



RHODES UNIVERSITY
Where leaders learn

Constitutional Law A

2009

1 Introduction

1.1 Overview

Constitutional Law A is a semester course that counts as a credit in the LLB degree offered in the Faculty of Law and it is a component course in the Legal Theory II course, a major subject in the Faculties of Humanities, Science and Commerce.

Students will be introduced to key concepts of constitutional law and to the Constitution of the Republic of South Africa, 1996. The consideration of key constitutional concepts will provide students with the necessary knowledge skills to identify these concepts in the South African constitutional framework, as well as the ability to compare the South African constitutional framework with other major constitutional frameworks.

This course is an introductory course in constitutional law and equips students the necessary knowledge and analytical skills to refine their knowledge in further courses.

1.2 Credit value

7.5 credits which translate to 7 hours 30 minutes to be spent on this course per week. There are two 45-minute lectures per week in this course. Students are thus required to do 6 hours of independent work in this course per week.

1.3 Assumptions of prior learning

It is assumed that students:

- have the ability to communicate in written and spoken English at least at the level of NQF level 4;
- are capable of independent work;
- know how and where to access resources such as textbooks and law reports in the law library;
- have a working knowledge of basic legal concepts and terminology;
- have a basic understanding of legal problem-solving techniques;
- have a working knowledge of legal referencing conventions and the ability to apply these conventions.

2 Outcomes

2.1 Critical outcomes

This course will contribute to students attaining the following critical outcomes:

- 2.1.1 organising and managing themselves;
- 2.1.2 collecting, analysing and evaluating information;
- 2.1.3 recognising problem solving contexts;
- 2.1.4 identifying and solving problems;
- 2.1.5 communicating effectively;
- 2.1.6 participating as responsible citizens and
- 2.1.7 being culturally sensitive.

2.2 Intended specific outcomes

At the end of this course, students will be able to:

- 2.2.1 Identify, list and explain the significance of the different sources of constitutional law;
- 2.2.2 Explain the significance and content of key constitutional law concepts and relate these concepts to major constitutional models;
- 2.2.3 Classify the South African Constitution in terms of the identified modes of classification;
- 2.2.4 Understand, explain and analyse the founding provisions and the nature of the South African state as set out in the Constitution;
- 2.2.5 Understand and explain the doctrine of separation of powers in the South African context with reference to constitutional provisions and court judgments;
- 2.2.6 Identify, explain and critically analyse the functioning and role of the legislative branch of government in all spheres of government with reference to constitutional provisions and court judgments;
- 2.2.7 Identify, explain and critically analyse the functioning and role of the executive branch of government in all spheres of government with reference to constitutional provisions and court judgments;
- 2.2.8 Explain and critically appraise the notion of judicial independence in the South African state.

3 Teaching methods

This course is taught by way of two lectures per week that will tend to be relatively formal. Class discussions will be held when the topic of discussion and time permit. Students are expected to prepare for lectures by doing the prescribed readings beforehand and are encouraged to engage in lecture room discussions. **All the prescribed material will not be addressed directly in lectures. Students are expected to take responsibility for their learning by independent study according to the guidance provided by the detailed course outline.** Students are invited to discuss problems with the lecturer.

Legal Theory II has a tutorial programme. The attendance of tutorials and submission of the tutorial assignments are compulsory. Details regarding the programme will be supplied in due course.

4 Course content

Introductory topics:

1. Constitutions and Constitutional Law.

Definition of constitutional law in the context of broader classification of areas of law will be explored. The question of what a constitution is and what it contains will be addressed.

2. Sources of Constitutional Law.

Systematic classification and listing of the sources of constitutional law will be undertaken.

3. Classification of Constitutions.

Modes of classification will be introduced and South African Constitution will be classified according to the modes of classification: codified and uncoded; rigid and flexible; presidential and parliamentary; unitary and federal; republican and monarchical.

4. Key Constitutional Concepts.

Exploration of the meaning of key constitutional concepts such as the rule of law, separation of powers, constitutionalism, supremacy of the constitution and parliamentary sovereignty will be undertaken. The South African interpretation or application of these key concepts will be considered.

5. Civil Liberties.

Classification of human rights will be undertaken according to internationally accepted

standards. Students will be introduced to most important international and regional human rights documents.

6. Major Constitutional Models.

The most important features of the American, Westminster and social state constitutional frameworks will be discussed as well as their relevance for South Africa.

The South African Constitution

1. Founding Provisions and the Nature of the South African State.

Discussion of the Preamble and Chapter 1 of the Constitution will be undertaken. The impact and importance of constitutional values in constitutional interpretation and application will be considered.

2. The Structures and Spheres of Government and Co-operative Government.

Federal division of power in the light of the principle of co-operative government will be under scrutiny. Theory regarding separation of powers will be revisited in the South African context.

3. The National Legislature.

The composition, role and functions of parliament will be considered. Judgments pertaining to the national legislature will be discussed.

4. The National Executive.

The composition, role and functions of the national executive will be considered in the light of judgments pertaining to the president and his cabinet.

5. The Judiciary.

The theory of judicial independence will be reinforced with reference to the South African context.

6. Provincial Government.

The role and importance of provincial government in the different branches of government will be considered in the light of the principle of co-operative government. Judgments will be studied to highlight issues regarding provincial government.

7. Local Government.

The principles, role and importance of local government will be considered in the light of the co-operative government. Judgments will be studied to highlight issues regarding local government.

5 Resources

Prescribed textbook:

Devenish *The South African Constitution* (2005), Durban: LexisNexis Butterworths

The following book is strongly recommended:

Currie and De Waal *The New Constitutional and Administrative Law Volume 1 Constitutional Law* (2001), Cape Town: Juta and Co.

Your course outline contains page references for this book as well. The two texts (Devenish and Currie and De Waal) should be considered conjunctively.

Other books available on short loan (recommended and referred to in the course outline):

Rautenbach and Malherbe *Constitutional Law* 5th ed (2008) Durban: LexisNexis Butterworths

Boulle, Harris and Hoexter *Constitutional and Administrative Law* (1989), Cape Town, Juta and Co.

Carpenter *Introduction to South African Constitutional Law* (1987), Durban,

Butterworths.

De Smith and Brazier *Constitutional and Administrative Law* (6ed), (7ed) and (8ed)
London, Penguin:1989, 1994 and 1998

Baxter *Administrative Law* Cape Town (1984), Cape Town: Juta and Co.

De Waal, Currie and Erasmus *The Bill of Rights Handbook* 5th ed (2005), Cape Town:
Juta and Co.

Journal articles referred to in course outline.

Court judgments referred to in course outline.

Comprehensive handout on *Introductory topics*

Lecture slides on RUCConnected

6 Student assessment

All students are required to do the work of the class. Failure to do so will result in the removal of your DP certificate. The work of the class comprises one class assignment, one test and one tutorial assignment. The marks obtained in the work of the class count 30% towards the final mark obtained in this course, calculated as follows: 30% = 15% class assignment + 10% test + 5% tutorial assignment.

Feedback will be provided on these tasks to enable the student to identify and rectify problems.

At the end of the semester there is one summative assessment exercise in the form of a 2-hour exam. The exam mark obtained counts 70% towards the final mark. In

preparing for the exam students have to pay heed to the assessment criteria for the intended specific outcomes.

7 Evaluation

This course will be reviewed and updated by the lecturer on an annual basis. Evaluation of the course will take place in accordance with the evaluation cycle set up by the Faculty. This means that the course will be evaluated at least once in every three years. Evaluation will take place at the end of the first term to enable the lecturer to provide feedback to the students on the evaluation and to address any complaints. Students are invited to discuss their difficulties and problems with this course either personally or through their student representative with the lecturer.

8 Additional information

Students **must read** the following cases in their entirety:

Pharmaceutical Manufacturers Association of South Africa: In Re: Ex parte Application of the President of the Republic of South Africa 2000 (2) SA 674 (CC), 2000 (3) BCLR 241 (CC)

South African Association of Personal Injury Lawyers v Heath and others 2001 (1) SA 883 (CC), 2001 (1) BCLR 77 (CC)

Minister of Health and others v Treatment Action Campaign and others 2002 (5) SA 721 (CC), 2002 (10) BCLR 1033 (CC)

Important dates: (To be announced)

Test:

Class assignment due:

R KRÜGER

January 2009