

Scuola Superiore Meridionale
“Federico II” University of Naples
PhD in Law and Organizational Studies for People with Disability
2nd semester – Academic year: 2022/2023

Course for PhD students
‘Personality Rights: personal and patrimonial aspects’

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Lesson schedule:

30 January

6, 13, 20 and 27 February

6, 13, 20 and 27 March

3 April

Timetable:

05:00pm to 07:00pm

Aims

The course is addressed to doctoral students and second year undergraduate students coming from any research area of the School. The final evaluation will take into account the students' different educational level.

At the end of the course, the students will be able to:

- Understand the ethical and legal issues associated with the development of society.
- Read a legal text: interpretation and construction of legal writing.
- Identify the problem and find the rule that applies to the problem.
- Understand the legal argumentation techniques.
- Analyze the connections between civil law and the rules concerning people with disabilities.

Learning methods

- Students will have to read the mandatory study materials before classes.
- Classes will be based on discussions between the professor and students regarding the main issues arising from the background readings.
- All students are expected to actively participate in the debate providing comments and raising questions on the issues discussed in class.
- PhD students will deliver a research project on the topics covered during the course. The work will be presented during the final class.

Course material

The course material consists of books selected for each lesson.

Reading the texts before the lesson is highly recommended.

About the course

Today's personality rights are the result of an evolutionary process whose cornerstones are the intervention of the legislator on specific regulations and the development of the legal doctrine and jurisprudence – which are increasingly consistent and in line with the principles of the Constitution. Personal and also patrimonial aspects have increasingly caught the attention of scholars and legal practitioners, who have been asked to find the right balance between the possibilities and risks of a cultural and social system that has profoundly changed, also due to the impact of new technologies on our daily lives. This course, therefore, will address the main questions raised by the regulations in force, while focusing on the fact that the solution of the practical cases that will be discussed in every single lesson cannot fail to take into due consideration the cogency of the general principles on the subject.

Lesson 1 – Fundamentals of Epistemology in Social Research: Legal Profiles

Before discussing personality rights, we will talk about legal subjectivity, which is, in turn, associated with the study and analysis of general categories, including legal capacity and capacity to act, which, not surprisingly, are addressed in the first two articles of the Civil Code. The lesson will offer a systematic overview of the main philosophical and legal issues that have also led to a reconsideration of the traditional concepts of personality and subjectivity.

Study materials:

- F. SANTORO PASSARELLI, *Dottrine generali del diritto civile*, Naples, 2012.
- F. BOCCHINI – E. QUADRI, *Diritto privato*, Turin, 2020, 257-299;
- P. PERLINGIERI, *La personalità umana nell'ordinamento giuridico*, Naples, 1972;
- A. TORRENTE – P. SCHLESINGER, *Manuale di diritto privato*, 2017, Turin, 92-123;
- M. INTERLANDI (edited by), *Funzione amministrativa e diritti delle persone con disabilità*, Naples, 2022.

Lesson 2 – The relationship rights of children

The most recent legal orientation seems to be more aware of the fact that children deserve special protection, not only when their assets are threatened by any negotiation activities – carried out by them or by other subjects – but even when the protection of their personal sphere becomes important. The lesson will be based on the assumption that certain rights, more than others, are conceived for the purposes of the development of the human person and, therefore, abstractly recognising one of them without also granting the possibility of exercising it does not make any sense. Preventing a minor from carrying out any activity that is a manifestation of the fundamental human qualities means not only denying his or her capacity, but also depriving him or her of subjectivity.

Study materials:

- C. CAMARDI, *Relazione di filiazione e privacy. Brevi note sull'autodeterminazione del minore*, in *Jus civile*, 2018, 6, 831.
- G. RECINTO – F. DELL'AVERSANA, *I rapporti personali del minore*, in F. ROSSI (edited by), *Capacità e incapacità*, Naples, 2018, 29-69.

Lesson 3 – Children and negotiation

Minors can carry out negotiation activities and this hypothesis is considered by the legislator itself as exceptional, that is why greater protection is required, both when the minor deals with his or her own daily life activities, and when he or she is assisted by other subjects, especially when the

patrimonial interest is particularly relevant. During the lesson, therefore, we will analyse the main issues – including practical issues – associated with the subject, with an eye also to obligations and contracts.

Study materials:

- G. CAPILLI, *La capacità negoziale dei minori. Analisi comparata e prospettive di riforma*, Turin, 2020.
- D. DI SABATO, *Gli atti a contenuto patrimoniale del minore*, F. ROSSI (edited by), *Capacità e incapacità*, Napoli, 2018, 70-99.
- R. SENIGAGLIA, *Minore età e contratto. Contributo alla teoria della capacità*, Turin, 2020, 75-154.

Lesson 4 – Minors and new technologies

The potential of the Internet and of network algorithms are innumerable, as many as the risks associated with the development of new technologies, which may undermine the protection of minors, both in quantitative and qualitative terms. During the lesson, therefore, additional considerations will be made with respect to the previous lesson, with specific regard to the child's Internet activity. In particular, we will focus on the case of children using *social networking* sites, an activity that might be in contrast with the reference regulatory framework.

Study materials:

- A. ASTONE, *L'accesso dei minori d'età ai servizi della c.d. Società dell'informazione: l'art. 8 del Reg. (UE) 2016/679 e i suoi riflessi sul Codice per la protezione dei dati personali*, in *Contratto e impresa*, 2019, 2, 614-648.
- F. DELL'AVERSANA, *Il minore: autore dei contratti telematici*, in G. DE MINICO (edited by), *Nuovi media e minori*, Rome, 2012, 207-237.

Lesson 5 – Personality rights

The increase in the number of personality rights is a phenomenon to which both the legal doctrine and jurisprudence have largely contributed, as they have both offered, from their respective perspectives, extraordinary reflections on art. 2 of the Constitution. This lesson, therefore, will focus on these new subjective legal situations, not expressly considered in other provisions, but whose fundamental relevance can no longer be neglected.

Study materials:

- P. PERLINGIERI, *Manuale di diritto civile*, Naples, 2021, 179-215.
- ID., *Principio personalista, dignità umana e rapporti civili*, Lectio magistralis svolta in occasione dei 50 anni di istituzione della Scuola di Specializzazione in Diritto Civile dell'Università degli Studi di Camerino, Camerino, 3 December 2019, in *Annali Società italiana degli studiosi del diritto civile*, 2020, 5, 1-17.

Lesson 6 – Personal rights and family

The protection of personal rights is also ensured within social formations: these certainly include the family, a social structure that has been characterised by important evolutions considered in multiple supranational and internal regulatory sources. The lesson will offer a critical interpretation of the asymmetries arising with regard to some hypotheses that emerged in practice, in relation to which, however, no uncertainty on the part of the legal system should be tolerated, and which are the real test bed for jurists who wish to investigate the (new) legal and value basis of family relationships.

Study materials:

- G. RECINTO, *Le genitorialità. Dai genitori ai figli e ritorno*, Naples, 2016.

Lesson 7 – Traditional protective means: interdiction and incapacitation

Fragility is part of human existence and affects everybody, both directly and indirectly. Based on this consideration and developing a global vision that includes rights, duties and responsibilities, the traditional institutions of interdiction and incapacitation, provided by the legal system to solve difficult situations – which, however, have clearly showed their limits – will be critically discussed.

Study materials:

- P. CENDON, *I diritti dei più fragili. Storie per curare e riparare i danni esistenziali*, Milan, 2018.

Lesson 8 – Guardianship between atypical situations and real protection needs

Recently introduced, guardianship is, today, the most interesting institution for building a debate on the protection of fragile people. After a theoretical description of the subject, the lesson will analyse some of the main jurisprudential cases that have occurred over time. Special attention will be paid to the reconstruction of the discipline of the so-called *very personal acts*, a category that has even more problematic characteristics in this specific case.

Study materials:

- G. BONILINI – F. TOMMASEO, *Dell'amministrazione di sostegno. Artt. 404-413, Commentario*, Milan, 2018.
- I. PRISCO, *Amministrazione di sostegno e atti personalissimi*, Naples, 2018.

Lesson 9 – The Bodies mentioned in the First Book of the Civil Code

Personality rights also apply to legal persons and other social formations characterised by legal subjectivity. The lesson will offer an overview of the issues concerning committees, associations (both recognised and unrecognised) and foundations. Special attention will be paid to patrimonial issues and to the correct reconstruction of the profiles of complete and incomplete financial autonomy.

Study materials:

- A. FUSARO, *La revisione della disciplina degli enti del libro primo del codice civile*, in *Rivista di diritto civile*, 2019, 6, 1358-1368.
- F. GALGANO (a cura di), *Trattato di Diritto Civile*, Vol. 1, Padua, 201-354.
- A. NERVI, *In margine all'ipotesi di riformare la disciplina del codice civile in tema di associazioni e fondazioni*, in *Annali Società italiana degli studiosi del diritto civile*, 2020, 5, 127-148.

Lesson 10 – Social formations as a tool for personal development

Art. 2 of the Constitution gives a central role to social formations, and this fact is widely considered in the most recent legislation that has reorganised the regulatory framework of the Third sector, understood as that set of private entities operating in different areas, including assistance to people with disabilities, environmental protection, health and social assistance services, and cultural activities. The lesson will try to shed light on the potential of the legislation and the critical aspects of the relationship that it undoubtedly builds with the intervention of public bodies.

Study materials:

- S. AMOROSINO, *Il Terzo settore tra pubblici poteri ed autonomia sociale*, Relazione al Convegno "Terzo settore, impresa e società", Padua, 9 November 2018, in *Rassegna di diritto civile*, 2019, 1, 304-317.
- A. D'ANDREA – L. MONTANINI, *La riforma del terzo settore. L'impatto sugli strumenti di accountability*, Turin, 2020.

About the final exam

The final exam will consist of the oral discussion of a paper prepared by the student on a topic previously agreed with the professor. Students will have to attend the lessons included in the course, especially the debate with scheduled and unscheduled interventions.