



FACULDADE DE DIREITO
Universidade de Lisboa

Ficha de Unidade Curricular

Mestrado em Ciência Jurídica

Unidade curricular

Direitos Fundamentais

Terças-feiras 11:00 / 13:00

Docente responsável

David Duarte

Conteúdos programáticos

Direitos Fundamentais e Posições Jurídicas

0: Introdução

1: Conceitos básicos da normatividade

1.1: Enunciado e norma

1.2: Estrutura da norma

1.3: Classificações de normas

1.4: Normas e posições jurídicas

2: A compreensão Hohfeldiana

2.1: As posições primárias

2.2: As posições secundárias

2.3.: A correlatividade

2.4: Os agregados Hohfeldianos

3: Teorias dos direitos

3.1: Sentido das teorias normativas dos direitos

3.2: Teoria da vontade

3.3: Teoria do interesse

3.4: Teorias mistas



FACULDADE DE DIREITO
Universidade de Lisboa

3.5: Críticas

4: Posições jurídicas atomísticas

4.1: «Claim right» e «duty to or not to»

4.2: «Liberty» e «duty of no interference»

4.3: «Competence» e «liability»

5: Posições jurídicas agregadas

5.1: A agregação

5.2: Exemplos de agregação

5.3: As posições tû-tû

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 papers (80%) com a avaliação relativa à participação nas sessões (20%);

Bibliografia principal

ALEXY, ROBERT

- 2002. *Theory of Fundamental Rights*. Oxford: Oxford University Press.

CÁCERES, MARÍA BEATRIZ

- 2018. *Fundamentalidad, Interdefinibilidad y Circularidad*. *Revus*. 1-37.
- 2014. *El Concepto Hohfeldiano de Derecho Subjetivo*. *Revista de Ciencias Sociales*. 65. 13-45.

CORNELL, NICOLAS

- 2015. *Wrongs, Rights, and Third Parties*. *Philosophy & Public Affairs*. 43. 2. 109-143.

CRUFT, ROWAN

- 2013. *Rights and the Direction of Duties*. *Ethics*. 123. 195-201.
- 2012. *Why Is It Disrespectful to Violate Rights ?* *Proceedings of the Aristotelian Society*. CXIII. 202-224.
- 2004. *Rights: Beyond Interest Theory and Will Theory ?* *Law and Philosophy*. 23. 4. 347-397.

DUARTE D'ALMEIDA, LUÍS

- 2016. *Fundamental Legal Concepts: The hohfeldian Framework*. *Philosophy Compass*. 11. 554-569.

FEINBERG, JOEL

- 1970. *The Nature and Value of Rights*. *Journal of Value Inquiry*. 4. 245-257.



FACULDADE DE DIREITO
Universidade de Lisboa

HALPIN, ANDREW

- 2003. Fundamental Legal Conceptions Reconsidered. *Canadian Journal of Law and Jurisprudence*. XVI. 41- 54.
- 1997. *Rights and Law. Analysis and Theory*. Oxford: Hart Publishing.
- 1985. Hohfeld's Conceptions: From eight to Two. *Cambridge Law Journal*. 44. 3. 435-457.

HART, HEBERT

- 1982. Legal Rights. *Essays on Bentham*. Oxford: Oxford University Press. 162-193.

HAYWARD, TIM

- 2103. On Preposition Duties. *Ethics*. 123. 264-291.

HEDAHL, MARCUS

- 2013. The Significance of a Duty's Direction: Climing Priority than Prioritizing Claims. *Journal of Ethics & Social Philosophy*. 7. 3. 1-28

HOHFELD, WESLEY

- 1917. Fundamental Legal Conceptions as Applied in Judicial Reasoning. *Yale Law Journal*. 710-770.

KOCOUREK, ALBERT

- 1921. Hohfeld System of Fundamental Legal Concepts. *Illinois Law Review*. 15. 24-39.

KRAMER, MATTHEW

- 2013. Doubts About Alternatives to the Interest Theory of Rights. *Ethics*. 123. 245-263.
- 2002. Rights Without Trimmings. *A Debate Over Rights*. Edited by M. Kramer, N. Simmonds, and H. Steiner. Oxford: Oxford University Press. 7-112.

KRAMER, MATTHEW / STEINER, HILLEL

- 2007. Theories of Rights: Is There a Third Way? *Oxford Journal of Legal Studies*. 27. 2. 281-310.

KURKI, VISA

- 2018. Rights, Harming and Wronging: Restatement of the Interest Theory. *Oxford Journal of Legal Studies*. 38. 3. 430-450.
- 2017. Hohfeldian Infinities: Why Not to Worry. *Res Publica*. 23. 137-146.

LINDAHL, LARS

- 2006. Hohfeld Relations and *Spielraum* for Action. *Análisis Filosófico*. XXVI. 2. 325-355.
- 1994. Stig Kanger's Theory of Rights. *Logic, Methodology and Philosophy of Science*. Edited by D. Prawitz, B. Skyrms, and D. Westerståhl. Amsterdam: Elsevier. 889-911.
- 1977. *Position and Change*. Dordrecht: Reidel Publishing.

MARTIN, REX

- 1993. *A System of Rights*. Oxford: Oxford University Press.

NYQUIST, CURTIS

- 2002. Teaching Wesley Hohfeld's Theory of Legal Relations. *Journal of Legal Education*. 52. 238-257.

O'REILLY, DANIEL



FACULDADE DE DIREITO
Universidade de Lisboa

- 1999. Are There Any Fundamental Legal Conceptions ? *University of Toronto Law Journal*. 49. 271-278.
- 1995. Using the Square of Opposition to Illustrate the Deontic and Alethic Relations Constituting Rights. *University of Toronto Law Journal*. 45. 279-310.
- SARTOR, GIOVANNI
- 2006. Fundamental Legal Concepts: A Formal and Teleological Characterisation. *Artificial Intelligence and Law*. 14. 101-142.
- SCHAUER, FREDERICK
- 1993. A Comment on the Structure of Rights. *Georgia Law Review*. 27. 415-436.
- SCHLAG, PIERRE
- 2015. How to Do Things with Hohfeld. *Law and Contemporary Problems*. 78. 185- 234.
- SIMMONDS, NIGEL
- 2002. Rights at the Cutting Edge. *A Debate Over Rights*. Edited by M. Kramer, N. Simmonds, and H. Steiner. Oxford: Oxford University Press. 7-112.
- SINGER, JOSEPH
- 1982. The Legal Rights Debate in Analytical Jurisprudence from Bentham to Hohfeld. *Wisconsin Law Review*. 975-1059.
- STEINER, HILLEL
- 2013. Directed Duties and Inalienable Rights. *Ethics*. 123. 230-244.
- THOMSON, JUDITH
- 1993. Précis of The Realm of Rights. *Philosophy and Phenomenological Research*. LIII. 159-162.
- 1990. *The Realm of Rights*. Harvard: Harvard University Press.
- 1980. Rights and Compensation. *Noûs*. 14. 3-15.
- WELLMAN, CHRISTOPHER
- 1995. On Conflicts Between Rights. *Law and Philosophy*. 14. 271-295.
- WENAR, LEIF
- 2013. The Nature of Claim Rights. *Ethics*. 123. 202-229.
- 2005. The Nature of Rights. *Philosophy & Public Affairs*. 33. 3. 223-252
- ZANGHELLINI, ALEARDO
- 2017. Raz on Rights: Human Rights, Fundamental Rights, and Balancing. *Ratio Juris*. 30. 1. 25-40



FACULDADE DE DIREITO
Universidade de Lisboa

Curricular unit sheet

Masters in Legal Science

Curricular unit

Fundamental Rights

Tuesdays 11:00 / 13:00

Academic staff

David Duarte

Syllabus

Fundamental Rights and Legal Positions

0: Introduction

1: Basic concepts of normativity

1.1: Norm and norm sentence

1.2: Norm structure

1.3: Taxinomy of norms

1.4: Norms and legal positions

2: The Hohfeldian understanding

2.1: First order legal positions

2.2: Second order legal positions

2.3.: The correlativity axiom

2.4: Hohfeldian aggregation

2: Theories of rights

3.1: Meaningfulness of normative theories of rights

3.2: Will theorie

3.3: Interest theorie

3.4: Mixed theories

3.5: Criticism



FACULDADE DE DIREITO
Universidade de Lisboa

4: Legal atomistic positions

- 4.1: «Claim right» and «duty to or not to»
- 4.2: «Liberty» and «duty of no interference»
- 4.3: «Competence» and «liability»

5: Aggregated legal positions

- 5.1: Aggregating
- 5.2: Examples of aggregation
- 5.3: The tû-tû positions

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%);

Main bibliography

- see above