



Número do candidato: _____

1. O candidato não poderá identificar de nenhum modo a sua prova.
2. O candidato só poderá responder com caneta esferográfica azul.
3. O candidato deverá apresentar uma versão em português do excerto abaixo e depois responder às duas questões propostas.

TEXTO

“The institutional principles of common law adjudication are rooted in the social functions of courts. Like other complex institutions, courts serve several functions, but two of these are paramount. The first concerns the resolution of disputes. Complex societies characteristically need an institution that can conclusively resolve disputes deriving from a claim of right based on the application, meaning, and implications of the society’s existing standards. In our society that institution is the courts, and the resolution of such disputes is accordingly a central function of our courts [...] The second paramount function of the courts is the enrichment of the supply of legal rules. Our society has an enormous demand for legal rules that private actors can live, plan, and settle by. The legislature cannot adequately satisfy this demand. The capacity of a legislature to generate legal rules is limited, and much of that capacity must be allocated to the production of rules concerning governmental matters, such as spending, taxes, and administration; rules that are regarded as beyond the courts’ competence, such as the definition of crimes; and rules that are best administered by a bureaucratic machinery, such as the principles for setting the rates charged by regulated industries. Furthermore, our legislatures are normally not staffed in a manner that would enable them to perform comprehensively the function of establishing law to govern action in the private sector. Finally, in many areas the flexible form of a judicial rule is preferable to the canonical form of a legislative rule. Accordingly, it is socially desirable that the courts should act to enrich the supply of legal rules that govern social conduct – not by taking on lawmaking as a free-standing function, but by attaching much greater emphasis to the establishment of legal rules than would be necessary if the courts’ sole function was the resolution of disputes” (EISENBERG, Melvin Aron. *The Nature of Common Law*. Cambridge: Harvard University Press, 1991, p. 4/5).



UNIVERSIDADE FEDERAL DO ESPÍRITO SANTO
CENTRO DE CIÊNCIAS JURÍDICAS E ECONÔMICAS
PROGRAMA DE PÓS-GRADUAÇÃO EM DIREITO PROCESSUAL



- 1) Quais são as duas funções sociais das cortes no *common law* quais as distinções entre ambas?
- 2) Quais matérias não se adaptam bem à função das cortes de garantir racionalidade, igualdade e segurança normativa aos jurisdicionados?