

One-Day Workshop on Legal Logic
PERMISSIVE NORMS IN LEGAL SYSTEMS

November 1, 2024

Faculty of Law

University of Bremen

The Faculty of Law at the University of Bremen will host a workshop on the nature and significance of permissive norms for the construction and development of normative systems. Our main focus is to develop the perspective that permissions cannot be simply reduced to prohibitions and to provide clarity on the concept of a permissive norm—a significant type of norm within normative systems—from both legal and logical viewpoints.

PROGRAM

Friday 1 November 2024 (Forum am Domshof, Room 60005)

30 min talks w/30 min discussion, 15 min break

9:30 a.m. – 10:00 a.m. Coffee & Registration

10:00 a.m. – 10:15 a.m.

Welcome by Dean of the Faculty of Law Prof. Dr. Graf-Peter Calliess

10:15 a.m. – 11:15 a.m.

Dr. Peter Hacker (University of Oxford)

THE DIVERSITY OF PERMISSIONS

Abstract forthcoming

11:15 a.m. – 12:15 a.m.

Prof. Dr. Giovanni Sartor (European University Institute)

A COMPOSITIONAL APPROACH TO NORMATIVE POSITIONS: THE ROLE OF PERMISSION

In this contribution we will provide a fresh approach to the study of normative positions. We assume two basic normative attitudes (expressed through speech acts), i.e., the disapproval or approval of states of affairs. We will then consider how these attitudes may be linked the corresponding attitudes towards of negative reactions (sanctions) to the embedded state of affairs,

namely, the approval of sanctions for the realisation of the disapproved state of affairs and the disapproval of sanctions for the realisation of approved ones. The framework is further expanded to include the involvement of agents in different roles: as beneficiaries of approved/disapproved states of affairs, as performers of the approved/disapproved actions, as targets of sanctions, as controllers in the applications of sanction. Some consistency requirements will be introduced to formalise relations between approvals and disapprovals, which will enable us to develop a distinct notion of strong permission, and a corresponding logic. Finally, we consider the possibility of developing a logical analysis of these attitudes and of building upon it a formalisation of the basic deontic notions of prohibition, obligation and permission as well as of more complex normative positions than those provided by the usual Hohfeldian analysis.

12:15 p.m – 12:30 p.m. Coffee Break

12:30 p.m. – 1:30 p.m.

Dr. Jorge Silva Sampaio (University of Lisbon)

COMPETENCES AND PERMISSIONS

Despite growing recognition of its importance for understanding law, the nature of competence norms (CN) remains uncertain. Three main theories address this: (TRN) competences are regulative norms, (TCN) competences are constitutive norms, and (TRCN) competences are both constitutive and regulative norms. This paper examines whether competences can be reduced to permissions (TRN*), are purely constitutive (TCN), or have a dual nature (TRCN). I argue that competence norms are exclusively constitutive, as they enable natural or institutional agents to perform “juridical acts,” bringing about legal consequences (e.g., creating norms, making legal decisions). Their link to permissions is clarified by distinguishing competence-conferring from competence-regulating norms. After evaluating TRN*, TCN, and TRCN, I conclude that TCN is correct, explaining competences as constitutive norms based on the concept of ability. I also address objections regarding the idea that competent authorities are inherently permitted to exercise their competences, discussing the role of permissive norms.

1:30 p.m. – 2:30 p.m. Lunch Break

2:30 p.m. – 3:30 p.m.

Prof. Dr. Antonino Rotolo (University of Bologna)

JUDICIAL EXPLANATIONS

The use of machine and deep learning techniques to predict outcomes in legal proceedings is a highly debated topic among legal scholars and policymakers. These technologies have the potential to support judicial decision-making, assist litigants, and analyze biases within the legal process. However, challenges remain, notably in the reluctance of judges to adopt such tools due to concerns over judicial independence, the normative correctness, accuracy, and robustness of algorithmic decisions, and the transparency of AI systems. It is claimed that methods are needed to validate AI-based judicial predication mechanisms. In this talk I will address these challenges by presenting a general framework for judicial case-based reasoning (CBR) grounded in Defeasible Logic and Argumentation Semantics. I will explore legal CBR, focusing on inconsistencies and incomplete knowledge within case bases, and emphasize the importance of normative explanations to ensure transparency and justification in legal decision-making. By reconstructing CBR and normative explanations within an argumentation framework, I will provide a formal mechanism for validating AI-based judicial predictions.

3:30 p.m. – 4:30 p.m.

Dr. Michal Araszkiwicz (Jagiellonian University)

**NORMATIVE STATUSES AND CONFLICTS. A VARIATION ON A THEME BY
AREND SOETEMAN**

In his discussion of normative systems, Arend Soeteman provides a nuanced treatment of weak and strong permissions, alongside a classification of normative conflicts. Building on Soeteman's framework, this talk proposes a generalization by introducing hierarchized constraints within normative systems, offering a more structured approach to understanding the relative strength and weakness of normative statuses. We explore how these hierarchical constraints affect the interpretation and resolution of normative conflicts, particularly in relation to the debate on weak and strong permissions. The proposed framework not only refines the classification of permissions but also sheds light on the dynamic interplay of norms when they conflict or coexist in a system. Furthermore, we investigate how this generalized account aligns or conflicts with broader jurisprudential theories, such as Hartian positivism and Dworkinian interpretivism. By examining (in)compatibility relations, we aim to provide insights into how different theoretical perspectives on the nature of law—whether grounded in rules, principles, or interpretations—can accommodate or challenge the hierarchized model of normative systems.

4:30 p.m. – 4:45 p.m. Coffee Break

4:45 p.m. - 5:45 p.m.

Dr. Pedro Moniz Lopes (University of Lisbon)

WEAK(ER) PERMISSIONS AND STRONG(ER) PERMISSIONS

Permissions have an elusive nature. Hans Kelsen initially sustained the principle according to which the negation of a prohibition necessarily amounted to permission. However, Alchourrón and Bulygin famously coined the distinction between weak and strong permissions and the “Bulygin Trilemma” sharply put an end to Kelsen’s principle: its possible interpretations are either false, trivial or impossible. Another symptom of elusiveness arises from the distinction between protected and unprotected permissions, a matter related to HLA Hart’s “protective perimeter” of permissions. I intend to clarify these distinctions and depart from them in order to put forward two claims. Firstly, I intend to argue that weak and strong permissions are but both ends of a spectrum. I strongly oppose the view that permissive norms in a *lex specialis* relation with general permissions are trivial or redundant. Secondly, I intend to argue that the degree of strength and protection of permissions follows a “rule of coextensivity”. In order to evidence this thesis, I will introduce a distinction between generic and specific actions that I borrow from an earlier paper of mine.

5:45 p.m. – 6:45 p.m.

Prof. Dr. Vitaly Ogleznev (University of Bremen)

THE RULE OF INTERDEFINABILITY OF PERMISSION, OBLIGATION, AND PROHIBITION

In my presentation, I will examine the difficulties associated with the rule of interdefinability in both deontic logic and legal logic, which defines permission, obligation, and prohibition in terms of each other. While this rule offers a structured approach to normative reasoning, it often overlooks important distinctions between different types of permissions. In Standard Deontic Logic, the rule of interdefinability states that if p is permitted, then $\text{not-}p$ is not obligatory or p is not forbidden. However, this assumption may not align with legal logic, where permission can behave differently. I will focus on the distinction between strong and weak permissions—strong permission being explicit authorization, and weak permission being the absence of prohibition. This distinction essential for understanding the flexibility in permissions and obligations, particularly when considering whether an action can be omitted. I will also introduce a revised version of the deontic square of opposition that incorporates both strong and weak permissions, offering a more accurate model for understanding normative concepts.

7:30 p.m. Dinner