UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

COURSE SYLLABUS

General Theory and Methods of Law - A-L

2425-1-E1401A084-AL

Learning objectives

Learning objectives :
A) Knowledge and Understanding
Knowledge of legal language theories, both traditional and contemporary legal theories.
Knowledge and understanding of the main regulatory concepts of legal experience, such as the concepts of norm, illicit act, sanction, and legal system.
Knowledge and analysis of the characteristics and problems of the legal system and the relationships between the legal system and other normative systems.

B) Applied Knowledge and Understanding
Learning to identify, select, and use the appropriate linguistic, logical, and analytical tools to define, understand, and interpret regulatory texts and to be able to use, in this regard and consciously, the main notions of jurists. Learning to reconstruct the possible different meanings of legal expressions, of the most used concepts in the world of law and learning to reflect on the meaning of terms, to develop texts and/or to attribute appropriate meanings to regulatory texts.
Being able to resolve any definitional and interpretative issues of regulatory texts, such as those related to the definition of norm, duty, permission, legal obligation, especially regarding the themes of completeness and coherence of the legal system. Understanding the peculiarities of legal texts and prescriptions, compared to other texts and/or regulatory areas.

C) Autonomy of Judgment
Acquiring autonomy of judgment regarding the use of legal concepts, to which is associated the acquisition of autonomous capacity to identify qualifications, interpretations and arguments made in the field of law and, hopefully, in any regulatory context.

D) Communication Skills
Knowing how to communicate with appropriateness fundamental legal theories and concepts, using appropriate definitions and redefinitions of terms and expressions typical of legal language. Communication, clear and precise, concerns the contents of legal language theories, general theories of law, and the notions most used in the legal

world. Communication skills must be acquired to be able to account for both general theoretical questions and specific profiles present in the practical activities of law, such as, for example, in the relationship between law and other non-prescriptive disciplines, or as in cases of so-called applied ethics.

E) Learning Skills
Being able to understand the theories on legal language, understand the theories of law, both traditional and contemporary, being able to understand regulatory texts and attribute appropriate meanings to the many applications of legal expressions and language.
Being able to understand the different regulatory qualifications and the different types of rules present in a legal system.
Understanding the structure and qualification of norms and the typical structure of the legal system.
Evaluating the rationality of legal discourses and arguments, both on theoretical problems and in relation to possible solutions and practical applications of specific regulatory theories.

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”, "tort" or "offence" (as concept of illegal or unlawful act), “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"

Analysis of persuasive, rhetorical, and propagandistic language. Introduction to the second text "The Opposites of Peace." Explanation of the meanings of rhetorical language usage. Presentation of different redefinitions and types of propaganda.

Analysis of the concept of peace and its opposites. In-depth study of specific readings and parts of texts.

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 delivered through different teaching methods:

-20 lessons of 2 hours conducted in person.
-10 lessons of 2 hours conducted interactively in the initial part, aimed at engaging students interactively in the subsequent part. These activities are carried out in person.
-6 lessons of 2 hours conducted remotely.

The course will therefore be characterized by expository (DE) and interactive (DI) lectures, classroom discussions, exercises, and will be supplemented by participation in seminars.

In this regard, the following will be used:

Analysis and study of the main theories on and of law;

Analysis of texts dealing with the main concepts in the legal world;

Analysis of language and legal language present in the texts and other materials made available;

Definition and redefinition of concepts, statements, and theories of law;

Critical approach and guided analysis of theoretical and legal issues present in contemporary debate;

Interpretation and argumentation of texts, speeches, and, more generally, reasoning on central themes present in the legal world.

Assessment methods

Oral exam on the topics covered in class and/or present in the textbooks and materials on which the course content is based.
The oral exam consists of an interview on the topics covered in the course and explored with reference to the indicated texts, as well as a series of recommended readings. Particular attention is paid to the themes of legal language and the main regulatory concepts presented in the lessons; the goal is to verify the ability to understand and explain clearly and with appropriate terminology all the topics and most relevant aspects of the subject.
The evaluation criteria for the indicated skills are based on the knowledge and understanding of the fundamental contents of the discipline and on the ability to apply the acquired knowledge, also through paths of individual critical re-elaboration.
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Specifically, there will be no midterm exams, and the final exam will consist of an oral interview aimed at verifying the technical-specific competencies and logical-argumentative skills developed within the general theory and regarding legal methods.

In particular, the final exam will be an interview on the course topics: for all students, it will cover the topics indicated by the professor through the course's e-learning platform, in addition to specific content and materials made available on the e-learning platform.

Textbooks and Reading Materials

For all students, the exam must be prepared by studying the following texts:

1. L. FORNI, *Il diritto e i suoi strumenti. Un percorso di teoria generale,* Giappichelli, Torino, 2021
2. L. FORNI, *I contrari della pace. Narrazioni e linguaggio: analisi del reale e dell'immaginario*, Giappichelli, Torino, 2023.

Sustainable Development Goals

QUALITY EDUCATION | REDUCED INEQUALITIES | PEACE, JUSTICE AND STRONG INSTITUTIONS