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THE COMMERCIAL LAW OF OLD RUSSIA

This article presents a brief history and description of the development of commercial law in Kievan Rus', Novgorod and the Muscovite tsardom and assesses its relative sophistication and maturation. The emphasis shall be on loans, credit, collateral and special commercial courts. As a standard of comparison, the commercial law of Western Europe in the same period, the so-called law merchant (lex mercatoria) shall be employed. The conclusion will be that while 'pre-Petrine law developed the basic concepts of property and contract necessary to support commercial activity, it failed to develop, or developed much later, most of the sophisticated commercial legal devices developed in the law merchant of medieval Western Europe. While the law merchant may have been practiced to some extent in Novgorod and Pskov, it had no significant impact on Russian law.

For those readers unfamiliar with the subjects of commercial law, a brief introduction is in order. In order to support simple domestic and international trade in agricultural and manufactured goods by way of seaborne and overland carriage, a legal system must at the very least develop legal doctrines and means of adjudication to protect property, to facilitate and enforce contracts and partnerships, and to allow credit to be obtained, at least on the security of land or pledged goods. Pre-Petrine Russian law accomplished all of these things.

The development and facilitation of substantial commercial activity, however, requires more sophisticated legal doctrines and mechanisms. These include negotiable instruments, chattel mortgages, and limited liability companies. The most ready example of a negotiable instrument is the modern day bank check, which is an order to a bank to pay a third party a certain sum of money on demand. The check was an invention of the law merchant. The check is negotiable in the sense that it may be negotiated by the payee with another third party such as a bank or a creditor. In other words, it may be exchanged for value, thus facilitating the movement and payment of funds.

Promissory notes also became negotiable in the law merchant of Western Europe. If notes are negotiable, they may be sold by the lender so that he may use them to raise additional funds to lend, thus making more credit available for additional transactions.

Purchase money chattel mortgages are, as the name implies, an agreement by which a seller takes collateral in goods he sells to secure payment of the purchase price on credit. If the purchase price is not paid, the seller or the person to whom he assigns or negotiates the chattel mortgage may foreclose on the goods. The key concept here is that the purchaser may obtain possession of the goods and keep possession as long as he is not in default on his debt. The chattel mortgage was another invention of the law merchant, and like the check it was developed from the eleventh through the fourteenth centuries. It probably developed from the early practice in the law merchant whereby a seller who had sold his goods on credit, obtained, by operation of law, a lien against the goods for the unpaid purchase price.2

These two types of contracts or legal devices, negotiable instruments and chattel mortgages, substantially facilitated the development of trade, particularly for transactions over long distances. They each facilitated and assured the payment of commercial obligations, particularly when the buyer and seller were far removed from each other. They also facilitated the extension of credit, which is the lifeblood of commerce. They each, however, also depended to some extent on the trustworthiness of the parties.

Limited liability companies, unlike partnerships, allow a person to invest in an enterprise without putting all of his assets at risk; he risks only his investment itself. This device, which was also developed by the law merchant, made it easier to raise capital for substantial enterprises from a large number of people.3

The law merchant was administered by special merchant courts, whose judges were chosen from the local merchantry, and even sometimes from the foreign merchants with whom the local merchantry dealt. The procedure in these courts was usually oral and summary in nature: the parties each presented their testimony to the judge or judges, who would render their decision immediately. In certain types of cases, such as the enforcement of loans, written notes were necessary in order to obtain relief. In some towns, these notes had to be notarized or recorded with the town clerk to be enforceable. The judges were conveniently located at fairs or in the commercial quarter of towns.4

4. Ibid., 69, 108.