UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

COURSE SYLLABUS

Comparative Criminal Procedure and Corporate Liability

2627-4-A5810237

Learning objectives

The course aims to analyze the key legal frameworks governing the criminal liability of entities arising from the commission of a crime in the Italian and U.S. legal systems.
By the end of the course, students should have acquired:

- A systematic and comparative understanding of the main legal frameworks governing the criminal liability of entities in Italy and the United States. With regard to the Italian legal system, critical insights will be provided to analyze the structure of Legislative Decree 231/2001 within the constitutional framework of criminal procedure.
  With regard to the U.S. legal system, students will be introduced to the doctrine of respondeat superior as applied in federal criminal law, the role of the Department of Justice guidelines (from the Thompson Memorandum to the Monaco Doctrine), the institutions of the Deferred Prosecution Agreement and the Non-Prosecution Agreement, as well as the constitutional framework within which the criminal liability of legal entities operates.
  Students will also develop an understanding of the theoretical foundations—of civil law and common law—that account for the structural differences between the two systems.

- Ability to apply the concepts learned to the analysis of concrete cases and the resolution of legal issues related to criminal proceedings against entities; students will also be able to compare the organizational model under Legislative Decree 231/2001 with the corporate compliance program relevant under the U.S. Federal Sentencing Guidelines, evaluating their respective suitability as a means of exoneration from liability. Students will also be able to identify the procedural consequences for the entity in joint proceedings with the individual defendant, in both jurisdictions.

- Independent judgment in interpreting legal norms and identifying the most appropriate legal solutions, developing critical thinking skills in evaluating the normative choices underlying each system, including the tension—present in both—between the principle of individual criminal liability and the attribution of liability to a collective entity.

- Communication skills in presenting and discussing legal arguments, both in
  written and oral form. In fact, students will acquire mastery of the specialized legal terminology of both systems in English, including the terminology specific to Italian criminal procedure as rendered in comparative and international legal discourse, enabling them to present and defend legal arguments regarding corporate liability in academic and professional contexts—in the form of written papers, moot court exercises, or seminar discussions—with rigor, a solid argumentative structure, and appropriate use of primary sources (case law, legislative acts, prosecution guidelines). They will also be able to communicate effectively with counterparts from different legal traditions, adapting their presentation to bridge the conceptual frameworks of civil law and common law.

- Ability to engage in independent learning, including through the consultation of legislative, doctrinal, and case law sources. In fact, all the necessary information will be provided to develop independent research skills to track the evolution of corporate criminal liability in both jurisdictions—a field subject to rapid change due to legislative reforms, shifts in enforcement policies, and new judicial trends. In this way, students will be able to critically analyze both doctrinal literature and primary sources (judgments, Department of Justice memoranda, legislative preparatory works) in English and Italian, to integrate the contributions of comparative methodology, and to apply the analytical framework acquired in the course to related systems of corporate accountability, including regulatory enforcement at the European level and emerging international standards regarding the criminal liability of legal persons.

Contents

During the lectures, with erogative method, we will analyze the regulations governing the corporate criminal liability. In particular, we will look at procedural developments and evidentiary dynamics while verifying their constitutional compatibility in the US and Italian legal framework.

Detailed program

Prerequisites

Knowledge of criminal law and criminal procedural law.

Teaching methods

Classes will be held in person in a lecture format, with opportunities for interactive discussion
of practical case studies; up to a maximum of 4 hours of class time may be conducted remotely, subject to prior notice.

Assessment methods

Oral exam on the topics covered in class and the required reading.

During the oral exam, the following will be assessed:
(a) knowledge and understanding of commercial law concepts;
(b) the ability to present ideas using appropriate legal language;
(c) the ability to apply acquired knowledge to the resolution of legal cases presented by the instructor;
(d) the ability to argue solutions using critical reasoning and to situate the institutions within the context of the legal system
In addition, optional written exams may be administered at the conclusion of the course.

Textbooks and Reading Materials

E. Militello, Criminal investigations on corporate liability. A comparative account on Italy and the United States, Pacini Editore, 2020.

Attending students will be provided with specific materials during the course of the lessons.

Sustainable Development Goals

QUALITY EDUCATION | GENDER EQUALITY | DECENT WORK AND ECONOMIC GROWTH | INDUSTRY, INNOVATION AND INFRASTRUCTURE | REDUCED INEQUALITIES | SUSTAINABLE CITIES AND COMMUNITIES | PEACE, JUSTICE AND STRONG INSTITUTIONS