UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

# COURSE SYLLABUS

# Theories of Interpretation

**2122-3-A5810033**

## Learning objectives

Interpretation is a necessary and crucial activity in the study of law as well as in actual 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 recognition and 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 will provide the grounding for reflection on general theories of interpretation, and specifically on the 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 excerpts from Hans Kelsen’s texts.

In the third part we'll discuss the implications, conditions and 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). 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 techniques of interpretation.

## 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
1.7. Literal meaning and conversational implicatures

2. The epistemological presuppositions of legal science in Hans Kelsen
2.1. Interpretation of phenomena through the principle of causality and the principle of imputation
2.2. Norm as a scheme of interpretation
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 in Kelsen
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 (cognitive, reproductive and normative 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 courts' 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 techniques of interpretation

## Prerequisites

No specific prerequisites are required, 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 are frontal lectures given in Italian, are marked by confrontation and debate among the students and aimed at the acquisition of notions and skills through critical reasoning.

The autonomous individuation of salient problems and the critical acquisition of the relevant categories for the attainment of the learning objectives will be promoted, as well as the development of argumentative skills.

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

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

## 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 shall include specific sections of the following books (sections will be detailed during classes and through the e-learning website):

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. Hans KELSEN, *Che cos'è la giustizia? Lezioni americane*. Seconda edizione, Macerata, Quodlibet, 2021.
8. 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.
9. Lelio Lantella/Raffaele Caterina, *Se X allora Y. II: lavorare con le regole*. Torino, Giappichelli, 2009. (only chapter 1, and optionally §§ 2.1. and 2.2.1. of chapter 2.).
10. Lorenzo Passerini Glazel, *La forza normativa del tipo. Pragmatica dell'atto giuridico e teoria della categorizzazione*, Macerata, Quodlibet, 2005.
11. Lorenzo Passerini Glazel, *Le realtà della norma, le norme come realtà. Saggio di filosofia del diritto*. Milano, LED, 2020 (open access on publisher's website).

**Further 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.

**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. Lorenzo PASSERINI GLAZEL, *La forza normativa del tipo. Pragmatica dell'atto giuridico e teoria della categorizzazione*. Macerata, Quodlibet, 2005 (only chapter 3.).
6. Hans KELSEN, *Lineamenti di dottrina pura del diritto*. Torino, Einaudi, 1952 (only chapter VI. *L'interpretazione*).
7. Hans KELSEN, *Che cos'è la giustizia? Lezioni americane*. Edited by Paolo Di Lucia e Lorenzo Passerini Glazel. Macerata, Quodlibet, 2015 (only §§ 1.-5. e 7. Of the first lecture).
8. Lelio Lantella/Raffaele Caterina, *Se X allora Y. II: lavorare con le regole*. Torino, Giappichelli, 2009. (chapter 1. and optionally 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 (only chapters 1. and 2.; the book is available in open access on the publisher's website).

**Further optional 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.