UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

# COURSE SYLLABUS

# Theories of Interpretation

**2425-3-A5810033**

## Learning objectives

The main learning objective of the course is to achieve a critical awareness of the theoretical and practical problems that are inherent in one of the essential activities for both the study and the practice of law. To this purpose, the student should acquire knowledge of a number of fundamental categories of semiotics, linguistics and the theory of interpretation, should be able to develop an independent reflection on the theses and assumptions of the main theories of legal interpretation (cognitive theories, skeptical theories, intermediate theories), and should be able to recognize and make relevant use of some of the main interpretive arguments.

## Contents

The course will be divided into four main parts.
The *first part* will be devoted to the acquisition of some basic categories of contemporary semiotics and linguistics to foster a more conscious reflection on interpretive activity in general and legal interpretation in particular.
The *second part* will be devoted to a critical reflection on the role of legal norms as "patterns of interpretation" of social phenomena and the theoretical distinction between subjective legal meaning and objective legal meaning.
The *third part* will be devoted to a critical discussion of the theses and assumptions of the main theories of legal interpretation, and in particular to a comparison of cognitive and skeptical theories of interpretation.
In the *fourth part*, more specifically oriented toward the acquisition of practical skills, some of the main interpretive techniques in use in legal interpretation will be examined and an introductory reflection on the tools that topics and rhetoric can offer for the analysis and construction of interpretive arguments in the legal context will be undertaken.

## Detailed program

1. Basic categories of semiotics and the theory of interpretation

1.1. The concepts of communication, signification and reception
1.2. The concept of sign: natural signs and artificial signs
1.3. Interpretation and categorization
1.4. Theories of meaning
1.5. Interpretation and conversation
1.6. Doing things with words: speech acts and the law
1.7. The problems of meaning: vagueness, ambiguity, ambivalence

2. Legal norms as schemes of interpretation
   2.1. Natural fact and legal meaning
   2.2. Causal vs. normative interpretation
   2.3. Subjective legal meaning vs. objective legal meaning
   2.4. The dynamic structure of law and the necessity of interpretation

3. Theories of legal interpretation
   3.1. Recognitive, reproductive and normative interpretation
   3.2. Cognitive theories of interpretation: interpretation as an act of knowledge
   3.3. Skeptical theories of interpretation: interpretation as a discretionary act of will
   3.4. The role of the judge and of interpretation in the determination of law

4. Interpretive techniques and argumentation
   4.1. Interpretive techniques or arguments
   4.2. Argumentation, topics and rhetoric in the practice of law

## Prerequisites

The course does not require any particular prerequisites, except for a general knowledge of basic legal concepts, which will, however, be discussed again in class.

The fundamental notions of semiotics and linguistics necessary for the acquisition of the learning objectives of the course will be provided and discussed during the first part of the course.

## Teaching methods

The course, which will take place in the *second semester*, will consist of 24 2-hours lectures. The lectures will be given in *italian*.

During the lectures, there will be alternating phases of *didactic delivery* and phases of *interactive teaching* aimed at promoting critical reflection and active participation of students through the model of maieutic and argumentative debate of Socratic matrix.
At least 2 of the 24 lectures will include a part carried out in flipped classroom mode: two groups of students identified on a voluntary basis will be asked to carry out the critical reading of a short text at home and then expose it and discuss it in the classroom with their peers.

Class attendance is highly recommended, also due to the fact that, given the markedly interdisciplinary nature of the topics covered, reflections and conceptual categories not always familiar in the context of legal studies will be introduced during the course, which will make it easier to understand the reference texts and the topics of the course program, and which will foster, in particular, a deeper reflection on the topics covered.

In any case, in order to facilitate the attainment of the training objectives by any *employed students*, up to 4 additional 2-hour lectures may be organized upon actual request: they shall be conducted remotely in synchronous mode during evening hours or during non-working days.

For students in other courses of study, the possibility of agreeing on a partially differentiated program depending on the area of study to which they belong is provided.

## Assessment methods

Assessment methods will consist in an interview on the topics covered in classes and in the reference texts indicated in the next section of the syllabus. In particular, the knowledge acquired, the ability to appropriately use the relevant vocabulary and conceptual categories, and the development of an adequate awareness of the theoretical and practical issues related to interpretative activity, particularly in the field of law, will be assessed. The development of autonomous critical reflection that is grounded in rigorous and relevant arguments with respect to the topics addressed will be highly valued.

Although the overall program and learning objectives of the course do not differ for attending and non-attending students, it is possible to choose whether to prepare for the exam according to one of the following two modes:

(i) the first mode, *recommended for attending students*, consists in preparing the exam with reference to the topics covered in the classes and the parts of the reference texts that will be indicated and discussed during the course;
(ii) the second mode, *recommended for non-attending students*, consists in preparing the exam making use of the reference texts that are indicated *for non-attending students* in the next section of the syllabus.

Please note that in both cases the critical reading of the texts in the bibliography indicated is considered an indispensable moment for the achievement of the learning objectives of the course.

No *in-progress* tests are planned.

## Textbooks and Reading Materials

**Textbooks and reading materials recommended *for attending students***

Due to the interdisciplinary nature of the subject, the bibliography for attending students will be defined during the course of the lectures, and will include some *specific parts* (which will be indicated during the course of the lectures) of the following volumes:

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.
3. Umberto ECO, *Trattato di semiotica generale*. Milano, La Nave di Teseo, 2016.
4. 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.
5. Riccardo GUASTINI, *Le fonti del diritto e l'interpretazione*. Giuffrè, Milano, 1993.
6. Riccardo GUASTINI, *Lezioni di teoria del diritto e dello stato*. Torino, Giappichelli, 2006.
7. Hans KELSEN, *Lineamenti di dottrina pura del diritto*. Torino, Einaudi, 1952.
8. Hans KELSEN, *Che cos'è la giustizia? Lezioni americane*. Seconda edizione, Macerata, Quodlibet, 2021.
9. Lelio LANTELLA/Raffaele CATERINA, *Se X allora Y. Volume II: lavorare con le regole.* Torino, Giappichelli, 2009.
10. Giuseppe LORINI/Lorenzo PASSERINI GLAZEL (eds.), *Filosofie della norma*. Torino, Giappichelli, 2012.

11. Giovanni PASCUZZI, *Riconoscere e usare gli argomenti interpretativi*. In “Diritto e formazione”, 7 (2007), n. 2, pp. 289-297.
12. Lorenzo PASSERINI GLAZEL, *La forza normativa del tipo. Pragmatica dell'atto giuridico e teoria della categorizzazione*, Macerata, Quodlibet, 2005.
13. John R. SEARLE, *Il mistero della realtà*. Milano, Raffaello Cortina, 2019.
14. Ugo VOLLI, *Manuale di semiotica*. Roma-Bari, Laterza, 2003.

**Textbooks and reading materials recommendend *for non-attending students***

In order to enable non-attending students to fully understand the topics of the course and achieve the learning objectives, the bibliography for non-attending students is detailed as follows (please follow the order of reading indicated):

1. Lorenzo CANTONI/Nicoletta DI BLAS, *Teoria e pratiche della comunicazione*. Milano, Apogeo, 2002 (limitatamente ai paragrafi 1.1, 1.2., 1.3, 1.4., 1.5., 1.6.).
2. Ugo VOLLI, *Manuale di semiotica*. Roma-Bari, Laterza, 2003, Cap. 1., §§ 1.1., 1.2., 1.3., pp. 3-12.
3. Umberto ECO, *I limiti dell'interpretazione*. Milano, La nave di Teseo, 2016, limitatamente alle pp. 13-19.
4. Umberto ECO, *Trattato di semiotica generale*. Milano, La Nave di Teseo, 2016. Limitatamente ai §§ 0.1.3., 0.3., 0.5., 0.6.1., 0.7.1.
5. John R. SEARLE, *Il mistero della realtà*. Milano, Raffaello Cortina, 2019, limitatamente a: lezione 5., § II-IV, pp. 155 161.
6. 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.
7. Lorenzo PASSERINI GLAZEL, *La forza normativa del tipo. Pragmatica dell’atto giuridico e teoria della categorizzazione*. Macerata, Quodlibet, 2005 (ch. 3.).
8. Hans KELSEN, *Che cos’è la giustizia? Lezioni americane*. A cura di Paolo Di Lucia e Lorenzo Passerini Glazel. Macerata, Quodlibet, 2015 ( §§ 1.-5. e 7. of the first lecture).
9. Hans KELSEN, *Lineamenti di dottrina pura del diritto*. Torino, Einaudi, 1952 (ch. VI. L'interpretazione).
10. Riccardo GUASTINI, *Le fonti del diritto e l’interpretazione*. Giuffrè, Milano, 1993 (ch. I, II, XXIV, XXV, XXVI, XXIX).
11. Riccardo GUASTINI, *Lezioni di teoria del diritto e dello stato*. Torino, Giappichelli, 2006 (second part, ch. I, II, III).
12. Giovanni PASCUZZI, *Riconoscere e usare gli argomenti interpretativi*. In “Diritto e formazione”, 7 (2007), n. 2, pp. 289-297.
13. Lelio LANTELLA/Raffaele CATERINA, *Se X allora Y. II: lavorare con le regole*. Torino, Giappichelli, 2009. (ch. 1, and reading of §§ 2.1. e 2.2.1. del cap. 2.).
14. Giuseppe LORINI/Lorenzo PASSERINI GLAZEL (eds.), *Filosofie della norma*. Torino, Giappichelli, 2012 (the following essays of part II.: John R. Searle, *Regole regolative vs. regole costitutive*, pp. 93-97; Gaetano Carcaterra, *Norme costitutive*, pp. 99-105; Amedeo Giovanni Conte, *Regole eidetico-costitutive e regole anankastico-costitutive*, pp. 99-105; Giampaolo M. Azzoni, *Regole ipotetico-costitutive*, pp. 119-136).

## Sustainable Development Goals

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