaction system with the introduction of securities, setting it apart from a mere complement to trade. Drawing parallels with Babylonian securities, it underscores literacy as integral to the Phoenician transactional system.

¹ HUDSON (M.), Did the Phoenicians introduce the idea of interest to Greece and Italy - and if so when?, 1992. Available on: <https://michael-hudson.com/1992/03/did-the-phoenicians-introduce-the-idea-of-interest-to-greece-and-italy-and-if-so-when/>

² BENJAMIN (J.- P.), BENNETT (E.-H.), *Treatise on the Law of Sale of Personal Property: With References to the American Decisions and to the French Code and Civil Law*, Boston, Houghton, Mifflin and Company, 1881, p. 209.

³ KERR (C.), *Origin and Development of the Law Merchant*, *The Virginia Law Review*, vol. 15, no. 4, 1928-1929, pp. 350-367, p. 362.

⁴ GEVA (B.), *From Commodity to Currency in Ancient History--On Commerce, Tyranny, and the Modern Law of Money*, *Osgoode Hall Law Journal*, Vol. 25, no. 1, 1987, pp. 115-158, p. 127.

⁵ READ (F.), *The Origin, Early History, and Later Development of Bills of Exchange and Certain Other Negotiable Instruments*, *Canadian Bar Review*, Vol. 4, no. 7 (September 1926), pp. 440-459, p. 443.

Temples in the Phoenician economy may have functioned similarly to credit-giving institutions, akin to the later monetization process in the Roman Empire's northern frontier zones¹.

In this vein, there is a valid basis for conjecture that Phoenician merchants employed bills of exchange and letters of credit to facilitate their extensive trade interactions with Mediterranean cities².

2.3. Navigating Risk: The Historical Evolution of Maritime Insurance from Phoenician Practices to Modern Contracts

Primarily via Phoenician maritime trade, financial innovations were disseminated to the Greeks and subsequently transmitted to the Romans³. These financial innovations encompass aspects such as maritime law and insurance agreements.

An initial proposition may suggest that many experts believe that marine insurance, considered one of the earliest forms of insurance, originated with Phoenician traders, who established

thriving colonies around the Mediterranean circa 1200 B.C.⁴.

Hence, from a historical vantage point, the evolution of insurance as a distinct institution unequivocally detached itself from the practice of "prêt à la grosse aventure", which appears to have been in use among the Phoenicians⁵. In fact, Phoenician merchants took out loans on ships and their cargo. In practice, the sea voyage was financed by a lender. If the ship returned safely to port, the revenues from the sale of the cargo were shared between the lender and the merchant. However, if the ship was wrecked, the lender was not reimbursed⁶.

It is important to acknowledge that modern insurance differs significantly from its millennium-old origins when Phoenician merchants mitigated shipping risks by dividing and distributing cargoes across various vessels⁷. Indeed, in their astute comprehension of the perils inherent in their maritime trade endeavors, Phoenician merchants exhibited a remarkable practice of mutual

¹ PAPPA (E.), You give me letters instead of money? Commercial transactions in the Near East and the Western Mediterranean ca. 1100-600 BCE: social innovation and institutional inhibition of Phoenician commerce, *Revista do Museu de Arqueologia e Etnologia*, Vol. 28, 2017, pp. 1-30, p. 22-23.

² TRIMBLE (R.-J.), The law merchant and the letter of credit, *Harvard Law Review*, Vol. 61, no. 6, 1948, pp. 981-1008, p. 984.

³ SCOTT (J.-S.), Phoenicians: The quickening of Western civilization, *Comparative civilizations review*, Vol. 81, no. 81, 2019, pp. 30-68, p. 45.

⁴ MORRIS (G.), A brief history of marine insurance, 2018. Available on: A Brief History of Marine Insurance - Risk & Insurance : Risk & Insurance (riskandinsurance.com).

⁵ BERR (J.), Assurance maritime, *Répertoire de droit commercial*, Dalloz, 2021, § 11.

⁶ VIGNERON (M.), La réglementation des assurances sur la vie en France (1681-1938) : éléments de comparaison avec l'Angleterre, *Thèse de doctorat- Université de Toulouse*, 2020, p. 17.

⁷ DEFEVER (K.-M.), "Comparative Analysis of European Union and United States Insurance Law Systems - With Emphasis on Consumer Protection Law, *European Journal of Commercial Contract Law* 10, no. 2/3, 2019, pp. 9-27, p. 10.

assistance and support among themselves¹.

A secondary hypothesis can be posited, suggesting that the roots of insurance can be traced back to Babylonian maritime traders as early as 2250 B.C. These traders developed contracts known as "bottomry", in which investors would lend money or goods to a merchant at a high interest rate. The agreement stipulated that the borrower's obligation to repay the interest or the debt would be waived if the vessel carrying the goods sank or fell victim to piracy².

Thus, the bottomry contract is a maritime agreement. It derives its name from the fact that the keel or bottom of the vessel is used as collateral. This contract involves the hypothecation of a ship for a monetary loan, utilizing the vessel's bottom as security. The loan is provided at an increased interest rate, and the lender assumes the sea risks for a specific voyage or a defined period of time³.

Within this alternative hypothesis, it remains highly probable that the Phoenicians served as intermediaries through whom the knowledge of bottomry practices was conveyed from the more ancient civilizations to the Greeks⁴.

Accordingly, over the centuries, these contracts evolved into the insurance contracts we are familiar with today. Lloyd's of London is recognized as the first formal insurer of vessels and cargo, with its inception in the late seventeenth century. Following the Great Fire of London in 1666, insurers also began offering coverage for fire losses on non-marine properties⁵.

Conclusion

Trade, especially commercial activities, was predominantly entrusted to the Phoenicians. It is an established reality that among the ancient civilizations in the Eastern world, none were more strategically positioned for thriving in commercial enterprises than the Phoenicians⁶.

Recognizing and understanding these Phoenician contributions is crucial for appreciating the rich historical tapestry that forms the basis of contemporary legal frameworks in global maritime commerce. In this regard, the Phoenician legal legacy in maritime law encompasses a broad array of concepts, from foundational commercial law to innovative financial instruments and practices:

First, *Lex Mercatoria*, originating with Phoenicians, Greeks, and Romans,

¹ COLLIER (S.-C.), *Insurance Law*, Denver University Law Review, Vol. 75, no. 3, 1998, pp. 1003-1030, p. 1003.

² FRENCH (C.), *The role of the profit imperative in risk management*, University of Pennsylvania journal of business law, Vol. 17, I. 4, 2015, pp. 1081-1138, p. 1092.

³ DESTY (R.), *Manual of the Law relating to Shipping and Admiralty*. San Francisco, S. Whitney, 1879, p. 73.

⁴ MAGEE (J.-H.), *The early development of insurance*, Thesis, University of Maine, 1917, p. 26.

⁵ FRENCH (C.), *The role of the profit imperative in risk management*, University of Pennsylvania journal of business law, Vol. 17, I. 4, 2015, pp. 1081-1138, p. 1092.

⁶ DEAN (A.), *History of Civilization*, Albany, N.Y, McGill Guide 9th ed., 1868, p. 642.

evolved into a foundational element of modern commercial law. This involved the emergence of private legal frameworks by enterprising traders, shaping market institutions, and transcending formal state laws. Therefore, it is crucial to acknowledge the pivotal role of *Lex Mercatoria* in legal education, emphasizing its adaptive nature and contribution to enforceable trade customs.

Second, Phoenicians laid the foundations for international maritime law, influencing private and public international legal concepts. This included the evolution of the "Tyrian sea" concept, maritime law's expansion with Phoenician trade. In light of this, promoting awareness of Phoenician influence in maritime law is recommended today, emphasizing the historical openness of seas and the need for international cooperation.

Third, Phoenicians pioneered tax-exempt trade zones, inspiring contemporary Free Trade Zones and Free Ports. Hence, for businesses in international trade, it is recommended to weigh the advantages and legal consequences of operating in or utilizing free ports and trade zones. Leveraging historical insights can aid in devising legally robust strategies in today's ever-changing global commerce environment.

Fourth, Phoenicians, ahead of their time, used standardized metals as currency, influencing regional adoption of silver in trade. This resulted in Phoenician minting of coins and regional variations in adopting silver as currency. This historical observation suggests integrating flexibility in

contemporary practices by adopting modern payment methods, including electronic funds transfer.

Fifth, Phoenicians likely employed bills of exchange, addressing challenges in primitive monetary systems. This involved the adoption of bills of exchange in Babylonia, specifically addressing transportation challenges in land-based trade. The Phoenician transaction system offers valuable insights for today's legal frameworks. Considering the pivotal role of literacy in introducing payment and credit instruments, legal professionals should also assess the impact of electronic literacy in contemporary transactions.

Sixth, Phoenicians exhibited mutual support in maritime trade, contributing to the evolution of insurance practices. As we navigate contemporary legal frameworks, it is essential to recognize the historical foundations that have shaped the principles of insurance. This underscores the importance for legal practitioners to comprehend and adjust to the dynamic evolution of insurance contracts within today's intricate maritime and commercial landscapes.

In the final analysis, the absence of substantial traces of Phoenician maritime laws in contemporary records remains a poignant reality. Whether this unfortunate circumstance is a consequence of unintentional factors, such as the gradual passage of time, or intentional actions, such as the Romans' concerted effort to obliterate not only Carthage physically (as witnessed at the conclusion of the Punic wars) but also any vestiges of the Phoenician Sea masters' legacy in Mediterranean maritime supremacy, the truth persists.

Yet, indisputably, the indelible image lingers—a Phoenician "Mer-Chant" stepping onto a distant shore, laden with merchandise, armed with a distinctive language (Phonetics), and wielding a unique set of laws. This image, like an enduring imprint on the canvas of human history, defies erasure, symbolizing the profound impact of the Phoenician maritime legacy on the collective memory of civilizations.

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