UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

COURSE SYLLABUS

Theories of Interpretation

2021-3-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 choice, 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 four 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 part, 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 part 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 interpretive arguments in use in legal interpretation will be examined.

The fourth part will be oriented to the acquisition of practical skills in interpretation and argumentation through a reflection on the tools provided by rhetoric and topic to the building of interpretive argumentations and the examination of some of the main interpretive techniques.

Detailed program

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

4. Interpretation and argumentation as a practice
4.1. Topic and rhetoric as argumentative instruments for interpretative choices
4.2. Some fundamental interpretive techniques

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 part 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.

Should the Covid-19 emergency situtation last up to the second semester of the year 2020-2021, the lectures shall be given in syncronous on-line modality on the University's e-learning website. Live attendance to the lectures is encouraged.

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.

During the Covid-19 emergency viva voce examination will be possible only through the WebEx platform on the University e-learning website. A public link will be published for each examination session on the aforementioned website, and access wil be granted also to external virtual participants. However, subscription to the e-learning course and to the session wil be both required for the examination of candidates.

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. Umberto Eco, *I limiti dell'interpretazione*. Milano, La nave di Teseo, 2016, pp. 13-19.
3. Riccardo GUASTINI, *Le fonti del diritto e l'interpretazione*. Giuffrè, Milano, 1993.
4. Riccardo GUASTINI, *Lezioni di teoria del diritto e dello stato*. Torino, Giappichelli, 2006.
5. Giuseppe LORINI/Lorenzo PASSERINI GLAZEL (eds.), *Filosofie della norma*. Torino, Giappichelli, 2012.
6. Hans KELSEN, *Lineamenti di dottrina pura del diritto*. Torino, Einaudi, 1952.
7. H. Paul GRICE, *Logica e conversazione*. In: Marina SBISÀ (ed.), *Gli atti linguistici. Aspetti e problemi di filosofia del linguaggio*. Milano, Feltrinelli, 1978, 19955, pp. 199-219.
8. Lelio Lantella/Raffaele Caterina, *Se X allora Y. II: lavorare con le regole*. Torino, Giappichelli, 2009. (limitatamente al cap. 1, e, esclusivamente come eventuale esercizio di analisi facoltativo, i §§ 2.1. e 2.2.1. del cap. 2.).
9. Lorenzo Passerini Glazel, *Le realtà della norma, le norme come realtà. Saggio di filosofia del diritto*. Milano, LED, 2020 (open access on the publisher's website).

Other supplementary reading materials for attending students:

1. Ugo Volli, *Manuale di semiotica*. Roma-Bari, Laterza,

2000, 2003, chapters 1. and 2.
2. Gaetano Berruto/Massimo Cerruti, *La linguistica. Un corso introduttivo*. Torino, UTET, 2011, chapters 1. and 2.
3. Lorenzo Passerini Glazel, *La forza normativa del tipo. Pragmatica dell'atto giuridico e teoria della categorizzazione*. Macerata, Quodlibet, 2005, chapter. 3.
4. Hans KELSEN, *Che cos'è la giustizia? Lezioni americane*. A cura di Paolo Di Lucia e Lorenzo Passerini Glazel. Macerata, Quodlibet, 2015.

Textbooks and reading materials for non-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 (paragraphs 1.1, 1.2., 1.3, 1.4., 1.5., 1.6.).
2. Umberto Eco, *I limiti dell'interpretazione*. Milano, La nave di Teseo, 2016, pp. 13-19.
3. Riccardo GUASTINI, *Le fonti del diritto e l'interpretazione*. Giuffrè, Milano, 1993 (chapters I, II, XXIV, XXV, XXVI, XXIX).
4. Riccardo GUASTINI, *Lezioni di teoria del diritto e dello stato*. Torino, Giappichelli, 2006 (Part II, chapters I, II, III).
5. Giuseppe LORINI/Lorenzo PASSERINI GLAZEL (eds.), *Filosofie della norma*. Torino, Giappichelli, 2012 (only the following papers: Amedeo G. Conte, *Norma: cinque referenti*; John R. Searle, *Regole regolative vs. regole costitutive*; Amedeo G. Conte, *Regole eidetico-costitutive e regole anankastico-costitutive*).
6. Lorenzo PASSERINI GLAZEL, *La forza normativa del tipo. Pragmatica dell'atto giuridico e teoria della categorizzazione*. Macerata, Quodlibet, 2005 (limitatamente al capitolo 3.).
7. Hans KELSEN, *Lineamenti di dottrina pura del diritto*. Torino, Einaudi, 1952 (limitatamente al cap. VI. *L'interpretazione*).
8. Lelio Lantella/Raffaele Caterina, *Se X allora Y. II: lavorare con le regole*. Torino, Giappichelli, 2009. (chapter 1. and paragraphs 2.1. and 2.2.1. of chapter 2.).
9. Lorenzo Passerini Glazel, *Le realtà della norma, le norme come realtà. Saggio di filosofia del diritto*. Milano, LED, 2020 (chapters 1. and 2.; open access on the publisher's website).

Other supplementary reading materials for non-attending students:

1. Ugo Volli, *Manuale di semiotica*. Roma-Bari, Laterza, 2000, 2003, chapters 1. and 2.

2. Gaetano Berruto/Massimo Cerruti, *La linguistica. Un corso introduttivo*. Torino, UTET, 2011, chapters 1. and 2.

3. Hans KELSEN, *Che cos'è la giustizia? Lezioni americane*. A cura di Paolo Di Lucia e Lorenzo Passerini Glazel. Macerata, Quodlibet, 2015, lectures I. and II.