

FOUNDATIONS OF LAW

Degree(s)	: Economics; Management
Type	: Compulsory course unit
Curricular year/semester	: 1st year / 2nd Semester
ECTS / hours per week	: 6 ECTS / 4.0 Hours
Workload per Week	: 1Theoretical x 2Hours + 1Practical x 2Hours
Teacher responsible	: Professor Luís Manuel Ferreira Ricardo

OBJECTIVES

- Locate, identify, analyse and put in context the concepts and basic tools of Legal Science;
- Analyse and understand the multiple expressions used for the regulation of juridical rules and their legal consequences;
- Understand the concept of law in different societies and recognise the diverse types of legal systems (especially those of Roman-Germanic and Anglo-Saxon origins);
- Examine the role of the State and its subjugation to the law;
- Evaluate the processes for the creation and application of the law;
- Examine the common ground of Economics and Law, transmitting the core bases to transversal subjects in specific areas that are included in other curricular units;
- Develop critical and substantiated thinking related to legal questions which could be pertinent in a future professional life.

PROGRAM

1. The Concept of Law

1.1. The need of an Introduction to Law to students of Economics, Management and Finance. Need of studying other juridical subjects. The importance of a critical view over Law

- 1.2. Practical guidance over the Law studying method, documentation and evaluation
- 1.3. The social nature of men
- 1.4. The social authority
- 1.5 Explanatory theories of the life in society
 - 1.5.1. The naturalistic conception of society
 - 1.5.2. The contractual conception of society
- 1.6. The plurality of meanings of the word Law
 - 1.6.1. Law as “Objective Law”
 - 1.6.2. Law as “Subjective Law”
 - 1.6.3. Law as “Science of Law”
- 1.7. Objective Law
 - 1.7.1. The essence of Law: Positive Law and Natural Law
 - 1.7.2. The scope of Law: Supra-State Law, State Law and Infra-State Law
 - 1.7.3. The form of Law: Written Law and Unwritten Law
- 1.8. The force of Law
- 1.9. The normative social orders
 - 1.9.1. Moral order
 - 1.9.2. Religious order
 - 1.9.3. Social conduct order
 - 1.9.4. Legal order
 - 1.9.4.1. Principle of freedom
 - 1.9.4.2. Principle of completeness of the legal order
 - 1.9.4.3. Principle of perfection of the legal order
- 1.10. Relations between different normative social orders
 - 1.10.1. Law and religion
 - 1.10.2. Law and morality
 - 1.10.3. Law and social conduct
- 1.11. Purposes and core values of Law
 - 1.11.1. Justice
 - 1.11.1.1. Notions of Justice
 - 1.11.1.1.1. Legal justice
 - 1.11.1.1.2. Extra-legal justice
 - 1.11.1.1.3. Social justice
 - 1.11.1.1.4. Supra-legal justice
 - 1.11.1.2. Types of justice
 - 1.11.1.2.1. Commutative justice or corrective or synallagmatic

- 1.11.1.2.2. Distributive justice
- 1.11.1.2.3. Legal or general justice
- 1.11.1.3. Logical elements of justice
 - 1.11.1.3.1. Equality
 - 1.11.1.3.2. Proportionality
 - 1.11.1.3.3. Alterity
- 1.11.2. Safety
 - 1.11.2.1. Homeland State safety
 - 1.11.2.2. Safety, stability and certainty of Law
 - 1.11.2.3. The safety of citizens before the State
- 1.11.3. Equity
 - 1.11.3.1. Types of equity
 - 1.11.3.1.1. Wide, “Strong”, “Intense” equity
 - 1.11.3.1.2. Restricted, “Weak”, “Moderate” equity
 - 1.11.3.2. Functions of equity
- 1.11.4. Economic, social and cultural welfare
- 1.12. Juridical science
 - 1.12.1. Main components of juridical science
 - 1.12.1.1. Legal dogmatic
 - 1.12.1.2. General theory of Law
 - 1.12.2. The scope of the Science of Law
 - 1.12.3. The three-dimensional concept of Law
- 1.13. Other sciences that study Law
 - 1.13.1. Comparative Law
 - 1.13.2. Legislative policy
 - 1.13.3. Legal history
 - 1.13.4. Sociology of Law
 - 1.13.5. Philosophy of Law
 - 1.13.6. Economic analysis of Law
- 1.14. Major auxiliary sciences of Law
 - 1.14.1. Political Science
 - 1.14.2. Economy
 - 1.14.3. Management Science
 - 1.14.4. Theory of International Relations
 - 1.14.5. Legal Medicine

2. The State and the Portuguese Constitutional System

- 2.1. The political system and the legal system
- 2.2. General features of political-legal systems
 - 2.2.1. Anglo-Saxon system (Common Law)
 - 2.2.2. Romanic-Germanic system
 - 2.2.3. Muslim system
- 2.3. The State
 - 2.3.1. People
 - 2.3.2. Territory
 - 2.3.3. Political power
- 2.4. State forms
 - 2.4.1. Unitary States
 - 2.4.1.1. Centralized States
 - 2.4.1.2. Decentralized States
 - 2.4.1.3. States with devolution
 - 2.4.2. Compound or Federal States
- 2.5. Traditional functions of the State
 - 2.5.1. Legislative function
 - 2.5.2. Judicial function
 - 2.5.3. Political (governing) function
 - 2.5.4. Administrative function
- 2.6. The purposes of State
 - 2.6.1. Justice
 - 2.6.2. Safety
 - 2.6.3. Economic, social and cultural welfare
- 2.7. From a State of Law to a Social State of Law
 - 2.7.1. Liberal State of Law
 - 2.7.2. Welfare State
 - 2.7.3. Democratic State of Law
- 2.8. Designation systems that exist in States
 - 2.8.1. Election
 - 2.8.2. Inheritance
 - 2.8.3. Co-optation
 - 2.8.4. Appointment
 - 2.8.5. Inherence
 - 2.8.6. Raffle

- 2.8.7. Tender
- 2.9. Electoral systems
 - 2.9.1. Electoral majority systems
 - 2.9.1.1. Simple majority system or “one-round” system or “plurality of votes” system
 - 2.9.1.2. Absolute majority system or “two rounds” system
 - 2.9.2. Proportional electoral systems
 - 2.9.2.1. Hondt method
- 2.10. The Portuguese Constitutional system
 - 2.10.1. Formal Constitution and Material constitution
 - 2.10.2. The Constitution in the history of constitutions
 - 2.10.2.1. Constitutions of monarchical liberalism
 - 2.10.2.2. Constitution of the 1st Republic
 - 2.10.2.3. Corporatist Constitution of the New-State period
 - 2.10.2.4. Constitution of the democratic regime
 - 2.10.3. The structure of the current Portuguese Constitution (CRP)
 - 2.10.3.1. Preamble
 - 2.10.3.2. Fundamental principles
 - 2.10.3.3. Fundamental rights and duties
 - 2.10.3.4. Economic organization
 - 2.10.3.5. Organization of political power
 - 2.10.3.5.1. Constitutional principles of political organization
 - 2.10.3.5.1.1. Principle of popular sovereignty
 - 2.10.3.5.1.2. Respect and guarantee for the fundamental rights of citizens
 - 2.10.3.5.1.3. Pluralism of expression and political democratic organization
 - 2.10.3.5.1.4. Principle of direct and universal suffrage as a way of appointing governors
 - 2.10.3.5.1.5. Separation and interdependence of the organs of sovereignty and their direct subordination to CRP
 - 2.10.3.5.1.6. Independence of the Courts
 - 2.10.3.5.1.7. Obedience of Courts and Public Administration to the law - principle of legality
 - 2.10.3.5.1.8. Independence of Churches and of the State
 - 2.10.3.5.2. Democratic representative government system
 - 2.10.3.5.2.1. Parliamentary system
 - 2.10.3.5.2.2. Presidential system
 - 2.10.3.5.2.3. Semi-presidential system
 - 2.10.3.5.3. Elements of sovereignty
 - 2.10.3.5.3.1. The Head of State

- 2.10.3.5.3.2. Parliament
- 2.10.3.5.3.3. Government
- 2.10.3.5.3.4. Courts
 - 2.10.3.5.3.4.1. Constitutional court
 - 2.10.3.5.3.4.2. Judicial courts
 - 2.10.3.5.3.4.3. Supreme Administrative court and other Administrative and Tax courts
 - 2.10.3.5.3.4.4. Court of Auditors
 - 2.10.3.5.3.4.5. Maritime Courts
 - 2.10.3.5.3.4.6. Courts for the resolution of conflicts
 - 2.10.3.5.3.4.7. Arbitration courts or Arbitration centers
 - 2.10.3.5.3.4.8. “*Julgados de Paz*”
- 2.10.3.5.4. Main relations between sovereign organs
 - 2.10.3.5.4.1. Head of State and Parliament
 - 2.10.3.5.4.2. Head of State and Government
 - 2.10.3.5.4.3. Head of State and Courts
 - 2.10.3.5.4.4. Parliament and Government
 - 2.10.3.5.4.5. Parliament and Courts
 - 2.10.3.5.4.6. Government and Courts
- 2.10.3.5.5. The Azores and Madeira
- 2.10.3.5.6. Portuguese Public Administration
 - 2.10.3.5.6.1. Direct State Administration
 - 2.10.3.5.6.2. Indirect State Administration
 - 2.10.3.5.6.3. Autonomous State Administration
- 2.10.3.5.7. Independent State Administration
- 2.10.3.5.8. Prosecutor (Public Ministry) and Attorney General Office
- 2.10.3.5.9. Military and Safety Administration
- 2.10.3.5.10. “*Provedor de Justiça*”
- 2.10.3.6. Guarantee and revision of the Constitution
 - 2.10.3.6.1. Flexible constitutions, rigid constitutions and semi-rigid constitutions
 - 2.10.3.6.2. Power of constitutional review
 - 2.10.3.6.3. Constitutional revisions
 - 2.10.3.6.4. Limits to constitutional revisions
 - 2.10.3.6.4.1. Formal limits
 - 2.10.3.6.4.2. Time limitations
 - 2.10.3.6.4.3. Circumstantial limits
 - 2.10.3.6.4.4. Material limits

2.10.3.7. Final and transitional provisions

3. Branches of Law

3.1. Concept of branch of Law

3.2. Public Law and Private Law: distinction criteria

3.2.1. Criteria of nature of interest

3.2.2. Criteria of the quality of subjects

3.2.3. Criteria of the position of the subjects

3.3. Distinction between International Law and Internal Law

3.4. International Law

3.4.1. Public International Law

3.4.2. Private International Law

3.4.3. Community Law or European Union (EU) Law

3.4.3.1. Original EU Law

3.4.3.2. Secondary EU Law

3.4.3.2.1. Regulations

3.4.3.2.2. Directives

3.4.3.2.3. Decisions

3.4.3.2.4. Opinions and recommendations

3.4.3.3. European Institutions and their attributions

3.4.3.3.1. European Parliament

3.4.3.3.2. European Council

3.4.3.3.3. Council

3.4.3.3.4. Commission

3.4.3.3.5. European Union Court of Justice

3.4.3.3.6. European Central Bank

3.4.3.3.7. European Union Court of Auditors

3.4.3.3.8. Social and Economic Committee

3.4.3.3.9. Regions Committee

3.4.3.4. Legislative process in the EU

3.4.3.5. Application of EU rules

3.4.3.5.1. Principle of primacy of EU Law over National Law

3.4.3.5.2. Principle of direct effect

3.4.3.5.3. Principle of subsidiarity

3.5. Internal Law

3.5.1. Public Law

- 3.5.1.1. Constitutional Law
- 3.5.1.2. Administrative Law
- 3.5.1.3. Criminal Law
- 3.5.1.4. Law of mere social ordering
- 3.5.1.5. Financial Law
- 3.5.1.6. Tax Law
- 3.5.1.7. Procedural Law
 - 3.5.1.7.1. Civil Procedural Law
 - 3.5.1.7.2. Criminal Procedural Law
 - 3.5.1.7.3. Labor Procedural Law
 - 3.5.1.7.4. Administrative Procedural Law
- 3.5.1.8. Military Law
- 3.5.1.9. Education Law
- 3.5.1.10. Health Law
- 3.5.1.11. Information Law
- 3.5.1.12. Urban Planning Law
- 3.5.1.13. Road Law
- 3.5.2. Private Law
 - 3.5.2.1. Common Private Law
 - 3.5.2.1.1. Civil Law
 - 3.5.2.1.1.1. Obligations Law
 - 3.5.2.1.1.1.2. Law of Things (“*in rem*”)
 - 3.5.2.1.1.1.3. Family Law
 - 3.5.2.1.1.1.4. Succession Law
 - 3.5.2.1.2. Special Private Law
 - 3.5.2.2.1. Commercial Law
 - 3.5.2.2.1.1. Subjective or Statutory sector of Commercial law
 - 3.5.2.2.1.2. Objective or Negotiable sector Commercial law
 - 3.5.2.2.2. Labor Law
 - 3.5.2.2.2.1. Individual Labor Law
 - 3.5.2.2.2.2. Collective Labor Law
 - 3.5.2.2.3. Copyright Law
 - 3.5.2.2.4. Industrial Property Law
 - 3.5.2.2.5. Maritime Law
 - 3.5.2.2.6. Air Law
 - 3.5.2.2. Special Private Law
 - 3.5.2.2.1. Commercial Law
 - 3.5.2.2.1.1. Subjective or Statutory sector of Commercial law
 - 3.5.2.2.1.2. Objective or Negotiable sector Commercial law
 - 3.5.2.2.2. Labor Law
 - 3.5.2.2.2.1. Individual Labor Law
 - 3.5.2.2.2.2. Collective Labor Law
 - 3.5.2.2.3. Copyright Law
 - 3.5.2.2.4. Industrial Property Law
 - 3.5.2.2.5. Maritime Law
 - 3.5.2.2.6. Air Law
- 3.5.3. Hybrid or mixed branches of Law

- 3.5.3.1. Environmental Law
- 3.5.3.2. Consumer Law
- 3.5.3.3. Economic Law
- 3.5.3.4. Agricultural Law
- 3.5.3.5. Sports Law
- 3.5.3.6. Law of Registries and Notaries
- 3.5.3.7. Social Security Law
- 3.5.3.8. Banking Law

4. Sources of Law

- 4.1. Concept of sources of Law
 - 4.1.1. Sociological and material sense
 - 4.1.2. Historical and instrumental sense
 - 4.1.3. Political and organic sense
 - 4.1.4. Technical and legal sense
- 4.2. Mediate and Immediate sources of Law
- 4.3. Law and corporate rules
 - 4.3.1. The law/act
 - 4.3.2. Corporate rules
 - 4.3.3. Law in formal sense and law in material sense
 - 4.3.4. Solemn and non-solemn laws
 - 4.3.5. Hierarchy of laws
 - 4.3.6. Types of legislative acts
 - 4.3.6.1. Laws of Parliament
 - 4.3.6.2. Decree-laws of Government
 - 4.3.6.3. Regional legislative decrees of Regional Parliaments of the Azores and Madeira
 - 4.3.7. Types of laws
 - 4.3.7.1. Constitutional laws
 - 4.3.7.2. Common laws
 - 4.3.7.2.1. Reinforced ordinary laws of general reach
 - 4.3.7.2.2. Statutory laws
 - 4.3.7.2.3. Organic laws
 - 4.3.7.2.4. Laws of legislative authorization
 - 4.3.7.2.5. Framework laws
 - 4.3.7.3. Framework laws
 - 4.3.8. Types of decrees-laws
 - 4.3.8.1. Competitive decrees-laws

- 4.3.8.2. Authorized or delegated decrees-laws
- 4.3.8.3. Development decrees-laws
- 4.3.8.4. Decrees-laws relating to the exclusive reservation of the Government
- 4.3.8.5. Decrees-laws and regulations
 - 4.3.8.5.1. Government regulations
 - 4.3.8.5.1.1. Regulatory decrees
 - 4.3.8.5.1.2. Resolutions of the Council of Ministers
 - 4.3.8.5.1.3. Ordinances
 - 4.3.8.5.1.4. Normative or ministerial orders
 - 4.3.8.5.1.5. Instructions
 - 4.3.8.5.1.6. Circulars
- 4.3.9. Types of regional legislative decrees
 - 4.3.9.1. Regional legislative decrees in strict sense
 - 4.3.9.2. Authorized or delegated regional legislative decrees
 - 4.3.9.3. Regional development legislative decrees
 - 4.3.9.4. Regional legislative decrees and regional regulating decrees
- 4.3.10. Development process of legislative diplomas
 - 4.3.10.1. Formation process of a law
 - 4.3.10.1.1. Phase of legislative initiative
 - 4.3.10.1.2. Constitutive phase: discussion and approval
 - 4.3.10.1.3. Control phase I: Promulgation, veto and preventive review of constitutionality
 - 4.3.10.1.4. Control phase II: Ministerial counter signature
 - 4.3.10.1.5. Effectiveness integration phase: Publication
 - 4.3.10.1.6. Effectiveness integration phase: Entering into force
 - 4.3.10.2. Formation process of a decree-law
 - 4.3.10.2.1. Governmental initiative phase
 - 4.3.10.2.2. Constitutive phase: discussion and approval
 - 4.3.10.2.3. Control phase I: Promulgation, veto and preventive review of constitutionality
 - 4.3.10.2.4. Control phase II: Ministerial counter signature
 - 4.3.10.2.5. Effectiveness integration phase: Publication
 - 4.3.10.2.6. Effectiveness integration phase: Entering into force
 - 4.3.10.2.7. Phase of Parliamentary appraisal of decree-laws
 - 4.3.10.3. Formation process of a regional legislative decree
 - 4.3.10.3.1. Regional initiative phase
 - 4.3.10.3.2. Constitutive phase: discussion and approval
 - 4.3.10.3.3. Control phase: Promulgation, veto and preventive review of constitutionality

- 4.3.10.3.4. Effectiveness integration phase: Publication
- 4.3.10.3.5. Effectiveness integration phase: Entering into force
- 4.3.11. Control of legality and constitutionality
 - 4.3.11.1. Means of control
 - 4.3.11.2. Unconstitutionality
 - 4.3.11.3. Types of unconstitutionality
 - 4.3.11.3.1. Unconstitutionality by action or positive
 - 4.3.11.3.2. Unconstitutionality by omission or negative
 - 4.3.11.4. Types of unconstitutionality by action or positive
 - 4.3.11.4.1. Material or substantial unconstitutionality
 - 4.3.11.4.2. Formal unconstitutionality
 - 4.3.11.4.3. Organic unconstitutionality
 - 4.3.11.5. Juridical review of unconstitutionality
 - 4.3.11.5.1. Preventive review of constitutionality
 - 4.3.11.5.2. Concrete successive review of constitutionality
 - 4.3.11.5.3. Abstract review of constitutionality
 - 4.3.11.6. Legal effects of unconstitutionality
 - 4.3.11.6.1. Legal inexistence
 - 4.3.11.6.2. Invalidity
 - 4.3.11.6.2.1. Nullity
 - 4.3.11.6.2.2. Annulment
 - 4.3.11.6.2.3. Legal ineffectiveness
 - 4.3.11.7. Cessation of validity of law
 - 4.3.11.7.1. Disuse
 - 4.3.11.7.2. Suspension of the law
 - 4.3.11.7.3. Expiry
 - 4.3.11.7.4. Revocation
 - 4.3.11.7.4.1. Types of revocation
 - 4.3.11.7.4.1.1. As regarding its form
 - 4.3.11.7.4.1.1.1. Express revocation
 - 4.3.11.7.4.1.1.2. Tacit revocation
 - 4.3.11.7.4.1.1.3. Global tacit revocation
 - 4.3.11.7.4.1.1.4. Partial tacit revocation
 - 4.3.11.7.4.1.2. Regarding its extension
 - 4.3.11.7.4.1.2.1. Total revocation or abrogation
 - 4.3.11.7.4.1.2.2. Partial revocation or exemption

- 4.3.11.7.4.2. Revocation and special relations between laws
- 4.3.11.7.4.3. Revocation and reinstatement
- 4.3.12. Codification
 - 4.3.12.1. Advantages of codification
 - 4.3.12.2. Disadvantages of codification
- 4.4. The custom
 - 4.4.1. The concept of custom
 - 4.4.2. The essential elements of custom
 - 4.4.2.1. Use: *corpus*
 - 4.4.2.2. The conviction of obligatoriness: *animus*
 - 4.4.2.3. Duration
 - 4.4.3. Relations between custom and law
 - 4.4.3.1. *Secundum legem* custom
 - 4.4.3.2. *Praeter legem* custom
 - 4.4.3.3. *Contra legem* custom
 - 4.4.4. The custom as an immediate source of law
 - 4.4.4.1. Statesman theory
 - 4.4.4.2. Sociological theory
- 4.5. Jurisprudence
 - 4.5.1. Notions of jurisprudence
 - 4.5.2. Jurisprudence as an immediate source of law
 - 4.5.2.1. Classical theory
 - 4.5.2.2. American realistic school theory
 - 4.5.2.3. Moderate realistic theory
 - 4.5.3. Harmonization of jurisprudence: *acórdãos de uniformização*
- 4.6. The doctrine
- 4.7. Uses
- 4.8. Equity

5. The Juridical Rules

- 5.1. Concept of juridical rule
- 5.2. Features of the juridical rule
 - 5.2.1. Generality
 - 5.2.2. Abstraction
 - 5.2.3. Hypothetical
 - 5.2.4. Bilateralism

- 5.2.5. Imperative
- 5.2.6. Coercivity
- 5.3. Structure of the juridical rule
 - 5.3.1. Prediction (*Previsão*)
 - 5.3.2. Legal Consequence (*Estatuição*)
 - 5.3.3. Sanction
- 5.4. Types of juridical rules
 - 5.4.1. Regarding their content
 - 5.4.1.1. Mandatory rules
 - 5.4.1.2. Prohibitive rules
 - 5.4.1.3. Permissive rules
 - 5.4.2. Regarding the material scope
 - 5.4.2.1. General rules
 - 5.4.2.2. Special rules
 - 5.4.2.3. Exceptional rules
 - 5.4.3. Regarding the internal application scope
 - 5.4.3.1. Universal rules
 - 5.4.3.2. Regional rules
 - 5.4.3.3. Local rules
- 5.5. Types of sanctions
 - 5.5.1. Reinstatement sanctions
 - 5.5.1.1. Reconstitution *in natura*
 - 5.5.1.2. Specific execution (*execução específica*)
 - 5.5.1.3. Specific compensation (*indemnização específica*)
 - 5.5.2. Countervailing or reimburse sanctions
 - 5.5.3. Punitive sanctions
 - 5.5.3.1. Criminal
 - 5.5.3.2. Civil
 - 5.5.3.3. Disciplinary
 - 5.5.3.4. Administrative offenses
 - 5.5.4. Preventive sanctions
 - 5.5.5. Mandatory or compulsive sanctions

6. Interpretation, Integration and Application of Juridical Rules

- 6.1. Juridical interpretation
 - 6.1.1. Notion of interpretation

- 6.1.2. Subjects of interpretation
 - 6.1.2.1. Self-interpretation and hetero-interpretation
 - 6.1.2.2. Authentic interpretation and official interpretation
 - 6.1.2.3. Public interpretation and private interpretation
 - 6.1.2.3.1. Political and legislative interpretation
 - 6.1.2.3.2. Judicial interpretation
 - 6.1.2.3.3. Administrative interpretation
 - 6.1.2.3.4. Specific interpretation
 - 6.1.2.3.5. Doctrinal interpretation
 - 6.1.3. Methods of interpretation
 - 6.1.3.1. Subjectivism (*mens legislatoris*) and objectivism (*mens legis*)
 - 6.1.3.2. Historicism and current interpretation
 - 6.1.4. Elements of interpretation
 - 6.1.4.1. Literal interpretation (grammatical or textual)
 - 6.1.4.2. Logical interpretation (extra-literal)
 - 6.1.4.2.1. The historic element
 - 6.1.4.2.1.1. Legislative, jurisprudential and doctrinal background
 - 6.1.4.2.1.2. "*Occasio legis*"
 - 6.1.4.2.1.3. Preparatory work
 - 6.1.4.2.1.4. Parliamentary debates and unofficial notes from the Government
 - 6.1.4.2.1.5. Preamble or explanation of purposes of the legal diploma
 - 6.1.4.2.2. Rational element (teleological): "*ratio legis*"
 - 6.1.4.2.3. Conjunctural element
 - 6.1.4.2.4. Systematic element
 - 6.1.4.2.4.1. Insertion of the rule in the act
 - 6.1.4.2.4.2. Epigraph of the rule
 - 6.1.4.2.4.3. Antecedent and subsequent rules
 - 6.1.4.2.4.4. Rules to which it relies (remissive or devolutive)
 - 6.1.4.2.4.5. Parallel situations (*lugares paralelos*)
 - 6.1.4.2.4.6. Rules in contradiction
 - 6.1.5. Interpretive processes
 - 6.1.5.1. Concept of interpretive processes
 - 6.1.5.1.1. Declaratory interpretation
 - 6.1.5.1.2. Extensive interpretation
 - 6.1.5.1.3. Restrictive interpretation
 - 6.1.5.1.4. Corrective interpretation

- 6.1.5.1.5. “*Abrogante*” interpretation
- 6.1.5.1.6. Explicatory interpretation (enunciating interpretation)
- 6.1.5.1.7. Optative interpretation
- 6.2. Integration of laws
 - 6.2.1. Lacunae
 - 6.2.1.1. Notion of lacunae
 - 6.2.1.2. Types of lacunae
 - 6.2.1.2.1. Intentional lacunae and non-intentional lacunae
 - 6.2.1.2.2. Normative lacunae and regulation lacunae
 - 6.2.1.2.3. Evident lacunae, hidden lacunae and collision lacunae
- 6.3. Integration
 - 6.3.1. Notion of integration
 - 6.3.2. Integration processes
 - 6.3.2.1. Analogy
 - 6.3.2.1.1. Notion of analogy
 - 6.3.2.1.2. Fundamentals of analogy
 - 6.3.2.1.3. Procedures of analogical integration
 - 6.3.2.1.3.1. *Legis* analogy (of the law)
 - 6.3.2.1.3.2. *Juris* analogy (of Law)
 - 6.3.2.1.4. Limits to analogical integration
 - 6.3.2.2. Creating an *ad-hoc* juridical rule
 - 6.3.2.2.1. Notion of *ad-hoc* rule
 - 6.3.2.2.2. Legal basis of *ad-hoc* rules
 - 6.3.2.2.3. Nature of *ad-hoc* rules
 - 6.3.2.2.4. Efficacy of *ad-hoc* rules
 - 6.3.2.3. General principles of Law
- 6.4. Application of the juridical rule
 - 6.4.1. Notion of application of the juridical rule
 - 6.4.2. Subsumption
 - 6.4.3. Types of application of juridical rules
 - 6.4.3.1. Declarative application
 - 6.4.3.2. Constitutive application
- 6.5. Application of laws in time
 - 6.5.1. Notion
 - 6.5.2. Criterion-rule: principle of non-retroactivity
 - 6.5.3. Degrees of retroactivity

- 6.5.3.1. Extreme retroactivity
- 6.5.3.2. Quasi - extreme retroactivity
- 6.5.3.3. Aggravated retroactivity
- 6.5.3.4. Common retroactivity
- 6.5.4. Application of juridical rules in Civil Law
 - 6.5.4.1. Art.12 of the CC and the underlying formality: presumption of non-retroactivity and limitation of retroactivity
 - 6.5.4.2. Concept of retroactivity of art.12, no. 2, CC, and the underlying formality: scope and deviations from art.12, no.2, CC
 - 6.5.4.3. Interpretive laws
 - 6.5.4.3.1. Notion of interpretive laws
 - 6.5.4.3.2. Requirements of interpretive laws
 - 6.5.4.3.3. Regime of interpretive laws of art.13 CC
- 6.5.5. Application of juridical rules in Criminal Law
 - 6.5.5.1. Principle of legality
 - 6.5.5.2. Principle of non-retroactivity of criminal law
 - 6.5.5.3. Exceptions to the principle of non-retroactivity of criminal law
- 6.5.6. Application of juridical rules in Constitutional Law
- 6.5.7. Application of juridical rules in Tax Law
- 6.5.8. Application of juridical rules in Procedural Law
- 6.6. Application of juridical rules in space
 - 6.6.1. Formal reception
 - 6.6.2. Material reception

7. The Juridical Relation

- 7.1. The concept of juridical relation
 - 7.1.1. The juridical relation in broad sense
 - 7.1.2. The juridical relation in strict sense
- 7.2. Classification of juridical relations
 - 7.2.1. Abstract juridical relation and concrete juridical relation
 - 7.2.2. Unilateral juridical relation and bilateral juridical relation
- 7.3. Structure of juridical relations
 - 7.3.1. Theory of will: *Savigny*
 - 7.3.2. Theory of interest: *Ihering*
- 7.4. Subjective rights and juridical duty
 - 7.4.1. Subjective rights *in stricto sensu* and the juridical duty

- 7.4.2. Potestative rights and subjection
- 7.4.3. Types of potestative rights
 - 7.4.3.1. Constituent potestative rights
 - 7.4.3.2. Modifiable potestative rights
 - 7.4.3.3. Extinguishable potestative rights
- 7.4.4. Types of subjective rights
 - 7.4.4.1. Public subjective rights and private subjective rights
 - 7.4.4.2. Absolute potestative rights and relative subjective rights
 - 7.4.4.3. Pecuniary subjective rights and non-pecuniary subjective rights
 - 7.4.4.4. Innate subjective rights and non-innate subjective rights
- 7.4.5. Juridical situations
 - 7.4.5.1. Burden (*Ónus*)
 - 7.4.5.2. Juridical expectation
 - 7.4.5.3. Exception
 - 7.4.5.3.1. Peremptory exception
 - 7.4.5.3.2. Dilatory exception
- 7.5. Elements of the juridical relation
 - 7.5.1. Subjects
 - 7.5.2. Object
 - 7.5.3. Juridical fact
 - 7.5.4. Guarantee
- 7.6. Juridical subjects
 - 7.6.1. Active subjects and passive subjects
 - 7.6.2. Natural persons or physical and legal entities or juridical
 - 7.6.3. Natural persons
 - 7.6.3.1. Juridical personality
 - 7.6.3.1.1. The beginning of juridical personality
 - 7.6.3.1.2. *Nascituros* and *Concepturus*
 - 7.6.3.1.3. Ceasing of juridical personality
 - 7.6.3.2. Juridical capacity
 - 7.6.3.2.1. Juridical capacity of ownership/use
 - 7.6.3.2.2. Juridical capacity of exercise
 - 7.6.3.3. Personality rights and their tutelage
 - 7.6.3.3.1. General notions
 - 7.6.3.3.2. Personality rights and fundamental rights
 - 7.6.3.3.3. General personality rights and their tutelage

- 7.6.3.3.4. Features of personality rights
- 7.6.3.4. Personal juridical sphere
 - 7.6.3.4.1. Name
 - 7.6.3.4.2. Nationality
 - 7.6.3.4.3. Place of birth
 - 7.6.3.4.4. Domicile
 - 7.6.3.4.4.1. Volunteer domicile
 - 7.6.3.4.4.2. Legal domicile
 - 7.6.3.4.5. Filiation, kinship and affinity
 - 7.6.3.4.6. Marital status
- 7.6.3.5. Incapacities
 - 7.6.3.5.1. Minority
 - 7.6.3.5.1.1. General regime
 - 7.6.3.5.1.2. Emancipation
 - 7.6.3.5.2. Interdiction
 - 7.6.3.5.3. Disqualification
 - 7.6.3.5.4. Other situations of incapacity: accidental incapacity
- 7.6.4. Legal entities
 - 7.6.4.1. Concept and types of legal entities
 - 7.6.4.1.1. Public legal entities and private legal entities
 - 7.6.4.1.2. Institutional structure private legal entities and corporative structure private legal entities
 - 7.6.4.1.3. Corporate private legal entities with profit in a broad sense and with profit in a strict sense
 - 7.6.4.2. Purpose and social object of legal entities. Principle of specialization
 - 7.6.4.3. Associations and Foundations
 - 7.6.4.3.1. Creation of associations and foundations
 - 7.6.4.3.2. Acquisition of juridical personality by associations and foundations
 - 7.6.4.3.3. The capacity of use of associations and foundations
 - 7.6.4.3.4. The capacity of exercise of associations and foundations
 - 7.6.4.3.5. Social denomination of legal entities
 - 7.6.4.3.6. The headquarters of associations and foundations
 - 7.6.4.3.7. Reasons for extinguishing associations and foundations
 - 7.6.4.5. Civil societies and Commercial companies
 - 7.6.4.5.1. Civil societies
 - 7.6.4.5.1.1. Simple civil societies
 - 7.6.4.5.1.2. Civil societies of commercial type
 - 7.6.4.5.2. Corporations

- 7.6.4.5.2.1. Legal type principle
- 7.6.4.5.2.2. Acquisition of juridical personality by commercial societies
- 7.6.4.5.2.3. Capacity of use of corporations
- 7.6.4.5.2.4. Capacity of exercise of corporations
- 7.6.4.5.2.5. Types of societies referred in CSC (*Código Sociedades Comerciais*)
- 7.7. Object
 - 7.7.1. Concept
 - 7.7.2. Immediate or direct object and mediate or indirect object
 - 7.7.3. Types of objects of juridical relations
 - 7.7.3.1. People
 - 7.7.3.2. Performance
 - 7.7.3.2.1. Performance of thing (“*de dare*”)
 - 7.7.3.2.1.1. To provide
 - 7.7.3.2.1.2. To repay
 - 7.7.3.2.2. Performance of fact
 - 7.7.3.2.2.1. Performance “*de facere*” or of positive fact
 - 7.7.3.2.2.2. Performance “*de non facere*” or of negative fact
 - 7.7.3.3. Rights: rights of personality
 - 7.7.3.4. Things
 - 7.7.3.4.1. Material or corporeal things and intangible or incorporeal things
 - 7.7.3.4.2. Things in trade and things off-trade
 - 7.7.3.4.3. Corporeal and incorporeal things
 - 7.7.3.4.4. Movable and immovable things
 - 7.7.3.4.5. Simple and complex things
 - 7.7.3.4.5.1. Complex things
 - 7.7.3.4.5.1.1. Composed things
 - 7.7.3.4.5.1.2. Collective things
 - 7.7.3.4.5.2. Collective things
 - 7.7.3.4.5.2.1. Collective things *stricto sensu*
 - 7.7.3.4.5.2.2. Universalities of fact
 - 7.7.3.4.6. Fungible and non-fungible things
 - 7.7.3.4.7. Divisible and non-divisible things
 - 7.7.3.4.8. Consumable and non-consumable things
 - 7.7.3.4.9. Main things and accessory things
 - 7.7.3.4.10. Present things and future things
 - 7.7.3.4.11. The fruits

- 7.7.3.4.11.1. Natural fruits
- 7.7.3.4.11.2. Civil fruits
- 7.7.3.4.12. Improvements (*benfeitorias*)
 - 7.7.3.4.12.1. Needful improvements
 - 7.7.3.4.12.2. Useful improvements
 - 7.7.3.4.12.3. Non-essential improvements
- 7.7.3.4.13. Patrimony
 - 7.7.3.4.13.1. Gross patrimony
 - 7.7.3.4.13.2. Active patrimony
 - 7.7.3.4.13.3. Liable patrimony
 - 7.7.3.4.13.4. Net patrimony
- 7.8. The juridical fact
 - 7.8.1. The voluntary juridical fact or juridical acts and the involuntary juridical fact
 - 7.8.2. Lawful juridical acts and unlawful juridical acts
 - 7.8.2.1. Civil illicit
 - 7.8.2.2. Criminal illicit
 - 7.8.2.3. Disciplinary illicit
 - 7.8.2.4. Administrative illicit
 - 7.8.3. Unlawful juridical acts
 - 7.8.3.1. Intentional juridical acts
 - 7.8.3.2. Negligent juridical acts
 - 7.8.4. Lawful juridical acts
 - 7.8.4.1. Simple juridical acts
 - 7.8.4.2. Juridical businesses
 - 7.8.5. Types of juridical businesses
 - 7.8.5.1. Unilateral juridical businesses and bilateral juridical businesses or contracts
 - 7.8.5.2. Unilateral “*receptícios*” juridical businesses and unilateral “*não receptícios*” juridical businesses
 - 7.8.5.3. Juridical businesses *inter vivos* and juridical businesses *mortis causa*
 - 7.8.5.4. Formal juridical businesses and non-formal juridical businesses
 - 7.8.5.5. Real *quoad effectum* juridical businesses and *quoad constitutionem* juridical businesses
 - 7.8.5.6. Onerous juridical businesses and non-onerous juridical businesses
 - 7.8.5.7. Simple juridical businesses and complex juridical businesses
 - 7.8.5.8. Juridical businesses “*recipiendos*” and juridical businesses “*não recipiendos*”
 - 7.8.5.9. Commutative juridical businesses and juridical businesses *aleatórios*
 - 7.9. Guarantee
 - 7.9.1. Concept

- 7.9.2. Private tutelage or self-tutelage
 - 7.9.2.1. Direct action
 - 7.9.2.2. Self-defense
 - 7.9.2.3. State of necessity
- 7.9.3. State public tutelage or hetero-tutelage
 - 7.9.3.1. Preventive tutelage
 - 7.9.3.1.1. Safety measures
 - 7.9.3.1.2. Trial procedures
 - 7.9.3.2. Compulsive measures
 - 7.9.3.3. Repressive tutelage

8. Contracts and Civil Liability

- 8.1. Contracts
 - 8.1.1. Concept of contract
 - 8.1.2. Essential principles
 - 8.1.2.1. Principle of contractual freedom
 - 8.1.2.2. Principle of consensuality or freedom of formal requisites
 - 8.1.2.3. Principle of good-faith
 - 8.1.2.4. Principle of binding effect
 - 8.1.3. Types of contracts
 - 8.1.3.1. Formal or solemn contracts and consensual contracts
 - 8.1.3.2. Unilateral contracts and bilateral contracts
 - 8.1.3.3. Synallagmatic bilateral contracts and non synallagmatic bilateral contracts or imperfect
 - 8.1.3.4. Nominated contracts and non-nominated contracts
 - 8.1.3.5. Typical contracts and atypical contracts
 - 8.1.3.6. Non onerous and onerous contracts
 - 8.1.3.7. *quoad effectum* contracts and *quoad constitutionem* contracts
 - 8.1.3.8. Mixed contracts
 - 8.1.3.9. Union or coalition of contracts
- 8.2. Negotiation declaration as an essential element of contracts
 - 8.2.1. Express declaration and tacit declaration
 - 8.2.2. The value of silence
 - 8.2.3. The structure of negotiation declarations
 - 8.2.3.1. Declarante
 - 8.2.3.2. Declaratário
 - 8.2.3.3. Form of declaration

- 8.2.3.4. Content of declaration
- 8.3. Contractual subjects
 - 8.3.1. Direct action
 - 8.3.1.1. Contractual legitimacy
 - 8.3.2. Representation
 - 8.3.2.1. Voluntary representation
 - 8.3.2.1.1. Proxy/power of attorney: content, form and effects
 - 8.3.2.1.2. Voluntary representation, power of attorney and term of office
 - 8.3.2.1.3. Capacity of the attorney and replacement of the attorney
 - 8.3.2.1.4. The power of attorney on behalf of the interest of the representative
 - 8.3.2.1.5. Extinction of the proxy
 - 8.3.2.1.6. Misuse of representation
 - 8.3.2.1.7. Representation without powers
 - 8.3.3. Duties of parties when forming contracts: *culpa in contrahendo*
- 8.4. Form of contractual negotiation declaration
 - 8.4.1. Freedom of requisites and legal form
 - 8.4.2. Scope of legal form
 - 8.4.3. Voluntary form and conventional form
 - 8.4.4. Documents
 - 8.4.4.1. Concept
 - 8.4.4.2. Written documents: authentic and private
- 8.5. Creation of contracts
 - 8.5.1. Creating contracts by proposal versus acceptance
 - 8.5.1.1. Contractual proposal and its requirements
 - 8.5.1.2. Invitation to contract
 - 8.5.1.3. Public offer
 - 8.5.1.4. Acceptance, rejection, revocation, expiry and counter-proposal
 - 8.5.1.5. Preparatory acts in contracting
 - 8.5.2. Creating contracts by general contractual clauses
 - 8.5.2.1. Concept of general contractual clauses
 - 8.5.2.2. Juridical regime of general contractual clauses (*cláusulas contratuais gerais*)
- 8.6. Contractual object
 - 8.6.1. Concept
 - 8.6.2. Content and contractual object
 - 8.6.3. Typical negotiation clauses
 - 8.6.4. Requirements of the contractual object

- 8.6.4.1. Possibility and determinability
- 8.6.4.2. Lawfulness of the object and of the purpose
- 8.6.4.3. Fraudulent businesses towards the law
- 8.6.5. Typical negotiation clauses
 - 8.6.5.1. Condition
 - 8.6.5.2. Term
- 8.7. Content of contractual negotiation declarations and their vices
 - 8.7.1. The lack of will: physical coercion
 - 8.7.2. Divergence between will and declaration: intentional and non-intentional
 - 8.7.2.1. Simulation: concept, types, consequences, legitimacy for invoking and opposition
 - 8.7.2.2. Error in the declaration
 - 8.7.2.3. Error in transmitting the declaration
 - 8.7.3. Vices of will
 - 8.7.3.1. Error on the person
 - 8.7.3.2. Error on the object
 - 8.7.3.3. Error on the motives
 - 8.7.3.4. Error upon the basis of the business
 - 8.7.3.5. Willful misconduct (*dolo*): requirements and regime
 - 8.7.4. Moral coercion
 - 8.7.5. Validity, invalidities and contractual efficacy
 - 8.7.5.1. Typical nullity and annullability: regimes
 - 8.7.5.2. Reduction and conversion
 - 8.7.5.3. Atypical invalidities
- 8.8. Contractual guarantees
 - 8.8.1. General guarantee
 - 8.8.1.1. The assets of the debtor
 - 8.8.1.2. Agreements which facilitate the payment of debts
 - 8.8.2. Retention of the patrimonial guarantee
 - 8.8.2.1. Declaration of nullity
 - 8.8.2.2. Sub-rogation of the creditor towards the debtor
 - 8.8.2.3. Paulian Action
 - 8.8.2.4. Attachment (*Arresto*)
 - 8.8.3. Special guarantees
 - 8.8.3.1. Personal guarantees
 - 8.8.3.1.1. *Fiança*
 - 8.8.3.1.2. Subfiança

- 8.8.3.1.3. Credit mandate
- 8.8.3.2. Security *in rem*
 - 8.8.3.2.1. Lease income consignment
 - 8.8.3.2.2. Pledge
 - 8.8.3.2.3. Mortgage
 - 8.8.3.2.4. Credit privileges
 - 8.8.3.2.5. Retention right
 - 8.8.3.2.6. Seizure
- 8.9. Civil liability
 - 8.9.1. Features
 - 8.9.2. Types
 - 8.9.2.1. Civil, criminal and disciplinary liability
 - 8.9.2.2. Subjective and objective liability
 - 8.9.2.3. Contractual and non contractual liability
 - 8.9.3. Requisites of civil liability
 - 8.9.3.1. Subjective liability
 - 8.9.3.1.1. Offence
 - 8.9.3.1.2. Wrongfulness/Illicit
 - 8.9.3.1.2.1. Notion
 - 8.9.3.1.2.2. Causes of justification
 - 8.9.3.1.2.2.1. Exercise of a right
 - 8.9.3.1.2.2.2. Direct action
 - 8.9.3.1.2.2.3. Self- defense
 - 8.9.3.1.2.2.4. State of necessity
 - 8.9.3.1.2.2.5. The consent of the injured
 - 8.9.3.1.2.3. Self- defense
 - 8.9.3.1.2.2.4. State of necessity
 - 8.9.3.1.2.2.5. The consent of the injured
 - 8.9.3.1.3. Fault
 - 8.9.3.1.3.1. Negligence
 - 8.9.3.1.3.2. Willful Misconduct: modalities
 - 8.9.3.1.3.3. The burden of proof: presumptions
 - 8.9.3.1.3.4. Causes for exclusion of fault
 - 8.9.3.1.3.5. Inimputability
 - 8.9.3.1.4. Damage
 - 8.9.3.1.4.1. Concept
 - 8.9.3.1.4.2. Real damage and the calculation of the damage
 - 8.9.3.1.4.3. Pecuniary damage and non-pecuniary damage
 - 8.9.3.1.4.4. Damage: death

- 8.9.3.1.4.5. Emerging damages (*danos emergentes*) and loss of profits (*lucros cessantes*)
- 8.9.3.1.4.6. Present and future damages
- 8.9.3.1.5. Causation (*nexo causal*)
- 8.9.3.1.6. Virtual cause
- 8.9.3.1.7. Specific provisions
 - 8.9.3.1.7.1. Provision aimed at defending third party's interests
 - 8.9.3.1.7.2. Credit offense or of the good-name
 - 8.9.3.1.7.3. Advices, recommendations or informations
 - 8.9.3.1.7.4. Omissions
- 8.9.3.1.8. Plurality of responsible persons
- 8.9.4. Objective liability
 - 8.9.4.1. Generalities
 - 8.9.4.2. Risk
 - 8.9.4.3. Liability of the principal
 - 8.9.4.4. Accidents caused by vehicles of terrestrial driving
 - 8.9.4.4.1. Requisites
 - 8.9.4.4.2. Beneficiaries of liability
 - 8.9.4.4.3. Exclusion of liability
 - 8.9.4.4.4. Collision of vehicles
 - 8.9.4.4.5. Compensatory damages
 - 8.9.4.4.6. Limits of liability
 - 8.9.4.4.7. Plurality of liable persons
 - 8.9.4.4.8. Damage caused by gas or electric energy facilities
 - 8.9.5. Contractual performance
 - 8.9.5.1. Concept and importance
 - 8.9.5.2. General principles
 - 8.9.5.2.1. Principle of good-faith
 - 8.9.5.2.2. Principle of punctuality
 - 8.9.5.2.3. Principle of integrity
 - 8.9.5.3. Capacity to achieve the performance and receive the performance
 - 8.9.5.4. Legitimacy to execute the performance
 - 8.9.5.5. Legitimacy to receive the performance
 - 8.9.5.6. Place of performance
 - 8.9.5.7. Time of performance
 - 8.9.5.8. Attribution of performance
 - 8.9.5.9. Proof of performance

- 8.9.5.10. Effects of performance
- 8.9.5.11. Nature of performance
- 8.9.6. Contractual default
 - 8.9.6.1. Impossibility of performance and delay (*mora*) not attributable to the debtor
 - 8.9.6.2. Originating and incidental impossibility
 - 8.9.6.3. Objective and subjective impossibility
 - 8.9.6.4. Definite and temporary impossibility
 - 8.9.6.5. Total and partial impossibility
 - 8.9.6.6. Absolute and relative impossibility
 - 8.9.6.7. Effects
 - 8.9.6.7.1. Contractual extinction
 - 8.9.6.7.2. *Commodum* of representation
 - 8.9.6.7.3. Effects in counter-performance
 - 8.9.6.8. Risk transfer in the performance of thing
 - 8.9.6.9. Creditor delay (*mora*)
 - 8.9.6.9.1. Requisites
 - 8.9.6.9.2. Effects
 - 8.9.6.9.3. Extinction
 - 8.9.6.10. Lack of performance attributable to the debtor
 - 8.9.6.10.1. Non-performance and contractual liability
 - 8.9.6.10.2. Subjective and objective contractual liability
 - 8.9.6.10.3. Pre-contractual liability
 - 8.9.6.11. General reaction instruments in case of non-performance
 - 8.9.6.11.1. General guarantee of Contracts
 - 8.9.6.11.2. Coercive execution of the performance (*realização coativa da prestação*)
 - 8.9.6.11.3. Exception of non-performance (*excepção de não cumprimento*)
 - 8.9.6.11.4. Contract termination
 - 8.9.6.12. Fault-based default
 - 8.9.6.13. Types of fault-based non performance
 - 8.9.6.13.1. Delay (*Mora*)
 - 8.9.6.13.2. Definitive default
 - 8.9.6.13.3. Defective performance
 - 8.9.6.13.4. Liability by act of a third party
 - 8.9.6.13.5. Contractual setting of the creditor's rights

BIBLIOGRAPHY

Recommended Bibliography:

- ALMEIDA, Carlos Ferreira de; CRISTAS, Assunção; PIÇARRA, Nuno (2007). *Portuguese Law: an overview*. Coimbra: Almedina.

Optional Bibliography:

- FONTES, José (2011). *Teoria Geral do Estado e do Direito*. 3rd Edition. Coimbra: Coimbra Editora;
- SOUSA, Miguel Teixeira de (2012). *Introdução ao Direito*. Coimbra: Almedina;
- TELLES, Inocêncio Galvão (2010). *Manual dos Contratos em Geral*. 4th Edition. Coimbra: Coimbra Editora.

Basic Legislation

- RODRIGUES, Benjamin (2013). *Constituição da República Portuguesa* and CÓDIGO CIVIL, 22nd Edition. Carcavelos: Rei dos Livros.