



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

Discricionariedade Administrativa: A Perspectiva Analítica

##### 0: Introdução

##### 1: O conceito operativo de discricionariedade

- 1.1: Alternativas legais, pluralidade de estatutos deontológicos da acção e escolha
- 1.2: Alternativas de linguagem e alternativas normativas
- 1.3: A componente epistémica das alternativas

##### 2: Discricionariedade e linguagem

- 2.1: Certeza e incerteza linguísticas
- 2.2: Elenco de incertezas linguísticas
- 2.3: Incertezas linguísticas e alternativas

##### 3: Discricionariedade e normas

- 3.1: Estrutura normativa
- 3.2: Normas de competência e normas de conduta em sentido estrito
- 3.3: Operadores deontológicos e alternativas
- 3.4: Conflitos normativos e alternativas

##### 4: Discricionariedades 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 projecto de investigação no final do primeiro semestre e de um paper no final do segundo;
- a classificação final é a média do paper (80%) com a avaliação relativa à participação nas sessões (20%);

#### Bibliografia principal

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- 2002. Theory of Constitutional Rights. Oxford: Oxford University Press.

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Barak, Aharon

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Duarte, David

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Ferrer Beltrán, Jordi / Ratti, Giovanni

- 2012. Defeasibility and Legality: a Survey. The Logic of Legal Requirements. Essays on Defeasibility. Edited by Jordi Ferrer Beltrán and Giovanni Battista Ratti. Oxford: Oxford University Press. 11-38.

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- 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

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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.

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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 research project at the end of the first semester and a paper at the end of the second;

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



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Main bibliography

- see above