

Kupiszewski, Henryk

"Das römische Privatrecht. Die nachklassische Entwicklungen", Max Kaser, München 1959 : [recenzja]

The Journal of Juristic Papyrology 14, 219-220

1962

Artykuł został zdigitalizowany i opracowany do udostępnienia w internecie przez **Muzeum Historii Polski** w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej bazhum.muzhp.pl, gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

Max Kaser, *Das römische Privatrecht. Die nachklassische Entwicklungen* (Rechtsgeschichte des Altertums im Rahmen des Handbuchs der Altertumswissenschaft, Dritter Teil, dritter Band, zweiter Abschnitt; München 1959; C. H. Beck'sche Verlagsbuchhandlung, pp. XXIV+478).

The appearance of Kaser's work is a very important event for the science of Roman law. The experienced teacher and great scholar who in his numerous monographs had thrown a new light on many problems gave us a synthesis which fully corresponds to the requirements of modern science.

The author broke with the extant manner in the presenting of the subject which emphasizes on the systematization of the matter and treated it as a historical phenomenon. For the first time he introduced a general division of the evolution of Roman law into periods. His division of Roman law into ancient, pre-classical, classical, postclassical and Justinian law opens the new perspectives of research into this branch of science. This division into periods which became now a starting point for many dissertations, contribute to the deepened knowledge of till now neglected periods of evolution of Roman law.

The second volume entitled „The postclassical developments” embraces the period from the reign of Diocletian to the reign of Justinian. In this period the evolution of Roman law was conditioned by many factors among which the most important are vulgarization, Hellenism, Christianity, the absolutism as well as the economic and social conditions of the State. The introductory chapters of the work are devoted to the general evaluation of these factors. The argumentation concerning the essence of the vulgar law and the process of its polarisation in practice, in the law schools and subsequently in the imperial legislation deserves special attention (p. 13 ff.).¹

The author devoted also much attention to the east-Roman classicism. The law schools existing in the East-Roman Empire succeeded in preserving the work of classical jurists and in handing it down to the posterity. The crown of their activity is the Justinian codification which without the existence of these schools would be impossible (p. 19 ff.). Very instructive also is the chapter concerning the ethical colour of the postclassical law (p. 38 ff.).

¹ See also Kaser, *R. E. s. v. Vulgarrecht* (offprint).

The legal institutions are presented in four sections: the family law (p. 72 ff.), the law of property (p. 172 ff.), the law of obligations (p. 236 ff.) and the law of succession upon death (p. 334 ff.). Here the author was confronted with the very difficult task of establishing the share of different factors in the formation of particular legal institutions. In the domains of the law of property and the law of obligations Levy's monumental works¹ are in invaluable help to the author, but in the elaboration of other parts of the book he could depend upon himself. A thorough knowledge of the literature and above all the perfect knowledge of the sources permitted him to perform fully the intended task.

The book of Kaser demonstrates in what degree the papyrology is helpfull science for the student of Roman law. The author carefully assembled the legal institutions which in the postclassical period were taken over by the Roman law from the Hellenistic law. But much more frequent are the instances in which only the influence of the Hellenism can be ascertained. In this domain an open field for research is still open for the jurist-papirologist, especially as it concerns the documents from the Byzantine period.

Kaser's work is a summing up of the achievements of the most recent trends in the legal science of Roman law of last years and a programme of research for the nearest future.

[Warsaw]

Henryk Kupiszewski

¹ See *The Law of Property*, Philadelphia, 1951; *Das Obligationenrecht*, Weimar, 1956.