

FD 2012

1ª Fase – Inglês (17/07/2011)

BOX 001
001/001



UNIVERSIDADE DE SÃO PAULO

Faculdade de Direito da USP - FDUSP

Exame de seleção para a Pós-Graduação – 2012

I N G L Ê S – 17/07/2011 (domingo), às 9h

A prova compõe-se de tradução de um texto e 20 questões em forma de teste de múltipla escolha. A tradução vale 60% da prova, ficando os demais 40% para os testes.

Instruções

- Só abra este caderno quando o fiscal autorizar.
- Em cada teste, há 5 alternativas, sendo correta apenas uma.
- Preencha completamente o alvéolo na folha óptica de respostas, utilizando necessariamente caneta esferográfica (tinta azul ou preta).
Exemplo: ■■■■
- Não deixe questões em branco na folha óptica de respostas.
- Duração da prova: **2h30min**. O candidato deve controlar o tempo disponível.
- Não haverá tempo adicional para transcrição da folha de gabarito para a folha óptica de respostas.
- Ao final da prova, poderá ser levado **somente** o gabarito de respostas, etiquetado na carteira.
- Ao final da prova, devem ser entregues ao fiscal o caderno de questões e a folha óptica de respostas.
- Não será permitido o uso de dicionários.

A divulgação dos resultados desta prova ocorrerá no dia 19 de agosto, no *site* da FUVEST (www.fuvest.br). Informações sobre a prova dissertativa devem ser obtidas junto à Comissão de Pós-Graduação da Faculdade de Direito.

ASSINATURA DO CANDIDATO:

Abstract:

Contemporary discrimination law is in crisis, both methodologically and conceptually. The crisis arises in large part from the judiciary's dependence on comparators—those who are like a discrimination claimant but for the protected characteristic—as a favored heuristic for observing discrimination. The profound mismatch of the comparator methodology with current understandings of identity discrimination and the realities of the modern workplace has nearly depleted discrimination jurisprudence and theory. Even in run-of-the-mill cases, comparators often cannot be found, particularly in today's mobile, knowledge-based economy. This difficulty is amplified for complex claims, which rest on thicker understandings of discrimination developed in second-generation intersectionality, identity performance, and structural discrimination theories. By treating comparators as an essential element of discrimination, instead of as a heuristic device to help discern whether discrimination has occurred, courts have largely foreclosed these other theories from consideration. At the same time, courts have further shrunk the very idea of discrimination by disregarding a central lesson from harassment and stereotyping jurisprudence: discrimination can occur without a comparator present. The comparator methodology retains its appeal, despite these deficiencies, because its empirical patina permits courts to evaluate discrimination claims without appearing to engage in a subjective analysis of workplace dynamics. Given the complex nature of both identity and discrimination, however, the comparisons produce a false certainty at best. By contrast, alternate methodologies, including the contextual consideration favored in harassment and stereotyping jurisprudence as well as the hypothetical comparator embraced in European law, offer a meaningful framework for matching discrimination law and norms to workplace facts, while preserving judicial legitimacy. With comparators dislodged from their methodological pedestal, we may yet recover space for the renewed development of discrimination jurisprudence and theory.

Suzanne B. Goldberg, 'Discrimination by Comparison',
120 *The Yale Law Journal*, 728 (2011). Adaptado.

ATENÇÃO: A tradução não pode ultrapassar o espaço a ela destinado.

CRITÉRIOS DE CORREÇÃO DA TRADUÇÃO

- ✓ Compreensão geral do texto.
- ✓ Compreensão específica de termos e estruturas.
- ✓ Legibilidade e correção do texto em português.

TEXTO PARA AS QUESTÕES DE 01 A 05

Disciplinary hearings for doctors are to be held behind closed doors, prompting fears of cover-ups that leave patients at risk.

5 *The medical regulator says that if General Practitioners agree to misconduct in private there is no need for them to undergo the "stress" of a public hearing, and that deals would save time and money.*

10 *Those who raised complaints would not give evidence and would be banned from the secret hearings, as would the press and public, and only a brief summary of the action taken would be put online.*

15 *But patients' groups and health experts warn that the move by the General Medical Council would damage confidence and put safety at risk by allowing dangerous doctors to avoid sanctions.*

20 *It comes amid growing fears for open justice as the rich and famous turn to the courts to prevent embarrassing information about themselves being published, while a recent injunction banned reporters from approaching 65 people and four addresses in a right-to-die case.*

25 *The Patients Association said: "We have real concerns that moving some hearings behind closed doors - with just the doctor and the GMC in attendance - will damage the public's confidence in the Fitness to Practice system. Patients will feel their views are not important, and that the impact of the doctor's actions on the patient are not being taken into account by the GMC."*

30 *Currently the GMC assesses complaints made against registered medics and if it is thought that patients may need protecting, an investigation is conducted before the evidence is considered in public by a fitness to practise panel.*

Telegraph.co.com, 20 April, 2011. Adaptado.

01 Conforme o texto, as audiências disciplinares, relacionadas a médicos, serão feitas a portas fechadas, com o objetivo de

- a) garantir a integridade física dos pacientes denunciante.
- b) melhor identificar médicos considerados perigosos e antiéticos.
- c) evitar a curiosidade pública e o assédio de órgãos de imprensa.
- d) poupar emocionalmente os médicos que admitem conduta inadequada.
- e) permitir que os processos contra médicos corram em segredo de justiça.

02 De acordo com o texto, constitui uma possível decorrência das audiências secretas com médicos

- a) a desconsideração da opinião do paciente denunciante.
- b) a falta de transparência na condução dos processos.
- c) a proliferação de falsas alegações contra médicos.
- d) o baixo impacto da medida junto à opinião pública.
- e) o aumento de poder dos conselhos de medicina.

03 O texto informa que o paciente denunciante

- a) tende a recusar propostas de acordo.
- b) é obrigado a depor sob juramento.
- c) carece de conhecimento sobre a prática médica.
- d) teme ser processado por calúnia e difamação.
- e) é proibido de participar da audiência secreta.

04 O texto aborda crescentes receios em relação

- a) aos altos custos com as audiências judiciais.
- b) a injunções da justiça no trabalho de repórteres.
- c) ao encobrimento de atos ilegais de médicos.
- d) ao número elevado de médicos indiciados.
- e) à aptidão do médico para exercer a profissão.

05 Segundo o texto, grupos de pacientes e especialistas em saúde argumentam que a prática de audiências secretas pode

- a) revelar a parcialidade de integrantes dos órgãos reguladores.
- b) permitir que médicos perigosos deixem de sofrer sanções.
- c) impedir que médicos sob investigação sejam reabilitados.
- d) fazer com que testemunhas de acusação se sintam intimidadas.
- e) desencadear aumento nos casos de reclamação contra médicos.

TEXTO PARA AS QUESTÕES DE 06 A 10

A paper in the Proceedings of the National Academy of Sciences describes how Shai Danziger of Ben-Gurion University of the Negev and his colleagues followed eight Israeli judges for ten months as they ruled on over 1,000 applications made by prisoners to parole boards. The plaintiffs were asking either to be allowed out on parole or to have the conditions of their incarceration changed. The team found that, at the start of the day, the judges granted around two-thirds of the applications before them. As the hours passed, that number fell sharply, eventually reaching zero. But clemency returned after each of two daily breaks, during which the judges retired for food. The approval rate shot back up to near its original value, before falling again as the day wore on. To be sure, mealtimes were not the only thing that predicted the outcome of the rulings. Offenders who appeared prone to recidivism were more likely to be turned down, as were those who were not in a rehabilitation programme. Happily, neither the sex nor the ethnicity of the prisoners seemed to matter to the judges. Nor did the length of time the offenders had already spent in prison, nor even the severity of their crimes, as assessed by a separate panel of legal experts. But after controlling for recidivism and rehabilitation programmes, the meal-related pattern remained. The researchers offer two hypotheses for this rise in grumpiness. One is that blood-sugar level is the crucial variable. This, though, predicts that the precise amount of time since the judge last ate will be what matters. In fact, it is the number of cases he has heard since his last break, not the number of hours he has been sitting, which best matches the data. That is consistent with a second theory, familiar from other studies, that decision making is mentally taxing and that, if forced to keep deciding things, people get tired and start looking for easy answers.

Economist.com, 14 April, 2011. Adaptado.

