



FACULDADE DE DIREITO
Universidade de Lisboa

Ficha de Unidade Curricular

Doutoramento em Direito

Unidade curricular

Direito Administrativo
Segundas-feiras 11:00/13:00

Docente responsável

David Duarte

Conteúdos programáticos

Discrecionariedade Administrativa: A Perspectiva Analítica

- 0: Introdução
- 1: O conceito operativo de discrecionariedade
 - 1.1: Alternativas legais, pluralidade de estatutos deonticos da acção e escolha
 - 1.2: Alternativas de linguagem e alternativas normativas
 - 1.3: A componente epistémica das alternativas
- 2: Discrecionariedade e linguagem
 - 2.1: Certeza e incerteza linguísticas
 - 2.2: Elenco de incertezas linguísticas
 - 2.3: Incertezas linguísticas e alternativas
- 3: Discrecionariedade e normas
 - 3.1: Estrutura normativa
 - 3.2: Normas de competência e normas de conduta em sentido estrito
 - 3.3: Operadores deonticos e alternativas
 - 3.4: Conflitos normativos e alternativas
- 4: Discrecionariedades abstracta e concreta
 - 4.1: Elenco de alternativas
 - 4.2: Eliminação de alternativas: derrotabilidade
 - 4.3: Escolha e reserva de administração

Metodologias de ensino

- as aulas têm estrutura de seminário;
- entrega de um paper no final do primeiro semestre e de outro no final do segundo;
- a classificação final é a média de ambos os papers (80%) com a avaliação relativa à participação nas sessões (20%);

Bibliografia principal

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- 2010. Two or Three ?. On the Nature of Legal Principles. Edited by Martin Borowski. Stuttgart: Franz Steiner Verlag. 9-18.
- 2002. Theory of Constitutional Rights. Oxford: Oxford University Press.
- Asgeirsson, Hrafn
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- Barak, Aharon
- 2012. Proportionality. Rights and their Limitation. Cambridge: Cambridge University Press.
- Brożek, Bartosz
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- 2005. Normas y Sistemas Normativos. Madrid: Marcial Pons.
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- Frändberg, Åke
- 2018. The Legal Order. Cham: Springer.
- Hage, Jaap
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- Jestaedt, Matthias
- 2012. The Doctrine of Balancing, its Strengths and Weaknesses. Institutionalized Reason. The Jurisprudence of Robert Alexy. Edited by Matthias Klatt. Oxford: Oxford University Press. 152-152.



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Klatt, Matthias

- 2015. An Egalitarian Defense of Proportionality-based Balancing: A Reply to Luc B. Tremblay. *International Journal of Constitutional Law*. 12. 4. 891-899.

- 2004. Semantic Normativity and the Objectivity of Legal Argumentation. *Archiv für Rechts- und Sozialphilosophie*. 90. 51-65.

Klatt, Matthias / Meister, Moritz

- 2012. *The Constitutional Structure of Proportionality*. Oxford: Oxford University Press.

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- 2012. Epistemic discretion in Constitutional Law. *International Journal of Constitutional Law*. 10. 1. 69-105.

Lopes, Pedro Moniz

- 2017. The Syntax of Principles: Genericity as a Logical Distinction Between Rules and Principles. *Ratio Juris*. 30. 4. 471-490.

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- 2007. Balancing and the Structure of Constitutional Rights. *International Journal of Constitutional Law*. 5. 3. 453-468.

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Raz, Joseph

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- 2015. To Whom Does the Law Speak? Canvassing a Neglected Picture of Law's Interpretative Field. *Problems of Normativity, Rules and Rule-Following*. Edited by Tomasz Gizbert-Studnicki and Krzysztof Pleszka. Chaim: Springer. 265-280.

Sartor, Giovanni

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- 1991. *Playing by the Rules*. Oxford: Oxford University Press.

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Curricular Unit Sheet

PhD on Legal Science

Curricular unit

Administrative Law

Mondays 11:00/13:00

Academic staff

David Duarte

Syllabus

Administrative Discretion: An Analytical Perspective

0: Introduction

1: A workable concept of discretion

1.1: Legal alternatives, plurality of deontic statutes and choice

1.2: Language and normative alternatives

1.3: The epistemic component of alternatives

2: Discretion and language

2.1: Language certainty and uncertainty

2.2: List of language uncertainties

2.3: Language uncertainties and alternatives

3: Discretion and norms

3.1: Norm structure

3.2: Competence norms and norms on action

3.3: Deontic operators and alternatives

3.4: Conflicts of norms and alternatives

4: Abstract and concrete discretion

4.1: Set of alternatives

4.2: Elimination of alternatives: defeasibility

4.3: Choice and administrative rule of law

Teaching methodologies

- classes will follow a workshop model;

- one paper at the end of both semesters to be delivered;

- final evaluation is the average of both papers (80%) with an assessment on class participation (20%);



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Main bibliography

- see above