

Law Degree Course, LMG/01,

**FILOSOFIA DEL DIRITTO II**

Academic Year 2023/2024,

IV-year, Second Semester, 6 CFU, 42 h.

**PROF. MASSIMO LA TORRE**

<b>General Information</b>	PHILOSOPHY OF LAW (JURISPRUDENCE) II
<b>Professor</b>	MASSIMO LA TORRE – e-mail: mlatorre@unicz.it; Office n. 2 – Department of Law, Economics and Sociology
<b>Course Contents</b>	<p>The activities of the course will take place relying on the Socratic method, thus aiming at involving students in the activity of thinking, which notably constitutes the core of philosophy. The course addresses the issues of the concept and nature of law, moving from the analysis of the contemporary jurisprudential debate.</p> <p>Frontal lectures, giving room for discussion and debate.</p>
<b>Course Targets and Expected Learning Outcomes</b>	<p>The course aims at providing the student with the fundamental notions of the legal philosophy debate, as well as making the student able to deliberate on practical issues concerning the justice of positive norms and their application and enforcement.</p> <p>The course aims at:</p> <ul style="list-style-type: none"><li>(a) providing an account of the contemporary jurisprudential debate, with many references to the more classical philosophical topics.</li><li>(b) stressing the reflection on the concept of law and on the fundamental categories that are presupposed in legal practice.</li><li>(c) pointing out the many philosophical and moral aspects of legal reasoning;</li><li>(d) stimulating the law student's practical reasoning;</li></ul>

topics

**ATTENDING STUDENT STUDY PROGRAMME**

**BOOK: M. LA TORRE, *IL SENSO DELLA NORMA. FILOSOFIA FRAGILE DEL DIRITTO, DERIVEAPPRODI 2023.***

*Main Topics:* duplicity of law, human activity, Nature and Society: internal and external point of view, romanticism and rationalism, Institutional Facts and Brute fact, Wittgenstein (explanation and understanding), Legal realism, words and commands, internal point of view and constitutive norm, Hart and the definition of the nature of law, command and commander; An ancient debate on the concept of law; essentially contested concept and a poem; concept and conceptions; Concept of law and Constitutional Justice; The guardian of Constitution; Ferrajoli vs. Alexy; A recent debate: post-positivism and neo-constitutionalism; «Argumentative representation»: essence and value democracy; Democratic Constitutional State; Public Reason; Directive principles and Regulative principles; Philosophy and politics: Law as Intermediary; Balancing, legitimacy and Equity; Legal Reasoning and jurisprudence; Law as a morality special case; legal and moral Reasoning; Habermas and Alexy; Neoinstitutionalism; Koskenniemi; Dworkin and the Law's Empire.

- ANALYSIS AND DISCUSSION OF A NOVEL AMONG THOSE WILL BE INDICATED DURING THE COURSE.

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**NON-ATTENDING STUDENT STUDY PROGRAMME**

Students can choose from the following textbooks:

1. Book: **M. LA TORRE, NORME, ISTITUZIONI, VALORI. PER UNA TEORIA ISTITUZIONALISTICA DEL DIRITTO, GIAPPICHELLI 2021.**

*Topics: Law and power; normativism; Language, law and institution, Institutional theory of law; Meaning and value judgment; value judgments and justification, Law and Morality*

2. **BOOK: M. LA TORRE, IL DIRITTO CONTRO SE STESSO. SAGGIO SUL POSITIVISMO GIURIDICO E LA SUA CRISI, LEO S. OLSCHKI, FIRENZE, 2020.**

*topics: Ronald Dworkin and the legal principles revolt; Analytical Legal positivism anche the Norberto Bobbio's contribution; "Decisionist" legal positivism and the "last" Hart; Neil*

	<p><i>MacCormick's and Ota Weinberger's institutional theory of law; Inclusive ed exclusive legal positivism; Law as Force theory, Legal idealism; Carlos Nino and the deliberative model; Neo-constitutionalism and legal positivism: Gustavo Zagrebelsky and Luigi Ferrajoli; postmodernist theory of law and Martti Koskenniemi; Legalism as theory of law;</i></p> <p>ADDITIONAL PROGRAMME:</p> <p>(Book: M. La Torre, G.F. Zanetti, <i>Nuovi seminari di filosofia del diritto</i>, Rubbettino, 2021.</p> <p>Topics: Accountability; The problem of Hell; Liberty and Freedom; Citizenship and republicanism</p>
<p><b>individual study Time commitment</b></p>	<p>120 Hours</p>
<p><b>Teaching Methods</b></p>	<p>Lectures, seminars, debates, and discussions.</p>
<p><b>Didactic Materials and Teaching Resources</b></p>	<p>Recommended Didactic Materials:</p> <p><b>ATTENDING-STUDENT STUDY PROGRAMME</b></p> <p>Book: M. LA TORRE, <i>IL SENSO DELLA NORMA. FILOSOFIA FRAGILE DEL DIRITTO</i>, DERIVEAPPRODI 2023.</p> <ul style="list-style-type: none"> <li>- Attending students are to comply with the programme indicated during the course, which also includes the critical analysis of a <u>NOVEL</u>, which is to be chosen from those that will be indicated.</li> </ul> <hr/> <p><b>NON-ATTENDING STUDENT PROGRAMME</b></p> <ul style="list-style-type: none"> <li>- STUDENTS CAN CHOOSE FROM THE FOLLOWING TEXTBOOKS:</li> <li>-</li> <li>- book: M. LA TORRE, <i>norme, istituzioni, valori. per una teoria istituzionalistica del diritto</i>, Giappichelli 2021.</li> <li>-</li> </ul>

	<ul style="list-style-type: none"> <li>- book: M. LA TORRE, <i>Il diritto contro se stesso. saggio sul positivismo giuridico e la sua crisi</i>, Leo s. Olschki, Firenze, 2020.</li> <li>- Supplementary programme (which is mandatory for non-attending students):</li> <li>- M. LA TORRE, GF. ZANETTI, <i>Nuovi seminari di filosofia del diritto</i>, Rubbettino, Soveria Mannelli, 2020 (chapters <b>1, 3, 5, 7</b>).</li> </ul>				
<p style="text-align: center;"><b>Support activities for students</b></p>	<p>Seminars and other additional activities will be scheduled during the lessons.</p> <p>During the course, Professor's office hours will take place before and after lessons.</p> <p>Reception: by appointment (by Meet platform or at university, if possible), by sending an e-mail to :</p> <p>Dr. Andrea Romeo e-mail <a href="mailto:a.romeo@unicz.it">a.romeo@unicz.it</a> Dr. Leonardo Mellace e-mail <a href="mailto:lmellace@unicz.it">lmellace@unicz.it</a></p>				
<p style="text-align: center;"><b>Course completion</b></p>	<p>The art. 8 of the “<i>Regolamento didattico di Ateneo</i>” (<i>University Handbook for Teaching</i>), provides a guide concerning how to attend lessons.</p> <p style="text-align: center;"><u>Oral exam, with evaluation expressed in thirtieths plus possible</u></p>				
	<table border="1" style="width: 100%; text-align: center;"> <tr> <td data-bbox="461 1852 679 2018"><b>Graduation</b></td> <td data-bbox="679 1852 930 2018"><b>Arguments Knowledge</b></td> <td data-bbox="930 1852 1278 2018"><b>Ability to analyze and synthesize</b></td> <td data-bbox="1278 1852 1516 2018"><b>References</b></td> </tr> </table>	<b>Graduation</b>	<b>Arguments Knowledge</b>	<b>Ability to analyze and synthesize</b>	<b>References</b>
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<b>Assessment methods and Examination</b>		Rejected	Serious shortcomings. Significant inaccuracies	Presence of frequent generalizations. Inability to synthesize topics	insufficient
		18-20	Threshold-level knowledge.	insufficient capabilities	Barely sufficient
		21-23	Basic knowledge	analyze and synthesize skills	Standard references
		24-26	non-trivial knowledge of the topics	appropriate synthesis and presentation skills	Basic references
		27-29	Appropriate knowledge of the topics	Good synthesis and presentation skills	Thorough knowledge of the main topics
		30-30L	Advanced knowledge of the topics	High synthesis and presentation skills	Detailed knowledge of all topics