



**RHODES UNIVERSITY**  
*Where leaders learn*

# **Constitutional Litigation**

## **2014**

### **1 Introduction**

#### **1.1 Overview**

Constitutional Litigation is an elective course that counts as a credit in the LLB degree offered in the Faculty of Law.

This course is designed to reach the following goals:

- to introduce students to the practice and the procedures involved in litigating constitutional issues;
- to critically analyse remedies in constitutional litigation; and
- to develop and refine critical thinking in respect of certain aspects of constitutional law.

#### **1.2 Credit value**

10 credits

#### **1.3 Assumptions of prior learning**

It is assumed that students:

- have a working knowledge of key constitutional concepts;
- are capable of independent work;
- know how and where to access resources such as textbooks, legislation and law reports in the law library;
- are capable of extracting and integrating relevant principles from various sources;
- are capable of applying legal problem-solving techniques;
- are capable of applying legal referencing conventions.

## **2 Outcomes**

### **2.1 Critical outcomes**

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

- 2.1.1 to organise and manage themselves;
- 2.1.2 to collect, analyse and evaluate information;
- 2.1.3 to recognise problem solving contexts;
- 2.1.4 to identify and solve problems;
- 2.1.5 to communicate effectively;
- 2.1.6 to participate as responsible citizens and
- 2.1.7 to be culturally sensitive.

### **2.2 Intended specific outcomes**

At the end of this course the student must be able to

- 2.2.1 explain and apply selected procedural rules of constitutional litigation;
- 2.2.2 explain and critically appraise remedies in constitutional litigation;
- 2.2.3 critically analyse selected topics in constitutional law.

## **3 Teaching method**

This course is taught by way of two lectures per week. Seminar work will form an essential part of the course. 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.

## **4 Course content**

*Part A Distinguished Visiting Professor Sandra Liebenberg*

1. Transformative constitutionalism: Its implications for constitutional adjudication
2. Designing innovative remedies for socio-economic rights violations

*Part B Constitutional practice and procedure*

1. Litigating fundamental rights
  - a. Introduction
  - b. The application of the Bill of Rights
  - c. The two-stage approach
2. What is a constitutional matter?
  - a. Definition
  - b. Ripeness and mootness
  - c. Constitutional issue last principle
3. The constitutional jurisdiction of the various courts
  - a. Constitutional Court
  - b. Supreme Court of Appeal
  - c. High Courts
  - d. Magistrates' Courts
4. Court rules applicable in constitutional matters
  - a. General
  - b. Applications
  - c. Direct access
  - d. Appeals
  - e. Referrals
  - f. *Amicus curiae*, joinder and intervention
  - g. Costs

*Part C Remedies in constitutional litigation*

1. Constitutional requirements
2. Declarations of rights
3. Prohibitory and mandatory interdicts
4. Orders of invalidity
5. Damages
6. Other forms of relief
7. Enforcing court orders

*Part D Seminars presented by students on selected topics*

## 5 Resources

The course outline contains references to a variety of sources on constitutional law and constitutional practice which can be found in the Law Library.

## 6 Student assessment

Class work counts 40% towards the final mark obtained in this course. Students will be assessed for the class work component on the basis of two assignments and a seminar presented in class. Feedback will be provided on the assessment tasks to enable students 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. Students can expect theory and application type questions in this exam. The mark obtained in the exam counts 60% towards the final mark.

<b>Intended specific outcomes:</b> <i>On successful completion of this course the students will be able to:</i>	<b>Assessment criteria</b> <i>Students will provide evidence that they can:</i>
Explain and apply selected procedural rules of constitutional litigation	<ul style="list-style-type: none"><li>• Identify instances in which the two-stage approach to constitutional litigation applies and apply the two-stage approach</li><li>• Explain and identify constitutional matters with reference to case law</li><li>• Explain and appraise the jurisdiction of the various courts in constitutional matters</li><li>• Explain how constitutional matters are brought before the courts with reference to court rules and case law</li><li>• Explain how a party may join or intervene (as amicus or</li></ul>

	<p>otherwise) in a constitutional matter before a court with reference to court rules and case law</p> <ul style="list-style-type: none"> <li>• Explain the working of costs orders in constitutional matters with reference to court rules and case law</li> </ul>
Understand and critically appraise remedies in constitutional matters	<ul style="list-style-type: none"> <li>• Explain and critically analyse the concepts 'appropriate relief' and 'just and equitable' remedies with reference to case law</li> <li>• Explain and critically analyse the remedies granted in constitutional matters with reference to case law</li> </ul>
In respect of seminar work – selected topics for individual students	<ul style="list-style-type: none"> <li>• A clear exposition and critical analysis of the chosen topic, in writing and oral presentation</li> </ul>

## 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 (if undertaken) will take place at the end of the third 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.

Dr Gustav Muller

July 2014