

## Chapter 11

# The Law Merchant: How We Came to Where We Are

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### Introduction

The second half of the second century of the common era is sometimes regarded as the zenith of Roman civilisation. The *Pax Romana* had operated for nearly two centuries. The network of roadways built by the Romans had spread throughout Western Europe, the Near East and North Africa. A sophisticated legal system was available to resolve disputes that arose out of trading activity throughout the Empire encouraged by that network. The second half of the second century is regarded as the classical period of Roman law, when the greatest of the Roman jurists produced their works.

However, things started to spiral downwards following the death of Alexander Severus in 235. The Empire began to fall apart. Although Constantine established a new Rome at Byzantium as capital of the Eastern Empire at the beginning of the fourth century, it was too late to save the Western Empire, which fell to barbarians in the last quarter of the fifth century. When, in 527, Justinian came to the Imperial throne in Constantinople, as Byzantium had become, he set about restoring the greatness of the Empire. One of the planks in that restoration was a gigantic piece of law reform involving the complete restatement of the whole of Roman private law. That was effected by the publication of *the Code*, an exhaustive and authoritative collection of statutes still in force; *the Digest*, an authoritative collection of all of the writings of the jurists updated and restated, the Roman equivalent of judicial decisions; and *the Institutes*, an elementary statement of first principles to operate as a map of the whole law. The three came to be known as the *Corpus Iuris Civilis*, which is the foundation of modern civil law jurisprudence and a substantial foundation of common law jurisprudence.

Roman jurists saw private law as having three sources, *ius naturale*, *ius gentium* and *ius civile*. The *ius naturale* was the law of natural reason or intuitional morality. The *ius gentium* was the law of all nations, the rules that are common to all civilised states. The *ius gentium* was not necessarily consistent with *ius*

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