

UČNI NAČRT PREDMETA / COURSE SYLLABUS

Predmet: Filozofija in teorija prava
Course title: Philosophy and Theory of Law

Študijski program in stopnja Study programme and level	Študijska smer Study field	Letnik Academic year	Semester Semester
Pravo – 2. stopnja		1	2
Law – 2nd degree		1	2

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
40	0	0	0	0	160	8

Nosilec predmeta / Lecturer:

prof. dr. Marko Novak/ prof. Marko Novak

**Jeziki /
Languages:**

**Predavanja /
Lectures:** Slovenski jezik/Slovenian/Angleški jezik/English
Vaje / Tutorial:

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

Vpis v prvi letnik magistrskega programa z osvojenimi temeljnimi znanji s področja dodiplomskega izobraževanja prava. Vsaj 80% prisotnosti na predavanjih.

Prerequisites:

Enrollment in the first year of the Master's program having acquired a basic knowledge from the undergraduate legal studies. At least 80% attendance at lectures.

Vsebina:

Predmet zajema predvsem dva vsebinska sklopa, ki sta še posebej značilna za pravno-filozofska ter pravno-teoretična raziskovanja: prvi del, pravno-filozofski, se nanaša na teorije o naravi prava ali pravno ontologijo, drugi, pravno-teoretičen, pa na pravno argumentacijo.

Oba sklopa sta nadaljevanje in razširitev temeljnih znanj, ki jih študenti pridobijo v prvem letniku pri predmetu Pravoznanstvo na prvi stopnji študija prava.

Content (Syllabus outline):

The course includes in particular two parts that are typical for legal-philosophical and legal-theoretical research: the first part, legal philosophical, deals with theories about the nature of law or legal ontology, while the second, legal-theoretical, with legal argumentation.

Both parts are continuation and extension of basic knowledge that the students acquire within the course Introduction to Jurisprudence, in the first year of the first-degree studies.

V prvem sklopu se študenti seznanijo predvsem z delitvijo med filozofijo prava in teorijo prava v smislu opredelitve pojmov oziroma obeh področij, kot tudi odnosa med pojmom ter kratko zgodovino njunega razvoja. Sledi pregled in razumevanje klasičnih in sodobnih teorij o naravi prava oziroma pogledov na naravo prava, kot so: naravno pravo, pravni pozitivizem, pravni realizem, zgodovinska šola, čista teorija prava, kritične pravne študije, pravo kot integriteta, ekonomska analiza prava, pravo in literatura itd. Standardni teoriji prava, kot sta naravno pravo in pravni pozitivizem, sta predstavljeni tako v klasičnih kot tudi modernih različicah, predstavljeni pa so tudi najpomembnejši trendi pri razvoju teorij o naravi prava.

V drugem delu študenti osvežijo ter podrobneje spoznajo temeljne pojme s področja argumentacije in pravne argumentacije, kot so: argument, veljavnost in zdravost argumenta; kako se argumentacija razlikuje od razlage; kaj so razlagalni argumenti in kaj je uklonljivost pravnih norm. Spoznajo tudi tri temeljne pristope k teoriji argumentacije, ki zaznamujejo temeljno razdelitev teorij tudi na področju pravne argumentacije: logični, dialektični ter retorični pristop. V zvezi z logičnim pristopom obravnavamo notranji kontekst utemeljevanja z logičnimi pristopi silogistične, stavčne, predikatne ter deontične logike. Pri dialektičnem pristopu si pogledamo zunanji kontekst utemeljevanja pravne in dejstvene premise prek posebnih razlagalnih argumentov ter dokazovanja oziroma dokaznih standardov. Pri retoričnem pristopu razpravljamo o vlogi pravne retorike in uporabnosti njenega pogleda pri najtežjih pravnih primerih.

Oba pogleda temeljita na razpravi o primerih iz sodne prakse, v smislu pravno-filozofskega oziroma pravno-argumentacijskega vidika.

The first part introduces to the students the division between legal philosophy and legal theory in the sense of defining the two concepts or theoretical areas, as well as the relation between the concepts and the history of their development. What follows is the survey and presentation of classical and modern theories on the nature of law, such as: natural law, legal positivism, legal realism, historical school, pure theory of law, critical legal studies, law as integrity, economic analysis of law, law and literature, etc. The standard theories on the nature of law, such as natural law and legal positivism, are presented in their classical and modern versions. What are also presented are all relevant trends in the development of theories on the nature of law.

The second part refreshes the students' knowledge and extend such with basic concepts from the area of argumentation and legal argumentation, such as: argument, validity and soundness of arguments; how argumentation is differentiated from interpretation; which interpretative arguments are there; and the notion of defeasibility of legal norms. The students also learn about three approaches to argumentation that are also typical of legal argumentation: the logical, dialectical, and rhetorical. In connection with the logical approach, what is discussed is the internal context of justification along with the logical approaches of syllogistic, propositional, predicate, and deontic logic. With respect to the dialectical approach, the external context of justification is discussed concerning the justification of the legal and factual premises by means of interpretative arguments, and evidence as well as standards of proof. The rhetorical approach brings the discussion about the relevance of legal rhetoric and the suitability of its approach to understand the most complex cases in law.

Both parts are grounded on case analysis from the aspects of legal philosophy and legal argumentation respectively.

Temeljni literatura in viri / Readings:

Obvezna literatura:

Filozofija prava / Philosophy of Law

- Austin, John. *The Province of Jurisprudence Determined and The Uses of the Study of Jurisprudence*, Prometheus Book, New York 2000 (str. 118-144).
- Kelsen, Hans. *Čista teorija prava*, Cankarjeva založba, Ljubljana 2005 (str. 31-44, 60-69).
- Hart, H. L. A. *Koncept prava*, Študentska organizacija Univerze v Ljubljani, Ljubljana 1994. (str. 81-98)
- Dworkin, Ronald. *Taking Rights Seriously*, Harvard University Press, Cambridge, 1978 (str. 81-100).
- Kant, Immanuel. *The Metaphysics of Morals*, Cambridge University Press, Cambridge 2008 (poglavje z naslovom *The Right of Punishing and of Pardoning*).
- Hegel, G. W. F. *Oris filozofije pravice*, Krtina, Ljubljana 2013 (§§ 82-103).
- Bentham, Jeremy. *An Introduction to the Principles of Morals and Legislation*, Dover Publications, Oxford 1960 (str. 1-7, 170-177).
- Nietzsche, Friedrich. *H genealogiji morale*, Slovenska Matica, Ljubljana 1988 (str. 226-243, 249-67).
- Beccaria, Cesare. *O zločinih in kaznih*, Cankarjeva založba, 2002 Ljubljana (poglavja I, II, III in XXVIII).
- Meninger, Karl. *The Crime of Punishment*, Viking Press, New York 1970 (str. 3-15, 153-168).

Patterson, Denise (Ed.). *A Companion to Philosophy of Law and Legal Theory*. Willey-Blackwell, London 2010.

Teorija prava / Theory of Law

Novak, Marko. *Pravna argumentacija v teoriji in praksi*, Uradni list RS, Ljubljana 2021.

Feteris, Eveline. *Fundamentals of legal Argumentation*, Springer, Dordrecht 2017.

Priporočena literatura:

- Höffe, Otfried. *Politična pravičnost*, v: *Pravnik*, let. 63, št. 1-3, Ljubljana 2008 (str. 133-157).
- Novak, Marko. *Poglavja iz filozofije in teorije prava*, Evropska pravna fakulteta v Novi Gorici, Nova Gorica 2008.
- Kaufmann, Arthur. *Uvod v filozofijo prava*. 2. izd. Ljubljana GV založba 2013.
- *Stanford Encyclopaedia of Philosophy* (dosegljiva na: <http://plato.stanford.edu>).

Cilji in kompetence:

Objectives and competences:

Študenti/ke bodo pridobili naslednje predmetno specifične kompetence:

- sposobnost za prepoznavanje razvoja in temeljev na področju pravne filozofije in pravne teorije (argumentacije);
- sposobnost za razumevanje (rekonstrukcijo) konkretnih problemov z uporabo znanstvenih metod in postopkov s področja primerjalnega prava;
- sposobnost za razumevanje novosti v okviru pravne filozofije in pravne teorije (argumentacije) in v skladu z njenimi temeljnimi paradigmi, 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 filozofije in pravne teorije (argumentacije);
- sposobnost za uporabo sodobne informacijsko–komunikacije tehnologije in informacijskih sistemov za potrebe preučevanja primerjalnega prava.

Študenti/ke bodo pridobili naslednje splošne kompetence:

- sposobnost analize, sinteze in predvidevanja rešitev ter posledic na področju primerjalnega prava;
- obvladovanje raziskovalnih metod, postopkov in procesov s področja primerjalnega prava ter razvoj kritične in samokritične presoje na tem področju;
- sposobnost uporabe znanj s področja primerjalnega prava,
- avtonomnost pri strokovnem delu in sprejemanju poslovnih odločitev;
- razvoj komunikacijskih sposobnosti in spretnosti s poudarkom na

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

- the ability to recognize foundations and developments in the area of legal philosophy and legal theory (argumentation);
- the ability to understand (reconstruct) specific problems by means of scientific methods and procedures developed by legal philosophy and legal theory (argumentation);
- the ability to understand new developments from within legal philosophy and legal theory (argumentation) 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 philosophy and legal theory (argumentation);
- the ability to use modern ICT for the study of legal philosophy and legal theory (argumentation).

The students will acquire the following general abilities:

- the ability to analyze, synthesize, and envisage solutions and consequences in the area of legal philosophy and legal theory;
- the mastering of research methods, procedures, and processes from within legal philosophy and legal theory, and development of critical and self-critical evaluation in this area;
- the ability to use knowledge from the area of legal philosophy and legal theory;
- autonomy in professional work and taking decisions;
- the development of communication

- komunikaciji v mednarodnem okolju;
- etična refleksija in zavezanost profesionalni etiki v poslovnem okolju;
 - kolegialnost do sodelavcev in lojalnost do delodajalcev ter sodelavcev, delo v skupini ter strpno sprejemanje in upoštevanje tvornih kritik in pripomb.

- skills with the emphasis of communication in international environment;
- collegiality with respect to co-workers 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 temeljnimi pojmi in vprašanji v okviru filozofije in teorije prava (pravne argumentacije);
- osvojitve temeljnega poznavanja problemov in rešitev v okviru filozofije in teorije prava (pravne argumentacije);
- razvije zanimanje in znanje o filozofiji in teoriji prava (pravni argumentaciji);
- razvije kritično razumevanje filozofije in teorije prava (pravne argumentacije);
- zmožen/na je kritične presoje ter analize in interpretacije dogodkov in usmeritev z vidika filozofije in teorije prava (pravne argumentacije);
- sposoben razpravljati oziroma pokomentirati praktične pravne probleme skozi prizmo pravno-filozofskih teorij;
- sposoben rekonstrukcije obrazložitve sodne odločitve z vidika temeljnih pristopov k teoriji pravne argumentacije;
- sposoben kritičnega presojati, analizirati in razlagati dogodke in politike s stališča filozofije in teorije prava (pravne argumentacije);
- pozna in uporablja osnovne metodološke pristope pri raziskovanju vprašanj s področja filozofije in teorije prava (pravne argumentacije).

Intended learning outcomes:

Knowledge and understanding:

Student / student:

- To introduce students to the fundamental concepts and questions within legal philosophy and legal theory (argumentation);
- acquiring the fundamental knowledge of problems and solutions within legal philosophy and legal theory (argumentation);
- aims to develop the students' interest in, and knowledge of, legal philosophy and legal theory (argumentation);
- develops a critical understanding of legal philosophy and legal theory (argumentation);
- is able to critically evaluate and analyse events and guidelines from the view of legal philosophy and legal theory (argumentation);
- is able to discuss or comment specific legal problems in the light of legal philosophy and legal theory (argumentation);
- is able to reconstruct the reasoning of a judicial decision from the approaches to legal argumentation theory;
- is able to critically judge, analyse and interpret events and policies from the view of legal philosophy and legal theory (argumentation);
- to know and use basic methodological approaches to legal philosophy and legal theory (argumentation).

Metode poučevanja in učenja:

Oblike dela:

- Frontalna oblika poučevanja
- Delo v manjših skupinah oz. v dvojicah
- Samostojno delo študentov

Learning and teaching methods:

Types of learning/teaching:

- Frontal teaching
- Work in smaller groups or pair work
- Independent students work

e-učenje
 drugo (vpišite) _____

Metode (načini) dela:

Razlaga
 Razgovor/ diskusija/debata
 Delo z besedilom
 Proučevanje primera
 Igra vlog
 Druge vrste nastopov študentov
 Reševanje nalog
 Študijski obiski podjetij ipd.)
 Vključevanje gostov iz prakse
 Udeležba na okrogli mizi, na konferenci

e-learning
 other _____

Teaching methods:

Explanation
 Conversation/discussion/debate
 Work with texts
 Case studies
 Role-play
 Different presentation
 Solving exercises
 Field work (e.g. company visits)
 Inviting guests from companies
 Attending round table and conference

Delež (v %) /

Načini ocenjevanja:

Weight (in %)

Assessment:

Način (pisni izpit, ustno izpraševanje, naloge, projekt):	Weight (in %)	Assessment:
Ocenjuje se pisni izpit.	100%	Written examination.

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*).