

Programa de Pós-graduação *Stricto Sensu* em Direito da Regulação Plano de Ensino

- **Disciplina:** Regulação dos Mercados de Consumo
- **Curso:** Mestrado
- **Tipo Disciplina:** Eletiva comum
- **Carga Horária:** 45h (3 créditos)

- **Ementa:**

A disciplina visa fornecer uma introdução crítica à regulação jurídica dos mercados de consumo, situando-a no contexto de debates mais amplos sobre os fundamentos da regulação e o papel do Estado. A matéria está baseada em fontes interdisciplinares, avaliando, por exemplo, a crescente influência da economia comportamental sobre direito do consumidor.

Durante as aulas, serão analisadas as tensões entre o neoliberalismo e o mercado social, a defesa do consumidor e a liberdade de escolha do consumidor, no estabelecimento das regras básicas do mercado único. A disciplina também avalia as respostas nacionais, regionais e internacionais à crise financeira mundial refletida na regulamentação dos mercados de crédito ao consumidor.

- **Objetivos:**

- I. Refletir sobre o direito do consumidor e os desafios para sua regulação;
- II. Discutir e propor soluções para problemas atuais de regulação envolvendo os mercados de consumo, como a publicidade, a qualidade e segurança dos produtos, não-discriminação dos consumidores, elevação de preços e deveres de informação em relação aos consumidores;
- III. Explorar e compreender os desafios regulatórios que têm sido gerados com o surgimento e o desenvolvimento de novos mercados e tecnologias;
- IV. Estudar os movimentos de modernização do direito do consumidor que tem se operado em diversos países e analisar o seu potencial impacto para o direito brasileiro
- V. Estimular o interesse no desenvolvimento de pesquisas sobre regulação dos mercados de consumo.

- **Temas e Bibliografia:**

Apresentação do curso: programa, bibliografia, metodologia de trabalho e de avaliação, distribuição e organização de seminários.

Apresentação do contexto em que se situa a disciplina.

Fundamentos para o Direito do Consumidor e Regulação

Bibliografia básica:

RAMSAY, Ian. Rationales for consumer law and policy. In: Consumer Law and Policy: Text and Materials on Regulating Consumer Markets. 3rd ed. Bloomsbury Publishing, 2012, cap. 2.

CAFAGGI, Fabrizio. New Foundations of Transnational Private Regulation. Working Paper, RSCAS 2010/53, Private Regulation series n. 04, 2010.

Bibliografia complementar:

BALDWIN, Robert. Is Better Regulation Smarter Regulation. Public Law, v. 485, p. 485-511, 2005.

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BLACK, J. Decentring Regulation: Understanding the Role of Regulation and Self-regulation in a “Post-Regulatory” World’. Current Legal Problems, v. 54, p. 103-147, 2001.

EHRlich, Isaac; POSNER, Richard. An Economic Analysis of Legal Rulemaking. Journal of Legal Studies, v. 3, p. 257 ss., 1974.

Enquadramentos e Formas de Regulação do Mercado de Consumo

Bibliografia básica:

RAMSAY, Ian. Frameworks and forms of regulation of consumer markets. In: Consumer Law and Policy: Text and Materials on Regulating Consumer Markets. 3rd ed. Bloomsbury Publishing, 2012, cap. 3.

BARRON, Alan. Reasonable Expectations, Good Faith and Self-Regulatory Codes. Yearbook of Consumer Law, v. 3, p. 4-21, 2007.

EUROPEAN CONSUMER LAW GROUP. Non-legislative Means of Consumer Protection. Journal of Consumer Policy, v. 6, p. 209-224, 1983.

Bibliografia complementar:

BENJAMIN, A. Consumer Protection in Less-developed Countries: The Latin American Experience. In: RAMSAY, Iain (ed). Consumer Law in the Global Economy: National and International Dimensions. Aldershot: Ashgate, 1997.

BORRIE, G. Laws and Codes for Consumers. Journal of Business Law, v. 315, 1980.

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DEUTCH, S. Are Consumer Rights Human Rights? Osgoode Hall Law Journal, v. 32, p. 537 ss., 1994.

HARLAND, D. The Consumer in the Globalized Information Society: The Impact of the International Organizations. In: WILHELMSSON, T.; TUOMINEN, S.; TUOMOLA, H. (eds). Consumer Law in the Information Society. The Hague: Kluwer, 1999.

PERTSCHUK, M. Revolt Against Regulation: The Rise and Pause of the Consumer Movement. Berkeley: University of California Press, 1982.

PONCIBO, C. Networks to Enforce European Law: The Case of the Consumer Protection Cooperation Network. *Journal of Consumer Policy*, v. 35, p. 175 ss., 2012.

Regulação da Publicidade

Bibliografia básica:

RAMSAY, Ian. The regulation of deceptive and unfair commercial practices. In: *Consumer Law and Policy: Text and Materials on Regulating Consumer Markets*. 3rd ed. Bloomsbury Publishing, 2012, cap. 4.

BOTELHO, Juliana Santos. O Conar e a regulação da publicidade brasileira. *Libero*, v. 13, n. 26, p. 125-134, dez. 2010.

AMY-CHINN, D. Regulating Against Offence: Lessons from the Field of UK Advertising. *Media & Critical Theory*, v. 29, p. 1036 ss., 2007.

Bibliografia complementar:

BAGGOT, R; HARRISON, L. The Politics of Self Regulation. The Case of Advertising Control', *14 Review of Politics* 143. 1986.

BAGWELL, K. 'The Economic Analysis of Advertising', www.columbia.edu/~kwb8/papers.html. 2005

BODDEWYN, JJ. Advertising Self-regulation: Organization Structures in Belgium, Canada, France and The United Kingdom. In: W Streeck and P Schmitter (eds), *Private Interest Government* (London, Sage). 1986.

COASE, R. Advertising and Free Speech. In: HYMAN, A.; JOHNSON, B. (eds). *Advertising and Free Speech*. Levington: Heath and Co., 1977.

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COMANOR, W; WILSON, T.A. *Advertising and Market Power*. Cambridge: Harvard University Press, 1974.

CRASWELL, R. Interpreting Deceptive Advertising. *Boston University Law Review*, v. 65, p. 657 ss., 1985.

EWEN, S. *Captains of Consciousness: Advertising and the Social Roots of the Consumer Culture*. New York: McGraw-Hill, 1976.

GRADY, M. Regulating Information: Advertising Overview. In: CLARKSON K.; MURIS, T. (eds). *The Federal Trade Commission Since 1970: Economic Regulation and Bureaucratic Behavior*. Cambridge: Cambridge University Press, 1981.

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IPPOLITO, PM; MATHIOS, A. Information, Advertising and Health Choices: A Study of the Cereal Market. *RAND Journal of Economics*, v. 21, p. 459 ss., 1990.

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JORDAN, E. H.; RUBIN, P. H. Economic Analysis of the Law of False Advertising. *Journal of Legal Studies*, v. 8, p. 527, 1979.

PITOFISKY, R. Beyond Nader: Consumer Protection and the Regulation of Advertising. *Harvard Law Review*, v. 90, p. 661 ss., 1977.

POLLAY, R. W. The Distorted Mirror: Reflections on the Unintended Consequences of Advertising. *Journal of Marketing*, v. 50, p. 18 ss., 1986.

Regulação de Preços nas Relações de Consumo

Bibliografia básica:

DIAS, Daniel; NOGUEIRA, Rafaela; QUIRINO, Carina de Castro. Vedação à discriminação de preços sem justa causa: uma interpretação constitucional e útil do art. 39, X, CDC. *Revista de Direito do Consumidor*, v. 121, p. 51-97, 2019.

EZRACHI, Ariel; STUCKE, Maurice. *Virtual competition: the promise and perils of the algorithm-driven economy*. Cambridge; London: Harvard University Press, 2016.

SALAMA, Bruno Meyerhof; LIMA, Leda Batista da Silva Diôgo. A personalização de preços na era digital: critérios para investigação concorrencial. *Revista do Instituto Brasileiro de Concorrência, Consumo e Comércio Internacional*, 2021-2022.

Bibliografia complementar:

Nota Técnica n. 8/2020/CGEMM/DPDC/SENACON/MJ.

Disponível em: <https://www.justica.gov.br/seus-direitos/consumidor/notas-tecnicas/anexos/nota-tecnica-no-8-2020.pdf>.

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ELLISON, G; ELLISON, S. Search Obfuscation, and Price Elasticities on the Internet. *Econometrica*, v. 77, n. 2, p. 427–452, mar. 2009.

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ZETTELMEYER, Florian, et al. How the Internet Lowers Prices: Evidence from Matched Survey and Automobile Transaction Data. *Journal of Marketing Research*, v. 43, n. 2, p. 168–181, mai. 2006.

Regulação dos Contratos de Consumo: Deveres de Informação

Bibliografia básica:

BAR-GILL, Oren. *Seduction by contract: Law, Economics, and Psychology in Consumer Markets*. Oxford University Press, 2012.

BEN-SHAHAR, Omri; SCHNEIDER, Carl E. *More than you wanted to know: The failure of mandated disclosure*, 2016.

WEBER, Rolf H. *From Disclosure to Transparency in Consumer Law*. *Consumer Law and Economics: 9 (Economic Analysis of Law in European Legal Scholarship)*. Springer International Publishing.

SEGGER-PIENING, Sören. No Need to Read: ‘Self-Enforcing’ Pre-Contractual Consumer Information in European and German Law. In: Consumer Law and Economics: 9 (Economic Analysis of Law in European Legal Scholarship). Springer International Publishing.

Bibliografia complementar:

DIAS, Daniel. Falha comportamental de mercado e regulação do direito do consumidor: por deveres de informação mais efetivos. Portal Migalhas, 30 nov. 2020. Disponível em: <https://migalhas.uol.com.br/coluna/direito-privado-no-common-law/337009/falha-comportamental-de-mercado-e-regulacao-do-direito-do-consumidor--por-deveres-de-informacao-mais-efetivos>.

FRIEDMANN, Danny. Correcting information asymmetry via deep consumer information; compelling companies to let the sunshine in. In: Consumer Law and Economics. Cham: Springer, 2020.

BEALES, H; CRASWELL, R; SALOP, S. The Efficient Regulation of Consumer Information. Journal of Law and Economy, v. 24 p. 49 ss., 1981.

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GRUNDMANN, S; KERBER, W; WEATHERILL, S. (eds). Party Autonomy and the Role of Information in the Internal Market. Berlin: De Gruyter, 2001

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Regulação do Comércio Eletrônico (*e-commerce*)

Bibliografia básica:

BRAGA, Carlos A. Primo. E-commerce regulation: New game, new rules? The Quarterly Review of Economics and Finance, vol. 45, Issues 2–3, mai. 2005, p. 541-558.

FINKELSTEIN, Maria Eugênia. Direito do comércio eletrônico. 2. ed. Rio de Janeiro: Elsevier, 2011.

TEIXEIRA, Tarcisio. Comércio eletrônico: conforme o Marco Civil da Internet e a regulamentação do e-commerce no Brasil. São Paulo: Saraiva, 2015.

LORENZETTI, Ricardo Luis. Comércio eletrônico. São Paulo: RT, 2004.

Bibliografia complementar:

BATES, JR. Continued Use of Goods After Rejection or Revocation of Acceptance: The UCC Rules Revealed, Reviewed and Revised, 24 Rutgers Law Journal 1. 1993

GRECO, Marco Aurelio. Internet e direito. São Paulo: Dialética, 2000.

OLIVEIRA, Júlio Moraes. A informação sobre o preço dos produtos nas redes sociais. Portal Consultor Jurídico (CONJUR), 22 set. 2020. Disponível em: <https://www.conjur.com.br/2020-nov-22/opiniao-cdc-informacao-preco-redes-sociais>.

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GILLETTE, C. 'Reputation and Intermediaries in Electronic Commerce', 62 Louisiana Law Review 1165. 2002.

_____ (2005) 'Pre-approved Contracts for Internet Commerce' 42 Houston Law Review 975.

Contratos por Adesão e a Busca por Justiça

Bibliografia básica:

RAMSAY, Ian. Standard form consumer contracts and the search for fairness. In: Consumer Law and Policy: Text and Materials on Regulating Consumer Markets. 3rd ed. Bloomsbury Publishing, 2012, cap. 6.

ATIYAH, P. The Rise and Fall of Freedom of Contract. Oxford: Clarendon Press, 1979.

COLLINS, H. (ed.) Standard contract terms in Europe: a basis for and a challenge to European contract law. Wolters Kluwer, 2008.

Bibliografia complementar:

DREXL, J. Die wirtschaftliche Selbstbestimmung des Verbrauchers. Tübingen: JCB Mohr, 1998.

HILLMAN, R. Online Consumer Standard Form Contracting Practices: A Survey and Discussion of Legal Implications. In: JK WINN (ed). Consumer Protection in the Age of the "Information Economy". Aldershot: Ashgate, 2006.

JOHNSTON, J. The Return of Bargain: An Economic Theory of How Standard Form Contracts Enable Cooperative Negotiation between Businesses and Consumers. Michigan Law Review v. 104, p. 857 ss., 2006.

KESSLER, F. Contracts of Adhesion: Some Thoughts About Freedom of Contract. Columbia Law Review, v. 43, p. 620 ss., 1943.

Regulação, Contratos Eletrônicos e Contratos Inteligentes (*smart contracts*)

Bibliografia básica:

DIMATTEO, Larry A.; CANNARSA, Michel; PONCIBÒ, Cristina (Editor). The Cambridge Handbook of Smart Contracts, Blockchain Technology and Digital Platforms. Cambridge, 2019.

REBOUÇAS, Rodrigo Fernandes. Contratos eletrônicos: formação e validade – aplicações práticas. 2. ed. São Paulo: Almedina, 2018.

SILVA, Rodrigo da Guia; PINTO, Melanie Dreyer Breitenbach. Contratos inteligentes (smart contracts): esses estranhos (des)conhecidos. Revista de Direito e as Novas Tecnologias, vol. 5, out-dez 2019.

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ELIAS, Paulo Sá. *Contratos eletrônicos: e a formação do vínculo*. São Paulo: Ex Editora, 2008.

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Proteção Contratual e Regulação

Bibliografia básica:

SCHMITT, Cristiano Heineck. *Cláusulas abusivas nas relações de consumo*. 4. ed. São Paulo: RT, 2014.

VANDENBERGHE, Ann-Sophie. The Law on Unfair Terms in Standard Form Contracts in Europe. In: *Consumer Law and Economics: 9 (Economic Analysis of Law in European Legal Scholarship)*. Springer International Publishing.

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Bibliografia complementar:

GÓMEZ, Fernando; ARTIGOT, Mireia. Ex-Post Fairness Controls and Contract Design: The Spanish Experience. *Consumer Law and Economics: 9 (Economic Analysis of Law in European Legal Scholarship)*. Springer International Publishing. Edição do Kindle.

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_____. Paternalism and the Law of Contracts. *Yale Law Journal*, v. 92, p. 763 ss., 1983.

Regulação de Práticas Comerciais Abusivas

Bibliografia básica:

ABBAMONTE, G. 'The Unfair Commercial Practices Directive and its General Prohibition' in S Weatherill and U Bernitz (eds), *The Regulation of Unfair Commercial Practices under EC Directive 2005/29 New Rules and New Techniques* (Oxford, Hart Publishing). 2007

Bibliografia complementar:

COLLINS, H. Harmonization by Example: European Laws against Unfair Commercial Practices. *MLR*, v. 73, p. 89 ss., 2010.

CRASWELL, R. Identification of Unfair Acts and Practices by the Federal Trade Commission. *Wisconsin Law Review*, v. 107, 1981.

Regulação do Mercado de Crédito e Superendividamento

Bibliografia básica:

RAMSAY, Ian. Regulation of consumer credit markets. In: *Consumer Law and Policy: Text and Materials on Regulating Consumer Markets*. 3rd ed. Bloomsbury Publishing, 2012, cap. 7.

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AUSUBEL, L. The Failure of Competition in the Credit Card Market, *American Economic Review*, v. 81, p. 50 ss., 1991.

MARQUES, Claudia Lima; CAVALLAZZI, Rosângela Lunardelli. *Direitos do consumidor endividado: superendividamento e crédito*. São Paulo: RT, 2006.

Bibliografia complementar:

BRITO, D. L.; HARTLEY, P. Consumer Rationality and Credit Cards. *Journal of Political Economy*, v. 103, p. 400 ss., 1995,

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Insights Behavioristas para o Mercado de Consumo

Bibliografia básica:

AVISHALOM, Tor. The Target Opportunity Costs of Successful Nudges. In: MATHIS, Klaus; TOR, Avishalom (ed.). *Consumer Law and Economics*. Springer, 2020.

SCHEBESTA, Hanna; PURNHAGEN, Kai. Limits to Behavioural Consumer Law and Policy: The Case of EU Alcohol Labelling. In: MATHIS, Klaus; TOR, Avishalom (ed.). *Consumer Law and Economics*. Cham: Springer, 2020, p. 283-298.

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Bibliografia complementar:

FAURE, M; LUTH, H. Behavioural Economics in Unfair Contract Terms: Cautions and Considerations. *Journal of Consumer Policy*, v. 34, p. 337 ss., 2011.

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Regulação da Qualidade e da Segurança dos Produtos

Bibliografia básica:

BENJAMIN, Antonio Herman. Notas sobre a teoria da qualidade no Código de Defesa do Consumidor: uma homenagem a Ada Pellegrini Grinover. *Revista de direito do consumidor*, v. 131, ano 29, p. 21-44, set.-out./2020.

RAMSAY, Ian. Quality regulation and post-purchase quality problems. In: *Consumer Law and Policy: Text and Materials on Regulating Consumer Markets*. 3rd ed. Bloomsbury Publishing, 2012, cap. 8.

RAMSAY, Ian. Product safety regulation. In: *Consumer Law and Policy: Text and Materials on Regulating Consumer Markets*. 3rd ed. Bloomsbury Publishing, 2012, cap. 9.

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Bibliografia complementar:

CARTWRIGHT, P. The General Product Safety Regulations 2005: Implementing Directive 2001/95/EC in the UK. *Yearbook of Consumer Law*, v. 309, 2007.

_____. Enforcement, Risk and Discretion: The Case of Dangerous Consumer Products. *Legal Studies*, v. 26, p. 524 ss., 2006.

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ERVINE, C. Satisfactory Quality: What Does it Mean? *Journal of Business Law*, v. 684, 2004.

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LLEWELLYN, K. On Warranty of Quality and Society II. Columbia Law Review, v. 37, n. 3, p. 341-409, mar. 1937.

Regulação e a Participação de Consumidores

Bibliografia básica:

GOLDEN, Marissa Martino. Interest Groups in the Rule-Making Process: who participates? Whose voices get heard? Journal of Public Administration Research and Theory, vol. 8, n. 2, 1998, p. 245-270.

SILVA, Mariana Batista. Mecanismos de participação e atuação de grupos de interesse no processo regulatório brasileiro: o caso da Agência Nacional de Energia Elétrica (Aneel). Revista de Administração Pública, vol. 46, n.4, jul./ago. 2012, p. 969-992.

KERWIN, Cornelius; FURLONG, Scott R. Rulemaking: how government agencies write law and make policy. 5.ed. Thousand Oaks: CQ Press, 2018.

Bibliografia complementar:

BAIRD, Marcello Fragano. Redes de influência, burocracia, política e negócios na Agência Nacional de Saúde Suplementar. Universidade de São Paulo (Doutorado em Ciência Política), 2017.

YACKEE, J. W.; YACKEE, S. W. A Bias toward business? Assessing Interest Group Influence on the Bureaucracy. Journal of Politics, v. 68, n.1, 2006, p. 128-139.

YACKEE, S. W. Sweet-Talking the Fourth Branch: the influence of interest group comments on Federal Agency Rulemaking. Journal of Public Administration Research and Theory, v. 16, n. 1, 2006, p. 103-124.

Conclusão do Curso

- Recapitulação e arremate dos temas estudados e debates travados ao longo do curso.
- Conversa sobre avaliações e questões remanescentes.