# Civil Law 1

## Prof. Mauro Orlandi

***COURSE AIMS AND INTENDED LEARNING OUTCOMES***

The course aims to encourage students’ critical approach and methodological rigour. Its purpose is to develop their capacity for analytical structuring and deconstruction of civil law principles with specific attention to bonds and contracts; to enhance their skills for the critical reconstruction of critical phenomena; to focus on the systematic rationality of the disciplines.

*Knowledge and understanding*

The students will acquire awareness of the essentially linguistic nature of law, distinguishing between hermeneutic relevance of the facts and semantic relevance of the texts. Through analytical method and in-depth analysis of the categories, they will be able to critically reconstruct nature, structure and function of the compulsory relationship and to systematically place the main institutions and statutes of bonds and contracts law.

*Ability to apply knowledge and method*

Critical knowledge reveals the gross error hidden behind the commonly felt idea of a rift between theory and practice. All laws start from conscious theoretical assumptions and then carries out rigorous and coherent demonstration of concrete solutions. The students will be guided along this line to solve cases with theoretical and argumentative rigour.

*Independent judgement*

The course applies the dialectical method and requires active student participation. Each step must be conceptualized in order for students to develop conscious attention to the logic of speech and technical language as well as the rigour of scientific demonstration.

*Analytical and communication skills*

The students will be able to measure and increase their aptitude for reasoning and refine their skills to systematically place correct and disciplined argumentation in active solutions of cases.

To this end, active practice and legal clinic sessions may be planned.

*Learning ability*

A university course must offer learners the study method and conceptual tools to independently search for national and ultra-national sources of the discipline; it also must provide methodological guidelines for consultation and arrangement of literature and jurisprudence. The journey towards developing critical knowledge and independent research skills is challenging and demanding. In this course students will progress in their methodological and cultural development through the study of the institutions and problems of bond law.

***COURSE CONTENT***

Each academic year is dedicated to specific study topics, with textbooks chosen by the lecturer.

Attendance is compulsory.

The course of the Academic Year 2023-2024 will focus on:

*Logic of Prescription*

– The prescription as subject matter

– The prescription as an effect. Static effect. Dynamic effect.

– The effect as a dependent case

– “Every right is extinguished by prescription”. The concept of extinction.

– Systematics of extinction. Extended literal interpretation

– Meaning of inertia. The significant sources. From hermeneutics to semantics

– From extinction to relevance. Internal relevance and external relevance

– Right. Action. Claim. The judicial syllogism

– Extinction and foreclosure

– Prescription and abuse. General terms

– The individual prescriptive cases. Rights in rem and rights of obligation

– Imprescriptible rights. Binding regulations

– From the case in point to prescription

– From prescription to reduction

– General reduction category. Abstract and concrete action

– Degrees of reduction

– Extinctive and constitutive effect of prescription. The usucaption

– Prescription and statute liability

– Effective date

– Collectability and knowledge of the law

– Suspension and causes of irresponsibility

– Suspension and interruption.

– Unavailability of the discipline

– Conventional prescription? The *pacta de non petendo*

– Reduced obligation and natural obligation

– Natural obligation and novation

– Perpetual reduction? Obligation and sanction

– Bad debt and ineffectiveness. Bankruptcy credits

– Statute of exception and universal statute of reduction

– The five-year statute of limitations and the analogies

– Prescription and tort

– Prescription and succession

– Voluntary payment and repeatability

– Enforceability of limitation

– Limitation and final judgment

– Limitation and third parties

– Circulation of reduced right

– Limitation and solidarity

– Waiver of Limitation

***READING LIST***

The use of an updated version of the Civil Code is compulsory. We recommend: G. Perlingieri (edited by) Codice civile, ESI, Napoli, ult. ed.

To attend the lectures and prepare the exam, the following textbooks are recommended:

M. Orlandi, *Introduzione alla logica giuridica,* Bologna, 2021 (for attending students the parts indicated in class).

M. Orlandi, *La riduzione dei diritti*, 2023 (for attending students the parts indicated in class)

P. Vitucci, *La precrizione*, seconda ed. a cura di F. Roselli, Milano, 2012 (for attending students the parts indicated in class).

Additional material to study:

Lecture notes.

All the texts, verdicts and recordings are published on the interactive Blackboard platform.

***TEACHING METHOD***

During lectures each topic is addressed with analytical method and dialectical process. Attendance is compulsory and requires students’ active participation in the critical analysis of the different topics dealt with.

There may be thematic in-depth studies and exercises on problems and case studies in order to apply analytical logic and also practice the method learned during theory lectures on cases.

During the year, students may be required to take written tests in the form of a brief opinion on remarkable case studies.

***ASSESSMENT METHOD AND CRITERIA***

The exam is based on the course programme planned for the current academic year.

The students can take the exam on the same contents and texts up until the winter session of the following year. For example, for the academic year 2022-2023, students can take the exam on the same contents as those planned for the academic year (2022-2023) until the winter exam session of 2025.

Students will take an interview on the general part of the course and on the thematic seminars.

They will have to demonstrate knowledge of the fundamental concepts and technical profiles discussed in the general part of the course and in the thematic seminars; to be familiar with the principles of civil law; and to develop the legal speech corollaries with rigour and consistency.

The assessment will be based on the relevance of students’ answers, their mastery of language, their argued and consistent structuring of reasoning, and ability to grasp conceptual links and open questions.

Excellence marks will be awarded to students who show conscious use of the categories and the ability to critically present the different lines of thought, expressing themselves with linguistic precision and rigourous method.

Students with adequate knowledge of the programme themes and command of language, although not always technically flawless, will be awarded marks between fair and excellent.

Although incomplete, students’ preparation may be sufficient if they demonstrates to be able to reconstruct the topics of discussion and the main arguments offered by doctrine and jurisprudence, with reference to at least two questions.

Students’ preparation will be considered insufficient, with reference to at least two questions, if they show knowledge gaps that prevent them from identifying the interpretative problem, the possible solutions, and the main applicable arguments. The students’ assessment will also be considered insufficient in case of unsuitable and approximate language.

***NOTES AND PREREQUISITES***

Prerequisite for the students is a basic knowledge of private law institutions and of the general theory of legal concepts.

Further information can be found on the lecturer's webpage at http://docenti.unicatt.it/web/searchByName.do?language=ENG or on the Faculty notice board.