

UČNI NAČRT PREDMETA / COURSE SYLLABUS

Predmet:	Teorija prava
Course title:	Theory of Law

Študijski program in stopnja Study programme and level	Študijska smer Study field	Letnik Academic year	Semester Semester
Pravo – 3. stopnja	Pravo	1	1
Law – 3rd degree	Law	1	1

Vrsta predmeta / Course type

Obvezni / Obligatory

Univerzitetna koda predmeta / University course code:

Predavanja Lectures	Seminar Seminar	Sem. vaje Tutorial	Lab. vaje Laboratory work	Teren. vaje Field work	Samost. delo Individ. work	ECTS
20	0	0	0	0	355	15

Nosilec predmeta / Lecturer:

prof. dr. Marko Novak

**Jeziki /
Languages:**

**Predavanja /
Lectures:** slovenščina/Slovenian

Vaje / Tutorial: slovenščina/Slovenian

Pogoji za vključitev v delo oz. za opravljanje študijskih obveznosti:

Vpis v prvi letnik doktorskega programa z osvojenimi temeljnimi znanji s področja postdiplomskega izobraževanja prava.

Prerequisites:

Enrollment in the first year of the doctoral program having acquired a basic knowledge from the post-graduate legal studies.

Vsebina:

Predmet vsebuje dva sklopa vsebin, ki nudita doktorskim študentom nujno pravnoteoretično podporo v razvijanju sposobnosti za sestavo doktorske naloge.

Content (Syllabus outline):

The course deals with two topics to give doctoral students necessary legal-theoretical support in developing their capacity to write a doctoral thesis.

Prva tema so metode raziskovanja v pravu ter argumentacija v (pravni) znanosti. Tu se študenti seznanijo s klasičnimi metodami za raziskovanje prava (tj. dogmatična, aksiološka,

The first topic covers methods of research in law and argumentation in (legal) science. Students learn classical methods for doing research in law (i.e. dogmatic, axiological, sociological, historical, and comparative

sociološka, zgodovinska in primerjalnopravna metoda). Ob tem spoznajo tudi nekatere druge metode, ki so se razvile v sodobnosti. Uporabo teh metod preizkusijo tudi na določenih raziskovalnih primerih. Zatem sledi predstavitev določenih teoretičnih problemov pri argumentiranju v znanosti, s poudarkom na pravni znanosti. V tem okviru študenti poskusijo tudi oblikovati nekatere znanstvene argumente.

Drugi sklop se posveča pravni argumentaciji v praksi, katere spoznanja prav gotovo koristijo tudi za teoretične namene doktorske naloge. Najprej sledi obdelava splošnih tem pravne argumentacije, skupaj z logičnim, dialektičnim ter retoričnim pristopom. Nato sledi obravnava argumenta precedensa ter nato še argumenta pravnih načel. Zadnja tema v tem drugem sklopu prinaša obravnavo argumenta teže ter argumenta pravne politike.

method). They also learn about other methods to do research in law that have been developed in recent times. They are also taught how to use them to deal with specific research problems. What follows is presentation of certain theoretical issues concerning argumentation in science, with the emphasis on legal science. In the framework of such, students try to develop certain arguments to deal with law scientifically.

The second topic deals with legal argumentation in legal practice, whose findings also importantly contribute to theoretical tasks with respect to a doctoral dissertation. What is covered first is general topics within legal argumentation including the logical, dialectical, and rhetorical approach to it. Then, the argument of precedent and the argument of legal principles are considered. Finally, the argument of weight and the argument of legal policy are discussed.

Temeljna literatura

- Feteris, E. (2017). *Fundamentals of Legal Argumentation: A Survey of Theories on the Justification of Judicial Decisions*. Springer: Dordrecht (str. 1-21).
- Groarke, L., Tindale, C. (2013). *Good Reasoning Matters! A Constructive Approach to Critical Thinking*. Oxford University Press, Canada: Don Mills, Ontario (str. 226-275).
- Jambreč, P. (ur.) (2020). *Metodologija znanstvenega raziskovanja*. Nova univerza: Ljubljana.
- Novak, M. (2010). *Pravna argumentacija v praksi*. GV Planet: Ljubljana.
- Novak, M. (2010). *Uvod v pravo*. Evropska pravna fakulteta v Novi Gorici: Nova Gorica (poglavje "Vrste in metode pravnih znanosti", str. 431-450).
- Novak, M. (2008). *Poglavja iz filozofije in teorije prava*. Evropska pravna fakulteta v Novi Gorici: Nova Gorica (str. 165 do konca).
- Pavčnik, M. (2007). *Teorija prava*. GV Založba: Ljubljana (poglavje "Vrste in metode pravnih znanosti", str. 49-87).

Cilji in kompetence:

Objectives and competences:

Študenti/ke bodo pridobili naslednje predmetno specifične kompetence:

- sposobnost za prepoznavanje razvoja in temeljev na področju pravne teorije;
- sposobnost za razumevanje (rekonstrukcijo) konkretnih problemov z uporabo znanstvenih metod in postopkov s področja teorije prava;
- sposobnost za razumevanje novosti v okviru pravne teorije in v skladu z njenimi temeljnimi paradigmami, sposobnost za uporabo analitičnih metod in na tej podlagi pravnih strategij ob stalni uporabi strokovne in moralno etične kritične presoje rešitev;
- razumevanje in uporaba kritične analize in razvoja teorij ter njihova uporaba v reševanju teoretičnih problemov na področju pravne teorije;
- sposobnost za uporabo sodobne informacijsko–komunikacije tehnologije in informacijskih sistemov za potrebe preučevanja teorije prava.

Študenti/ke bodo pridobili naslednje splošne kompetence:

- sposobnost analize, sinteze in predvidevanja rešitev ter posledic na področju pravne teorije;
- obvladovanje raziskovalnih metod, postopkov in procesov s področja teorije prava ter razvoj kritične in samokritične presoje na tem področju;
- sposobnost uporabe znanj s področja teorije prava,
- avtonomnost pri strokovnem delu in sprejemanju odločitev;
- razvoj komunikacijskih sposobnosti in spretnosti s poudarkom na komunikaciji v mednarodnem okolju;
- kolegialnost do sodelavcev in lojalnost do delodajalcev ter sodelavcev, delo v

The students will acquire the following abilities specific to this course:

- the ability to recognize foundations and developments in the area of legal theory;
- the ability to understand (reconstruct) specific problems by means of scientific methods and procedures developed by legal theory;
- the ability to understand new developments from within legal theory and, following its basic paradigms, the ability to use analytical methods and based on them legal strategies including the permanent use of professional and morally-ethical critical evaluation of solutions;
- the understanding and use of critical analysis and theories developed, as well as their use in solving specific theoretical problems in the area of legal theory;
- the ability to use modern ICT for the study of legal theory.

The students will acquire the following general abilities:

- the ability to analyze, synthesize, and envisage solutions and consequences in the area of legal theory;
- the mastering of research methods, procedures, and processes from within legal theory, and development of critical and self-critical evaluation in this area;
- the ability to use knowledge from the area of legal theory;
- autonomy in professional work and taking decisions;
- the development of communication skills with the emphasis of communication in international environment;
- collegiality with respect to co-workers

skupini ter strpno sprejemanje in upoštevanje tvornih kritik in pripomb.

and loyalty to employers and co-workers; group work as well as tolerance and consideration of constructive criticism.

Predvideni študijski rezultati:

Znanje in razumevanje:

Študent/študentka:

- Seznanitev študentov s posebnimi vprašanji teorije prava;
- osvojitve dodatnega znanja glede reševanja problemov v okviru teorije prava;
- razvije zanimanje in znanje o teoriji prava;
- razvije kritično razumevanje teorije prava;
- zmožen/na je kritične presoje ter analize in interpretacije dogodkov in usmeritev z vidika teorije prava;
- sposoben razpravljati oziroma pokomentirati praktične pravne probleme skozi prizmo teorije prava;
- sposoben kritičnega presojati, analizirati in razlagati dogodke in politike s stališča teorije prava;
- pozna in uporablja nadgradnjo metodoloških pristopov pri raziskovanju vprašanj s področja teorije prava.

Intended learning outcomes:

Knowledge and understanding:

Student / student:

- To introduce students to specific issues within legal theory;
- acquiring additional knowledge to find solutions to specific problems within legal theory;
- aims to develop the students' interest in, and knowledge of, legal theory;
- develops a critical understanding of legal theory;
- is able to critically evaluate and analyse events and guidelines from the view of legal theory;
- is able to discuss or comment specific legal problems in the light of legal theory;
- is able to critically judge, analyse and interpret events and policies from the view of legal theory;
- to know and use advanced methodological approaches to legal theory.

Metode poučevanja in učenja:

Oblike dela:

- Frontalna oblika poučevanja
- Delo v manjših skupinah oz. v dvojicah
- Samostojno delo študentov
- e-učenje
- drugo (vpišite) _____

Metode (načini) dela:

- Razlaga
- Razgovor/ diskusija/debata
- Delo z besedilom
- Proučevanje primera
- Igra vlog

Learning and teaching methods:

Types of learning/teaching:

- Frontal teaching
- Work in smaller groups or pair work
- Independent students work
- e-learning
- other _____

Teaching methods:

- Explanation
- Conversation/discussion/debate
- Work with texts
- Case studies
- Role-play

<input type="checkbox"/> Druge vrste nastopov študentov
<input checked="" type="checkbox"/> Reševanje nalog
<input type="checkbox"/> Študijski obiski podjetij ipd.)
<input type="checkbox"/> Vključevanje gostov iz prakse
<input checked="" type="checkbox"/> Udeležba na okrogli mizi, na konferenci

<input type="checkbox"/> Different presentation
<input checked="" type="checkbox"/> Solving exercises
<input type="checkbox"/> Field work (e.g. company visits)
<input type="checkbox"/> Inviting guests from companies
<input checked="" type="checkbox"/> Attending round table and conference

Delež (v %) /

Načini ocenjevanja:

Weight (in %)

Assessment:

<p>Ocenjuje se pisni izpit. Pogoja za pristop k izpitu sta izdelava raziskovalne seminarske naloge ali udeležba na mednarodni znanstveni konferenci iz teorije prava LegArg. Možni oceni: uspešno/neuspešno.</p>		<p>Written ("take-home") examination. Prerequisites to take the exam are making of a research paper or participation at the LegArg international scientific conference on the theory of law. Possible assessment: Pass/Fail.</p>
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Reference nosilca / Lecturer's references:

Marko Novak je redni profesor za filozofijo in teorijo prava ter ustavno pravo na Evropski pravni fakulteti in Fakulteti za državne in evropske študije, obe Nova Univerza. Na Pravni fakulteti Univerze v Ljubljani je diplomiral leta 1992. Magistriral je leta 1994 na *Georgetown University Law Center* v Washingtonu, D. C., ZDA, doktoriral pa na Pravni fakulteti Univerze v Ljubljani leta 2001. Bil je predsednik Sodnega sveta Republike Slovenije in član izvršnega odbora Evropske mreže sodnih svetov (*ENCJ*).

Marko Novak is Full Professor of Legal Philosophy, Legal Theory, and Constitutional Law at the European Faculty of Law and Faculty of Government and European Studies, both New University. He graduated from the University of Ljubljana in 1992, completed his LL.M. at the Georgetown University Law School in the USA in 1994, and his doctorate in law at the University of Ljubljana in 2001. He has served as President of the Judicial Council of the Republic of Slovenia and member of the Executive Board of the European Network of Councils for the Judiciary (*ENCJ*).