



FACULDADE DE DIREITO  
Universidade de Lisboa

## Ficha de Unidade Curricular

Curso de Mestrado em Ciência Jurídica

### 1. Nome da Unidade curricular:

Direitos Fundamentais

### 2. Docente responsável e respetiva carga letiva na unidade curricular:

David Duarte

### 3. 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: A compreensão da base normativa

3.1: A base normativa das posições jurídicas

3.2. Os modelos de acção única e de acção com co-acção

3.3: Normas de primeira ordem e normas de segunda ordem

3.4. Posições conferidas por normas: elenco

3.5: Posições atómicas e agregadas

4: Conflitos de posições jurídicas

4.1: Requisitos dos conflitos

4.2: Solução por normas de conflitos

4.3: Solução por ponderação

4.4: Modelos de ponderação



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#### 4. Metodologias de ensino:

- as aulas têm estrutura de seminário;

#### 5. Avaliação:

- entrega de um paper no final do segundo (e realização prévia de uma exposição do mesmo);
- a classificação final é a média do papers (80%) com a avaliação relativa à participação nas sessões (20%);

#### 6. Bibliografia principal:

ALEXY, ROBERT

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

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

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

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- 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.

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.

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HAYWARD, TIM

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

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

HOHFELD, WESLEY



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KRAMER, MATTHEW

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- 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

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- 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

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NYQUIST, CURTIS

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O'REILLY, DANIEL

- 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

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THOMSON, JUDITH

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- 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, ALEARDIO

- 2017. Raz on Rights: Human Rights, Fundamental Rights, and Balancing. *Ratio Juris*. 30. 1. 25-40

## Curricular Unit Sheet

### Masters Course

#### 1. Curricular Unit Name:

Fundamental Rights

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

David Duarte

#### 3. 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



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2.2: Second order legal positions

2.3.: The correlativity axiom

2.4: Hohfeldian aggregation

3: The norm-based approach

3.1: Normative basis of legal positions

3.2. Two models: single action and action with co-action

3.3: First order and second order norms

3.4. Positions given by norms: list

3.5: Atomic and aggregated positions

5: Conflicts of legal positions

4.1: Conditions of conflicts

4.2: Solution by norms of conflicts

4.3: Solution by balancing

4.4: Models of balancing

#### **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