UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

COURSE SYLLABUS

General Theory and Methods of Law - A-L

2122-1-E1401A084-AL

Learning objectives

Learning objectives :

To know theories of law

To know different orientations in legal theories

To learn and to think critically about terms, meanings and functions of legal language

To define and to interpret the most important legal concepts by linguistic, logic and analytic tools

To know and to analyse main issues in the legal system

To learn argumentation and justification about choices made in the field of law and, hopefully, in any practical context

The course will be given in Italian.

Contents

The course will focus on the most important key concepts of law elaborated by legal philosophers from the point of view of analytical linguistic legal positivism. Within the broader framework of normativity, the focus will be on the characteristics of legal prescriptive. Moreover, the course will take into account regulatory systems referring to the characteristics and problems of the legal systems.

The course will also delve into fundamental concepts such as, for example, “law”, “rule”, “legal system”, “illicit”, “sanction”, “legal obligation”, “right”.

Especially the course will pay attention to the analysis of the main tasks and operations performed by jurists and lawyers, such as interpretation and argumentation, not forgetting reasoning patterns, important in the theory and practice of law.

The course will be complemented by workshops on selected topics determined at the beginning of the course.

The course will be given in Italian.

Detailed program

Presentation and classification of the course.

Adhesion to the paradigm of mature, critical-methodological juxpositivism; anti-metaphysical perspective and predilection for analytical tools, with particular attention to language.

Language theory.

Ordinary language and legal language: relationships and problems.

Ambiguity and vagueness

Definition theory.

Conceptual redefinitions of "law": in natural law tradition, legal positivism and legal realism. Comparing theories.

Detailed analysis of the prescriptive propositions. Typical characters of the prescriptiveness from the divergent point of legal formalism.

prescriptive propositions and descriptive propositions. Lgical error committed if we are to derive values from facts: presentation and analysis of the "Hume's Law"

Introduction to legal reasoning. Deductive, inductive and abductive reasoning. Theory and practical examples.

Law as a context of justification and rational argumentation. Good and bad arguments. Inappropriate argumentative mode (to appeal to authority, to Nature, to tradition and appeal to emotions) and appropriate argumentative modalities (“principle reasons” and “facts reasons”). Law as a context of rational argumentation. Indispensable tools for an adequate rational legal argumentation.

The field of prescriptivity. Prescriptivity as a typical character of normativity. Arguments to support prescriptiveness as a typical function of normative language.

The imperativistic theory of the norm.

Beyond the imperative theories: the theory of the juridical norm according to Kelsen. The norm as a qualification scheme of reality.

Primary rule and secondary rule according to Kelsen.

The concept of illicit. The Kelsenian conception of the illicit. The redefinitions of "illicit" in Kelsen's theory.

Beyond the Kelsenian theory of the norm. The juridical norms in contemporary experience: the contributions of post-Kelsenian theorists: Herbert Hart.

Introduction to the concept of legal system, according to Kelsen.

The fundamental norm (Grundnorm).

The Grundnorm in contemporary experience.

Interpretation and problems of the legal system.

Three theories of interpretation. Interpretative formalism, interpretive skepticism and "intermediate theory" or moderate anti-formalism. Assumptions and implications.

Interpretation and open questions of the legal system. Interpretation and completeness: the question of gaps; interpretation and coherence: the question of antinomies.

Analysis of some fundamental legal concepts in the formation of jurists. Concept of subjective right, concept of person, concept of legal obligation / duty, concept of ability, concept of responsibility and concept of competence.

The course will be given in Italian.

Prerequisites

Fluent in Italian, basic legal knowledge acquired during secondary school and implemented in the I semester of the first year (Bachelor’s degree – Three years)

Teaching methods

The course will be taught trough lectures, practical presentation, class participation and seminars.

In this regard, shall be used:

Analysis and study of the main legal theories

Analysis of the most important legal concepts

Language analysis and analysis of legal language, specifically

Definition and re-definition of concepts, assertions and legal theories

Critical approach to contemporary legal theories

Critical study of law; interpretation and arguments used by jurists.

Assessment methods

Oral exam.

WARNING: Regarding Coronavirus emergency, please note the following: students must register, for exams from May 2020 to February 2021, and until further notice, both through the secretariats online (Esse 3), and compulsorily through the online e-learning platform of General theory and methods of law, a.y. 2021-2022.

Textbooks and Reading Materials

ATTENDING STUDENTS

The exam will be based on 1) the topics discussed during the course, 2) recommended readings, 3) selected chapters of the following books:

1. L. FORNI, *Il diritto e i suoi strumenti. Un percorso di teoria generale,* Giappichelli, Torino, 2021

NOT ATTENDING STUDENTS

The exam must be prepared on the following books:

1. N. BOBBIO, *Teoria generale del diritto*, Giappichelli, Torino, 1993

2. L. FORNI, *Il diritto e i suoi strumenti. Un percorso di teoria generale,* Giappichelli, Torino, 2021