

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

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**dr Jan Andrzejewski**

Chair of Roman Law and History of Jurisprudence

Faculty of Law and Administration

Adam Mickiewicz University in Poznań (Poland)

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dr Jan Andrzejewski

**Chair of Roman Law and History of Jurisprudence**

Collegium Iuridicum (old campus), Św. Marcin Street 90, **room 101**

**webpage:** *[rzym.amu.edu.pl](http://rzym.amu.edu.pl)*

**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)

**mail:** [\*j.and@amu.edu.pl\*](mailto:j.and@amu.edu.pl)

**MATERIALS:** *[rzym.amu.edu.pl](http://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)



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

- 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/

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

## 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

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

## 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





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

## **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

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

## **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?)

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

***„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)**

