UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

COURSE SYLLABUS

Theories of Interpretation

2526-3-A5810033

Learning objectives

The main learning objective of the course *Theories of Interpretation* consists in achieving on one hand a critical awareness of theoretical and practical problems inherent in the interpretation of norms and on the other hand a basic knowledge of some fundamental interpretive arguments.

More specifically, the course objectives consist in:

- knowledge of notions of semiotics, linguistics and categorization theory indispensable for understanding interpretive activity; understanding of theories about the relationships between norms and language; knowledge of the assumptions and arguments of the main theories of legal interpretation; knowledge of some fundamental interpretive arguments;
- acquisition of an adequate ability to develop critical, autonomous and rigorous reflection on cultural and legal problems connected to the interpretation of normative texts and an adequate ability to recognize and employ interpretive arguments;
- development of an adequate autonomy of judgment and evaluation in relation to interpretive arguments, supported by the application of relevant conceptual categories;
- development of an adequate ability to analsyse texts and present contents, theses and arguments in clear and rigorous form, through the use of a relevant and appropriate theoretical-conceptual vocabulary;
- development of an adequate ability to autonomously continue one's own learning path of further interpretive and argumentative techniques relevant in specific contexts of legal practice.

Contents

The course will be articulated in four main parts.

The *first part* will be dedicated to acquiring some fundamental categories of contemporary semiotics and linguistics to foster more conscious reflection on interpretive activity in general and on legal interpretation in particular.

The *second part* will be dedicated to critical reflection on the role of legal norms as "interpretive schemes" of social phenomena and to the theoretical distinction between subjective legal meaning and objective legal meaning.

The *third part* will be dedicated to critical discussion of the theses and assumptions of the main theories of legal interpretation, and in particular to the comparison between cognitive theories and skeptical theories of interpretation.

In the *fourth part*, more specifically oriented toward the acquisition of practical skills, some of the main interpretive techniques used in the field of legal interpretation will be examined and an introductory reflection will be initiated on the tools that topics and rhetoric can offer for the analysis and construction of interpretive arguments in the legal context.

Detailed program

1. Fundamental categories of semiotics and 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 law
1.7. Problems of meaning: vagueness, ambiguity, ambivalence

2. Legal norms as interpretive schemes

2.1. Natural fact and legal meaning
2.2. Causal interpretation 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. Cognitive, 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 interpretation in the construction and application of law

4. Interpretive techniques and argumentation

4.1. Interpretive techniques or arguments
4.2. Argumentation, topics and rhetoric in legal practice

Prerequisites

The course in *Theories of Interpretation* does not require particular prerequisites, except for a general knowledge of basic legal concepts, which will be rediscussed in class.

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

Teaching methods

The course, which will take place in the *second semester*, will consist of 24 lessons of 2 hours each. The lessons will be held in *Italian*.

The lessons will alternate between didactic lecture phases and interactive phases in which significant texts will be examined and discussed in class to foster critical reflection and active student participation through the Socratic maieutic model.
For at least 2 of the 24 lessons, preventive reading of brief essays with presentation and discussion in class by students will be proposed.

Attendance at lessons is strongly recommended, also by reason of the fact that, given the markedly interdisciplinary nature of the topics covered, during the course reflections and conceptual categories not always familiar in the context of legal studies will be introduced. The topics discussed in class will make understanding of the reference texts and course program easier and will favor, in particular, deeper reflection and the development of a critical spirit on the topics covered.

In any case, to favor the achievement of learning objectives by any *working students*, up to 4 lessons of 2 hours each can be organized, in the face of an actual request, to be held remotely in synchronous mode during evening hours or on non-working days.

For students from other degree programs, the possibility of agreeing with the professor on a partially differentiated program according to their field of study is provided.

Assessment methods

Assessment will consist of an interview on the topics covered in class and on the reference texts indicated in the subsequent section of the present *syllabus*. The results achieved in relation to the course's learning objectives will be evaluated, in particular:

- adequate knowledge of notions of semiotics, linguistics and categorization theory indispensable for understanding interpretive activity; understanding of theories about the relationships between norms and language; adequate knowledge of the assumptions and arguments of the main theories of legal interpretation; adequate knowledge of some fundamental interpretive arguments;

- acquisition of an adequate ability to develop critical, autonomous and rigorous reflection on cultural and legal problems connected to the interpretation of normative texts and an adequate ability to recognize and employ interpretive arguments;

- development of an adequate autonomy of judgment and evaluation in relation to interpretive arguments, supported by the application of relevant conceptual categories;

- development of an adequate ability to analyse texts and present contents, theses and arguments in clear

and rigorous form, through the use of a relevant and appropriate theoretical-conceptual vocabulary;

- development of an adequate ability to autonomously continue one's own learning path of further interpretive and argumentative techniques relevant in specific contexts of legal practice.

In general, in the evaluation of the interview, the capacity elaboration of autonomous critical reflection based on rigorous and relevant arguments with respect to the topics addressed will be 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 the exam according to one of the following two modalities:

(i) the first modality, *recommended only for attending students*, consists in preparing the exam by making use of the explanations and critical discussions carried out during the lessons and of the parts of the reference texts that will be indicated and discussed during the course;

(ii) the second modality, *recommended for non-attending students*, consists in preparing the exam by making use of the reference texts indicated *for non-attending students* in the subsequent section of the *syllabus*.

It is reminded that in both cases the critical reading of the texts in the indicated bibliography is considered an indispensable moment for achieving the course's learning objectives.

No *in itinere* tests are provided.

Textbooks and Reading Materials

Reference texts indicated for *attending* students

Given the interdisciplinary nature of the subject, the bibliography for *attending* students will be defined during the course, and will include some *specific parts* (which will be indicated during the lessons) 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, T*rattato 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.

Reference texts indicated for *non-attending* students

In order to allow all students to achieve the course's learning objectives, *non-attending students* may prepare the exam using the following bibliography (it is recommended to follow the indicated reading order):

1. Lorenzo CANTONI/Nicoletta DI BLAS, *Teoria e pratiche della comunicazione*. Milano, Apogeo, 2002 (limited to paragraphs 1.1., 1.2., 1.3, 1.4., 1.5., 1.6.).
2. Ugo VOLLI, *Manuale di semiotica*. Roma-Bari, Laterza, 2003, Chapter 1., §§ 1.1., 1.2., 1.3., pp. 3-12.
3. Umberto ECO, *I limiti dell'interpretazione*. Milano, La nave di Teseo, 2016, limited to pp. 13-19.
4. Umberto ECO, *Trattato di semiotica generale*. Milano, La Nave di Teseo, 2016.ì, limited to §§ 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, limited to lecture 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 (limited to chapter 3.).
8. Hans KELSEN, *Che cos'è la giustizia? Lezioni americane*. A cura di Paolo Di Lucia e Lorenzo Passerini Glazel. Macerata, Quodlibet, 2015 (limited to §§ 1.-5. e 7. of the first lecture).
9. Hans KELSEN, *Lineamenti di dottrina pura del diritto*. Torino, Einaudi, 1952 (limited to chapter VI. *L'interpretazione*).
10. Riccardo GUASTINI, *Le fonti del diritto e l'interpretazione*. Giuffrè, Milano, 1993 (limited to chapters I, II, XXIV, XXV, XXVI, XXIX).
11. Riccardo GUASTINI, *Lezioni di teoria del diritto e dello stato*. Torino, Giappichelli, 2006 (limited to: Second part, chapters 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 (limited to chapter 1, and, as an optional analysis exercise, §§ 2.1. e 2.2.1. of chapter 2.).
14. Giuseppe LORINI/Lorenzo PASSERINI GLAZEL (eds.), *Filosofie della norma*. Torino, Giappichelli, 2012 (limited to 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).

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