

7,458,1.00 Legal Reasoning

Winter Semester 2006/2007

This is a working translation of a brief description accessible to students on the course Legal Reasoning being held the in winter semester 2006/2007 as part of the Master of Law and Economics (MLE) program of the University of St. Gallen.

The fall semester 2005 marked the second time that students of the MLE who had completed their bachelor degree entered the master program after the Bologna reorganisation of the curricula at St. Gallen University. The Dean will shortly be authorizing the use of an official description of the program in English. For the time being the German version is attached.

The course Legal Reasoning is a basic course. It is taught under the direction of Professor Jens Drolshammer. During the time that he is engaged as Senior Fellow and Visiting Researcher at the Law School and the Kennedy School of Harvard University from early September to early December 2006, his colleagues Prof. Philippe Mastronardi and Dr. Stephanie Hrubesch-Millauer will teach the first part of the course.

This description is accessible to students electronically as of now.

1. Description of course

Number of Course:	7,458,1.00
Title:	Legal Reasoning
Remarks:	
max. participants: (Bidding)	
max. participants: (Application of Professor)	
Language of Teaching	See below
Recommended Semester	7. Semester
Requisites:	
SWS:	3 SWS
Credits:	
Limitations:	
Substance and Goals:	<p>Basic Part – 1st Half of Semester (Professor Philippe Mastronardi / Dr. Stephanie Hrubesch-Millauer)</p> <p><i>Self Study (Selbststudium)</i></p> <p>Establishing the basis of the discipline of legal method: Grammatical, historic, systematic and teleological elements of interpretation, filling of lacunae etc. as a common instrument of the work in private and public law. The students require the ability to apply a legal norm in a methodologically accepted way to facts.</p> <p><i>Classes (Kontaktstudium)</i></p>

Application of the basics acquired in the self study of the discipline of legal method. More in-depth treatment of selected questions of private and public law based upon cases, judgments and excerpts from legal writing. The students learn to deal with norms and the principles of legal method and methodological techniques to bring arguments in private as well as in public law.

Special Part – 2nd half of semester (Prof. Jens Drolshammer / Visiting professors)

Classes (Kontaktstudium)

More in-depth study and in particular expansion of the basics taught in part 1 of the semester. The course aims to convey a sophisticated understanding of the discipline of legal method in respect of the function, origin and evolution and positioning of the discipline of legal method in various areas of national and international law. Given the insufficient importance attached even in a national legal context to methodology, this part of the module was concerned with according equal and simultaneous importance to issues in specific areas of law, legal cultures and phases of legal development and making students aware of these.

This should lead to a new and enlarged methodological consciousness on the part of the students. The questions and issues raised lead to an enlargement and a more profound understanding, as well as partly critical and contextual view of the traditional understanding of the discipline of legal method as grounded in national law. For example the function of methodology can vary and be specific depending on the different legal cultures, areas of law, phases of development of an area of law, the realization of law in various fields of law and different historical and political conditions.

In that context the course will also address an understanding of the discipline of legal method adequate to internationalization and globalization as regards the formation, application and the enforcement of law in times of change.

This part aims to show that certain premises of the traditional understanding of the discipline of legal method are open to question and that this process should take place in an institutionalized and accepted process of critique.

Self study (Selbststudium)

These enlarged issues and questions will be approached through a guided study of texts, which the visiting professors have chosen themselves to be relevant to their presentations. The students will also be guided to formulate appropriate questions to the visiting professors to

Structure:

be discussed in class.

The course is divided into a **basic** and a **special part**. Both parts involve elements of self study and elements of classroom work.

Basic Part – 1. part of the semester (Prof. Philippe Mastronardi / Dr. Hrubesch-Millauer)

Classes (Kontaktstudium)

The classes deal with selected topics of the discipline of legal method in classical private and public law on a domestic level. In private law the major issues are the system of claims and writs and the interpretation of private and commercial law, to be addressed specifically in the context of cases and legal writing. In the parts covering public law, the issues will be interpretation of public law, methods to weigh competing goals in law, concretisation in public law in particular based upon judgments and legal writing.

Self study (Selbststudium)

The self study of the discipline of legal method is based upon the book of Prof. Ernst Kramer and a reader with examples and questions. The study of the basics in the course of self study will be supported by an electronic learning platform.

Special Part – 2. part of the semester (Prof. Dr. Jens Drolshammer / visiting professors)

Classes (Kontaktstudium)

The classroom work aims to provide a wider and more differentiated understanding of the function, the origin and the evolution as well as the significance of the issue of legal methodology in various areas of law. The classroom work consists of a structured series of questions put to a visiting professor by the main professor as well as the prepared questioning of visiting professors by the students. The basis of this discursive and interactive approach to the issues are texts chosen by the visiting professor as relevant to the issues addressed in the specific classroom event. Those texts form part of the reader.

The course primarily deals with wider issues specific to various areas of law (for example civil law, comparative law), various legal cultures (for example Anglo-American law), as well as to specific to various stages of law (for example international law, transnational law, methodological issues in dealing with forms of globalisation of law). The following are formally invited:

- Prof. Ernst Kramer, University of Basel
- Prof. Dr. Dr. h.c. Bernd Rütters, former president of the University of Constance

Literature:

- Prof. Dr. Marcel Niggli, University of Fribourg
- Prof. Dr. Christine Breining, University of Zurich
- Prof. Arthur Miller, Harvard Law School

Self study (Selbststudium)

The texts are contained in the reader for the course, which have been chosen by the visiting professor specifically for the class in which he appears. The work of the students will be supported by an electronic learning platform.

First half of the semester

Compulsory reading: (to be adapted according to the wishes of the guest professors)

- Ernst A. Kramer, *Juristische Methodenlehre*, 2. Auflage (ausgewählte Kapitel)
- Reader (Self Study (Selbststudium)/Classes (Kontaktveranstaltung))

Second half of the semester

Compulsory reading:

- Mathias Reimann, *The End of Comparative Law as an Autonomous Subject*, *Tulane European & Civil Law Forum*, Volume 11, 1996. S. 50-72.
- Mathias Reimann, *From The Law of Nations to Transnational Law: Why We Need a New Basic Course for the International Curriculum*, *The Dickinson School of Law of the Pennsylvania State University*, Volume 22, Winter 2004, Number 3, S. 397-415.
- Duncan Kennedy, *Two Globalizations of Law & Legal Thought: 1850-1968*, *Suffolk University Law Review*, Volume XXVI, 2003, Number 3, S. 632-679
- Marc Amstutz/Marcel Alexander Niggli, *Recht und Wittgenstein I*, in *Gauchs Welt, Festschrift für Peter Gauch zum 65. Geburtstag*, Schulthess 2004, S. 1-21 (Compulsary)
- Marc Amstutz/Marcel Alexander Niggli, *Recht und Wittgenstein II*, in *Gauchs Welt, Festschrift für Peter Gauch zum 65. Geburtstag*, Schulthess 2004, S. 161-183 (Optional)
- Marc Amstutz/Marcel Alexander Niggli, *Recht und Wittgenstein III, vom Gesetzeswortlaut und seiner Rolle in der rechtswissenschaftlichen Methodenlehre, Richterliche Rechtsfortbildung in Theorie und Praxis*, *Festschrift für Hans Peter Walter*, Bern 2005, S. 9-36 (Optional)
- Daniel Thürer, *Worte des Richters - Gedanken rund um die Verfassungsgerichtsbarkeit*, in: Stefan Hammer/Alexander Somek/Manfred Stelzer/Barbara Weichselbaum (Hrsg.), *Demokratie und sozialer Rechtsstaat in Europa*, *Festschrift für Theo Öhlinger*, Wien 2004, S. 272-297
- Daniel Thürer, *Ein schiefer Blick vom Völkerrecht auf werdendes staatliches Verfassungsrecht*, in: *recht 2005, Sonderheft Die Öffnung des Verfassungsrechts*, Symposium zum 65. Geburtstag von Jörg Paul Müller, S. 63-68
- Daniel Thürer, *L'Europe, une expérience - IECRI, une*

Additional information:

Pre-discussion (PHD courses):
Rhythm of classes (PHD courses):
Organisation/Information (PHD courses):
Subscription deadline (PHD courses):

illustration, in: Mélanges Pierre Moor, Théorie du droit, Droit administratif, Organisation du territoire, Bern 2005, S.543-551

- Bernd Rüthers, Rechtsdogmatik und Rechtspolitik, Vortrag in Trier am 30. Juni 2003, S.1-41
- Bernd Rüthers, Methodenrealismus in Jurisprudenz und Justiz, S.1-22
- Ernst A. Kramer: Juristische Methodenlehre, 2. Auflage, München 2004 (Pflichtlektüren von Teil 1)
- Literaturhinweis: Andreas Kläy; Ernst A. Kramer, Juristische Methodenlehre, in ZBJV, Bd. 141, 2005, S. 346-348

There is a possibility of organising optional dinners with the visiting professors in small numbers.

2. Description of exam

possible for exams	Prof. Dr. Jens Drolshammer
format of exam (Format, Time, percentage) (written exams period,)	Central (yes/no)
written exam period, 100%	yes