



UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

COURSE SYLLABUS

Teorie dell'Interpretazione

1718-3-A5810033

Learning objectives

Interpretation is a crucial and unavoidable moment in every activity connected with the study of law and in legal practice: on the one hand the determination of the content of legal acts and statutes requires the adoption of a definite and motivated interpretative choices, on the other hand the outcome of legal cases depends on the ability to find and propose normative interpretations sustained by pertinent and persuasive arguments.

The main learning objectives are the acquisition of a critical awareness of the linguistic, juridical and epistemological presuppositions of legal interpretation, as well as the acquisition of mature theoretical and practical skills in the argumentation of interpretative choices.

Contents

Classes will be divided into three parts.

In the first part, some of the main categories of contemporary semiotics and linguistics will be introduced and discussed (the concept of "sign", the idea of semiotics, the repartition of semiotics into syntax, semantics and pragmatics, the main theories of categorization and meaning, the notions of performativity, semantic ambiguity and vagueness, pragmatic ambivalence): these categories provide the grounding for reflection on general theories of interpretation, and on theories of legal interpretation.

In the second of the three parts, the specific presuppositions of juridical knowledge and the function of legal norms as "schemes of interpretation" will be investigated through the reading of two lectures by the legal philosopher Hans Kelsen.

In the third of the three parts the implications, the conditions and the fundamentals of interpretation, with specific analysis of the main theories of legal interpretation (cognitive theory of interpretation, skeptical theory of interpretation, mixed theory of interpretation), will be discussed. Personal reflection and a critical approach will be encouraged, especially with reference to the role of judges and legal operators in the production of legal rules, and

to the main interpretational arguments in use in legal interpretation will be examined.

Detailed program

Program for all students

0. Objects of interpretation, kinds of interpretation

1. Fundamental categories of semiotics

1.1. The concept of "sign" and the idea of semiotics

1.2. Three levels of semiotic analysis of a text: syntactic, semantic and pragmatic level

1.3. Classical theories of categorization and meaning

1.4. The theory of prototypes

1.5. Performativity and speech acts theory

1.6. Vagueness, semantic ambiguity, pragmatic ambivalence, and literal meaning

2. The epistemological presuppositions of legal science in Hans Kelsen

2.1. Norm as a scheme of interpretation

2.2. The principle of imputation as the basic principle of legal science

2.3. The role of the science of law in the determination of the legal meaning of legal phenomena

2.4. The distinction between "rule of law" and legal norm

2.5. Subjective and objective meaning of law-creating acts

2.6. Interpretation as a necessary presupposition for the application of law

3. General theory of interpretation and theories of legal interpretation

3.1. Kinds of interpretation, functions of interpretation

3.2. Cognitive theories of legal interpretation

3.3. Skeptical theories of legal interpretation

3.4. Eclectic theories of interpretation

3.5. Interpretative "dynamism"

3.6. The judge's role in the production of legal norms

3.7. Basic interpretative techniques

3.8. Topic and rhetoric as argumentative instruments for interpretative choices

Prerequisites

No specific prerequisites are requested, except for a basic knowledge of the most fundamental legal notions (legal norm, legal order, the role of the courts), which will be however taken back again and discussed during classes.

The fundamental linguistic and semiotic notions required for the acquisition of the learning objectives will be provided and discussed in the first of the course.

Teaching methods

Classes aim at the acquisition of notions and skills through critical reasoning, and will be accordingly based on dialogue and confrontation with students on all the main topics.

The autonomous individuation of salient problems and the critical acquisition of the relevant categories for the attainment of the objectives of the course will be promoted, as well as the development of argumentative skills, also through direct confrontation among students.

Short texts can be assigned to willing students for an analysis and discussion during classes.

Foreign students and student from different degree courses can agree upon supplementary classes with the teacher.

For foreign students and for student from different

Assessment methods

Assessment method consists in a final viva voce examination aimed at ascertaining the acquisition of a critical awareness concerning the theoretical and practical issues connected to interpretation in the study of law and in legal practice, as well as of the relevant theoretical notions and argumentative skills to confront them on a critical basis.

Textbooks and Reading Materials

Textbooks and reading materials for attending students

Given the interdisciplinarity of the topics concerned, textbooks and reading materials will be determined during the lectures. They will include specific sections of the following books:

1. Lorenzo CANTONI/Nicoletta DI BLAS, *Teoria e pratiche della comunicazione*. Milano, Apogeo, 2002.
2. Riccardo GUASTINI, *Le fonti del diritto e l'interpretazione*. Giuffrè, Milano, 1993.
3. Riccardo GUASTINI, *Lezioni di teoria del diritto e dello stato*. Torino, Giappichelli, 2006.
4. Giuseppe LORINI/Lorenzo PASSERINI GLAZEL (eds.), *Filosofie della norma*. Torino, Giappichelli, 2012.
5. Lorenzo PASSERINI GLAZEL, *La forza normativa del tipo. Pragmatica dell'atto giuridico e teoria della categorizzazione*. Macerata, Quodlibet, 2005.
6. Hans KELSEN, *Lineamenti di dottrina pura del diritto*. Torino, Einaudi, 1952.
7. Hans KELSEN, *Che cos'è la giustizia? Lezioni americane*. A cura di Paolo Di Lucia e Lorenzo Passerini Glazel. Macerata, Quodlibet, 2015.
8. Ugo VOLLI, *Manuale di semiotica*. Roma-Bari, Laterza, 2000, 2003.
9. H. Paul GRICE, *Logica e conversazione*. In: Marina SBISÀ (ed.), *Gli atti linguistici. Aspetti e problemi di filosofia del linguaggio*. Milano, Feltrinelli, 1978, 1995, pp. 199-219.

Textbooks and reading materials for attending students

In order to allow non-attending students to reach a full understanding of the topics of the course, textbooks and reading materials for non-attending students are the following:

1. Lorenzo CANTONI/Nicoletta DI BLAS, *Teoria e pratiche della comunicazione*. Milano, Apogeo, 2002 (§§ 1.1, 1.2., 1.3, 1.4., 1.5., 1.6.).
2. Riccardo GUASTINI, *Le fonti del diritto e l'interpretazione*. Giuffrè, Milano, 1993 (chapters I, II, XXIV, XXV, XXVI, XXIX).
3. Riccardo GUASTINI, *Lezioni di teoria del diritto e dello stato*. Torino, Giappichelli, 2006 (Section II, chapters I, II, III).

4. Giuseppe LORINI/Lorenzo PASSERINI GLAZEL (eds.), *Filosofie della norma*. Torino, Giappichelli, 2012 (only the following chapters: Czesław Znamierowski, Norme costruttive vs. norme imperative; John R. Searle, Regole regolative vs. regole costitutive; Amedeo G. Conte, Regole eidetico-costitutive e regole anankastico-costitutive).
 5. Lorenzo PASSERINI GLAZEL, *La forza normativa del tipo. Pragmatica dell'atto giuridico e teoria della categorizzazione*. Macerata, Quodlibet, 2005 (chapter 3.).
 6. Hans Kelsen, *Lineamenti di dottrina pura del diritto*. Torino, Einaudi, 1952 (chapter VI. L'interpretazione).
 7. Hans Kelsen, *Che cos'è la giustizia? Lezioni americane*. A cura di Paolo Di Lucia e Lorenzo Passerini Glazel. Macerata, Quodlibet, 2015 (First section: Elementi di teoria pura del diritto, lectures I and II).
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