



FACULDADE DE DIREITO
Universidade de Lisboa

Ficha de Unidade Curricular

Curso de Doutoramento

1. Nome da Unidade curricular:

Direito Administrativo

3. Docente responsável e respetiva carga letiva na unidade curricular:

David Duarte

3. 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

4. Metodologias de ensino:

- as aulas têm a estrutura de seminário;

5. Avaliação:

- entrega de um paper no final do segundo semestre (e realização de uma apresentação prévia do mesmo);

- a classificação final é a média do paper (80%) com a avaliação relativa à participação nas sessões (20%);

6. Bibliografia principal:

Alchourrón, Carlos / Bulygin, Eugenio

- 1998. Introducción a la Metodología de las Ciencias Jurídicas y Sociales. Buenos Aires: Astrea.

Alexy, Robert

- 2003. On Balancing and Subsumption. A Structural Comparison. Ratio Juris. 16. 4. 433-449.

- 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

- 2015. On the Instrumental Value of Vagueness in the Law. Ethics 125. 425-448

Barak, Aharon

- 2012. Proportionality. Rights and their Limitation. Cambridge: Cambridge University Press.

Brożek, Bartosz

- 2004. Defeasibility of Legal Reasoning. Krakow: Zakamycze.

Bulygin, Eugenio / Mendonca, Daniel

- 2005. Normas y Sistemas Normativos. Madrid: Marcial Pons.

Duarte, David

- 2011. Linguistic Objectivity in Norm Sentences: Alternatives in Literal Meaning. Ratio Juris. 24. 2. 111-138.

Endicott, Timothy

- 2000. Vagueness in Law. Oxford: Oxford University Press.

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.

Frändberg, Åke

- 2018. The Legal Order. Cham: Springer.



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- Hage, Jaap
- 2018. Foundations and Building Blocks of Law. Maastricht: Eleven Publishing.
- 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.
- 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.
- Klatt, Matthias / Schmidt, Johannes
- 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.
- Möller, Kai
- 2007. Balancing and the Structure of Constitutional Rights. International Journal of Constitutional Law. 5. 3. 453-468.
- Moreso, Josep Joan
- 2017. Marry Me a Little. How Much Precision is Enough in Law? Droit & Philosophie. 9. 1. 45-69.
- 2002. Conflitti tra Principi Costituzionali. Diritto & Questioni Pubbliche. 2. 19-34.
- 1998. Legal Indeterminacy and Constitutional Interpretation. Dordrecht: Springer.
- Raz, Joseph
- 1972. Legal Principles and the Limits of Law. Yale Law Journal. 81. 823-854.
- Sandro, Paolo
- 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 Gzbert-Studnicki and Krzysztof Pleszka. Chaim: Springer. 265-280.
- Sartor, Giovanni
- 2013. The Logic of Proportionality: Reasoning with Non-Numerical Magnitudes. German Law Journal. 14. 8. 1419-1456.
- Schauer, Frederick
- 1991. Playing by the Rules. Oxford: Oxford University Press.
- 1997. Legal Theory and Value Judgments. Law and Philosophy. 16. 447-477.
- Zorrilla, David Martinez
- 2007. Conflictos Constitucionales, Ponderación e Indeterminación Normativa. Madrid: Marcial Pons.

Curricular Unit Sheet

Masters Course

1. Curricular Unit Name:

Administrative Law

2. Responsible Academic staff and respective workload in the curricular unit:

David Duarte

3. 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



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4.2: Elimination of alternatives: defeasibility
4.3: Choice and administrative rule of law

4. Teaching methodologies (including evaluation):

- classes will follow a workshop model;

5: Evaluation:

- one paper at the end of the second semester (and a previous presentation of such paper);
- final evaluation is the average of the paper (80%) with an assessment on class participation (20%);

6: Main Bibliography:

- see above