



UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

SYLLABUS DEL CORSO

Teoria Generale e Metodi del Diritto - A-L

2425-1-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", "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. Logical 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.

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
