Great jurists and their impact on history and development of Private Law

Academic year 2019/2020

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duties in Winter Semester:
Tuesdays 9:00 - 10:00 (room 101 CI, Św. Marcin Street 90)
Fridays 14:00 - 15:00 (room 4.3 CIN, al. Niepodległości 53)

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MATERIALS: rzym.amu.edu.pl
→ „materials” (in Polish: „materiały”)


How to pass this lecture?

Three equivalent ways:

1. **Paper/essay + discussion**  [recommended]
   
   [Paper/essay: max. 6 pages, font 12, line spacing 1.5]
   
   subject ?
   
   deadline – 15th March 2019

OR

2. **Oral exam**
   
   [list of issues → student prepares 4 of them → I choose 2 ]
   
   when? during my duties (February-March 2019)

OR

3. **Writing exam**
   
   [2 issues form the list]
   
   Winter semester final exams (February)
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- about **private law**
  (not criminal law, not public law)

  ...in the continental Europe (*civil law* system);
  especially in Central and Western Europe

- about **history of the private law,**
  however basing on great personalities

  (historical approach, because only from the certain perspective
   we can estimate, which jurist really was „great”)

- about **development (evolution?) of private law**
  from the ancient times to contemporaries
  /law as part of humanities/
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Idea of this lecture
- presentation of development of private law within history

Great personalities
a) selection of jurists (subjective)
b) not in the „encyclopedic” way
c) without pathos or excessive admiration
d) on the background of the époque (the way of thinking of that time, challenges of that time)
e) on the background of the „system” of private law of that time
f) presentation of the impact of the given jurist
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the core of this lecture

presentation of the „system” of private law throughout history

presentation of the impact (output, way of thinking) of the chosen „great” jurists

aim of this lecture

presentation of private law as it was in the past, as it is now and maybe also... as it could look like in the future
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ius est ars boni et aequi
- law is the art of goodness and equity [justice]
  (law is the art of knowing what is good and just)

D. 1.1.1 Ulpian in 1 book of his institutes
  As Celsus elegantly said, law is the art of goodness and equity [justice]

*institutes = handbook
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ius est ars boni et aequi

the law is the art of goodness and equity [justice]

- definition of law?
- strong axiological charge
- but objective or subjective?
- „art” - ?
  (so which role should we play?)
  (art or craftsmanship?)
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„In all things (in all cases), the principles of justice and equity should take advantage over the strict rules of law”

C,3,1,8 Emperors Constatine and Licinius to Dionisius

In all things (in all cases), the principles of justice and equity should take advantage over the strict rules of law

[314 AD]

conflict between the regulations (the positive law) and law (as something wider, deeper, more complicated than just words)
In all things (in all cases), the principles of justice and equity should take advantage over the strict rules of law

Characteristics of the great jurist:
- acquaintance with legal regulations [knowledge]
- skill in application of the law [practice]
- honor
  ...

PLUS! something special
Great jurists and their impact on history and development of Private Law

Schedule

- Poland (inter war period 1918-1939; contemporaries)
  *
- Roman jurists (from the classic time: I BC-III AD)
- „Codification” of the Roman law (VI AD)
- Glossator and Commentators (late Medieval)
- Legal humanism
- „Scientification” of private law (17th century)
  *
- Era of the great codifications (FRA, GER, SUI)
System of the Private Law in continental Europe

„Axis of development”

case (hard cases)

→ compilation of cases and their solutions
  (attempts of systematization)

→ building of definitions and rules (in the scope of compilation)

→ generalization / research on legal constructs

[→ „scientification” of law]

→ pragmatism

(modern codification in national states)