



RHODES UNIVERSITY
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Faculty of Law

CONSTITUTIONAL LAW A

2021

Course Outline Compiled by Prof Rosaan Kruger & Updated by Mr Gaopalelwe Mathiba

March 2021

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1. INTRODUCTION

Welcome to the course **Constitutional Law A**. As its name suggests, this course aims to introduce students to key concepts and theory of constitution law and to the Constitution of the Republic of South Africa, 1996. Upon successful completion of this course, students should be able to demonstrate an integrated, well-rounded knowledge and understanding of, as well as an ability to correctly evaluate, identify and apply the legal principles, concepts and processes involved in the South African constitutional framework.

1.1. Overview

Constitutional Law A is a first semester course that is compulsory in the LLB curriculum, and it constitute a component course of Legal Theory 2, a major subject in the Faculties of Humanities, Science and Commerce.

In this course, 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. Students will also be able to compare the South African constitutional framework, in certain aspects or whole, with other major constitutional frameworks.

The course is designed to familiarise students with constitutional concepts and their application in the South African context, in relation to theory and practical application. It is intended to equip students with the necessary knowledge and analytical skills to refine their knowledge in further courses.

1.2. Credit value and NQF level

The course carries 10 credits. This implies that the student must spend a total of at least 100 notional hours to master the learning outcomes of this course successfully. The course is offered at NQF level 7.

NQF level 7 require students to demonstrate an integrated knowledge of the field of constitutional law and the ability to apply and evaluate the key concepts, theories, principles and rules of the field. Students are further expected to demonstrate an understanding of contestations in the field, apply the theory methods in the field in context, solve unfamiliar problems by identifying, analysing, evaluating and critically reflecting on complex problems. Additionally, students are expected to produce and communicate information in the form of well-formed arguments based on validated sources and express their own opinion based on that.

Students must be able to manage their own learning and take full responsibility for their own learning in an independent manner, and must also be able to work with other students.

2. LEARNING OUTCOMES

After successful completion of this course, students should be able to:

- Identify, list and explain the significance of the different sources of constitutional law;
- Explain the significance and content of key constitutional law concepts and relate these concepts to major constitutional models;
- Classify the South African Constitution in terms of the identified modes of classification;
- Understand, explain and analyse the founding provisions and the nature of the South African state as set out in the Constitution;
- Understand and explain the doctrine of separation of powers in the South African context with reference to constitutional provisions and court judgments;
- 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;
- 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;
- Explain and critically appraise the notion of judicial independence in the South African state.

2.1. TEACHING METHODS

This course **requires intensive reading** and students are expected to read court judgments, articles, legislation and other prescribed reading material on their own in preparation for lectures. Key concepts will for the most part be explained in podcasts posted on RUconnected. This will mean that lecture time will be freed up for class discussions, particularly around case law which students often find challenging. **Students are expected to prepare for lectures by doing the prescribed readings beforehand and listening to the podcasts explaining key concepts. All the prescribed material will not be addressed directly in lectures or in the podcasts. Students are expected to take full responsibility for their learning by independent study according to the guidance provided by the detailed course outline and during the lectures.** Students are invited to discuss problems with the lecturer.

Legal Theory 2 has a tutorial programme. The attendance of tutorials and submission of the tutorial assignments are compulsory. Details regarding the programme will be supplied in the first week of the term. Materials discussed during tutorials form part of the course material and are examinable. Students are reminded that **it is a DP requirement to write the tutorials, assignments and tests and they will only be excused if they can produce a valid leave of absence (LoA).**

3. COURSE CONTENT

3.1. 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. Specific sources and their relevance in different constitutional systems will be considered.

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 Aspects

Exploration of the meaning of key constitutional concepts such as the rule of law, separation of powers, constitutionalism, transformative constitutionalism, supremacy of the constitution, parliamentary sovereignty and civil liberties and human rights as constraints on the exercise of governmental power will be undertaken. The South African interpretation or application of these key concepts will be considered, and compared with similar concepts in other constitutional systems where appropriate.

5. 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.

3.2. 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 and reports 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 and reports 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 and reports 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 and reports will be studied to highlight issues regarding local government.

4. RESOURCES

There is no single prescribed book prescribed for this course, but the following books are relied upon extensively:

De Vos and Freedman (eds) *South African Constitutional Law in Context* (2014) Currie and De Waal *The New Constitutional and Administrative Law Volume 1 Constitutional Law* (2001)

These books are available on short loan in the law library and in the main library. The materials from these books form the core readings for the course and the texts are to be considered conjunctively. References in the reading list are to the surnames to the authors.

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

Devenish *The South African Constitution* (2005) Rautenbach and Malherbe *Constitutional Law* 6th ed (2012)

Boulle, Harris and Hoexter *Constitutional and Administrative Law* (1989)

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

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

Baxter *Administrative Law* Cape Town (1984)

De Waal, Currie and Erasmus *The Bill of Rights Handbook* 6 ed (2013)

Journal articles referred to in course outline.

Court judgments referred to in course outline and class.

Materials on RUconnected.

5. STUDENT ASSESSMENT

5.1. *Class Work*

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 (marked by the lecturer), one test (marked by an assistant/lecturer), one tutorial assignment (marked by a teaching assistant). The marks obtained in the work of the class count **50%** towards the final mark obtained in this course, calculated as follows:

$$\begin{array}{r} \text{Class assignment} = 20\% \\ + \\ \text{Test} = 20\% \\ + \\ \text{Tutorial assignment} = 10\% \end{array}$$

All these tasks are compulsory! Feedback will be provided on these tasks to enable the student to gauge how well they have assimilated course content and to help them identify areas for improvement in their learning. Students are reminded that they are fully responsible for their marks. It is therefore incumbent on them to ensure that they participate and submit all their tasks when they are due.

5.2. *Summative Assessments (Examination)*

At the end of the semester (June/July 2021), there will be one summative assessment exercise in the form of an examination. The exam mark obtained counts 50% towards the final mark of the course. More information on the structure of the examination and duration will be made available to students closer to the exam date. In preparing for the exam, students will have to pay attention to the assessment criteria for the intended specific outcomes. These outcomes are presented in table form on the next page.

<p style="text-align: center;">Intended specific outcomes</p> <p><i>On successful completion of this course the students will be able to:</i></p>	<p style="text-align: center;">Assessment criteria</p> <p><i>Students will provide evidence that they can:</i></p>
<p>Identify, list and explain the significance of the different sources of constitutional law</p>	<ul style="list-style-type: none"> • Name the sources of constitutional law; • Provide a description of each source and its background and relevance; • Indicate the importance of particular sources for South African constitutional law against the background of the history of the South African Constitution.
<p>Explain the content and significance of key constitutional law concepts and relate these concepts to major constitutional models</p>	<ul style="list-style-type: none"> • Explain what is meant by constitutionalism and transformative constitutionalism; • Explain the notion of the rule of law; • Explain what is meant by the doctrine of separation of powers; • Explain what is meant by parliamentary sovereignty; • Explain the concept of constitutional supremacy; • Integrate information regarding constitutional concepts extracted from court judgments; • Relate different constitutional concepts to different constitutional models; • Show in what ways the selected constitutional models have impacted on the South African Constitution • Solve constitutional law problems by application of constitutional concepts with reference to authority
<p>Classify the South African Constitution in terms of the modes of classification identified</p>	<ul style="list-style-type: none"> • Explain the selected modes of classification: ✓ Codified and uncodified constitutions;

	<ul style="list-style-type: none"> ✓ Rigid and flexible constitutions; ✓ Presidential and parliamentary constitutions; ✓ Unitary and federal constitutions; ✓ Republican and monarchical. • Relate the SA Constitution to these modes of classification, and highlight differences/similarities/synergies with selected constitutional models and concepts.
<p>Understand, explain and analyse the founding provisions and the nature of the South African state as set out in the Constitution</p>	<ul style="list-style-type: none"> • Explain the significance of the Preamble of the SA Constitution • Relate and explain the significance of s2 of the Constitution in view of constitutional concepts considered before (see specific intended outcome 2.2 & Course Content <i>Introductory Topics 4</i>)) • Explain the concept of co-operative governance as set out in Chapter 3 of the Constitution • Identify and briefly show how aspects of judgments illustrate understanding of the foundational provisions and co-operative government • Give advice in hypothetical matters involving co-operative government with reference to authority • Explain the meaning of, and apply foundational values as constraints on the exercise of governmental power
<p>Understand and explain the doctrine of separation of powers in the South African context with reference to constitutional provisions, judgments, reports and analyses</p>	<ul style="list-style-type: none"> • Explain the concept of separation of powers; • Show how this concept is reflected in the SA Constitution; • Illustrate the court's understanding of the separation of powers in terms of the SA Constitution • Give advice in hypothetical matters involving the separation of powers with reference to authority

<p>Identify, describe and critically evaluate the functioning and role of the legislative branch of government in all spheres of government with reference to constitutional provisions, judgments, reports and analyses</p>	<ul style="list-style-type: none"> • Describe the composition and functions of the two houses of Parliament; • Describe the composition and functions of provincial legislatures; • Describe the composition and legislative functions of municipal councils; • Integrate relevant information regarding constraints on the exercise of powers by legislative bodies from judgments and other relevant sources and reflect critically upon the role of the judiciary in relation to tasks of legislative bodies; • Give advice in hypothetical situations involving the composition, functions and constraints on functions of legislatures with reference to authority
<p>Identify, describe and critically evaluate the functioning and role of the executive branch of government in all spheres of government with reference to constitutional provisions, judgments, reports and analyses</p>	<ul style="list-style-type: none"> • Describe the composition and functions of the national executive; • Describe the composition and functions of provincial executives councils; • Describe the composition and executive functions of municipal councils; • Integrate relevant information regarding executive competencies, and constraints on the exercise of power by the executive from judgments, reports and analyses in critical analysis • Give advice in hypothetical situations involving the executive, their exercise of power and the constraints on the exercise of power in the different spheres of government with reference to authority
<p>Explain and critically appraise the notion of judicial independence in the South African state with reference to</p>	<ul style="list-style-type: none"> • Describe the composition, role and functions of the judiciary in SA.

constitutional provisions, judgments, reports and analyses

- Explain what is meant by judicial independence.
- Critically examine selected court judgments, reports and discussions dealing with the notion of judicial independence
- Give advice in hypothetical matters involving the judicial function and judicial independence with reference to authority

6. 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.

7. ADDITIONAL INFORMATION

The aim of the course is to familiarise students with basic constitutional concepts and their application and operation in the South African context. In view of the fact that more lecture time will be available to deal with case law, our concern will be with making sense of cases as they apply key constitutional concepts – particularly separation of powers, the rule of law and co-operative federalism/governance. In particular, we shall look carefully at operation of constitutional law principles in:

(1) Scorpions/Hawks disputes through a consideration of series of cases illustrating the roles of each of the branches of state:

Glenister v President of the Republic of South Africa (14386/2008) [2008] ZAGPHC143

Glenister v President of the Republic of South Africa 2009 (1) SA 287 (CC)

Glenister v The Speaker of the National Assembly (17259/2008) [2009] ZAWCHC 1 (13 January 2009).

Glenister v The President of the RSA and Others (7798/09) [2010] ZAWCHC 92 (26 February 2010)

Glenister v President of the Republic of South Africa and Others 2011 (3) SA 347(CC)

Helen Suzman Foundation v President of the RSA and Others; Glenister v President of the Republic of South Africa and Others 2015 (1) BCLR 1 (CC).

(2) Accountability measures: motions of no confidence

Mazibuko v Sisulu 2013 (6) SA 249 (CC)

United Democratic Movement v Speaker of the National Assembly 2017 (5) SA 300(CC)

8. WARNING AGAINST PLAGIARISM

Plagiarism constitutes a serious offence. It is therefore the responsibility of the student to familiarise themselves with the plagiarism policy of Rhodes University accessible at:

https://www.ru.ac.za/media/rhodesuniversity/content/law/documents/10-students/plagiarism_policy.pdf

To avoid plagiarism, the student must read and understand the Faculty Handbook guidelines for referencing in their assessments. The Faculty Handbook will be made available on RUconnected.

Please note the important dates regarding assessment

Written test: 19 April 2021

Assignment due date: 17 May 2021

Tutorial worksheets on RUConnected

G MATHIBA

March 2021

Assistance of Judge Clive Plasket in drafting the handout outlining the substantive concepts is acknowledged. The handout will be made available to students in PDF format on RUConnected.

CONSTITUTIONAL LAW A

FIRST SEMESTER 2021 - COURSE OUTLINE AND READING LIST

The students must consult this Outline in conjunction with the Schedule posted on RUConnected. Preparation by reading prescribed materials and listening to the podcasts is essential.

[A] INTRODUCTORY TOPICS

1. *Constitutions & Constitutional Law*

- a) What is a Constitution?
- b) What is Constitutional Law?
- c) What do Constitution usually contain?
- d) The Constitution: Where law and politics meet?

Currie and De Waal, 1-10; 24-37.

Munro 'What is a Constitution?' 1983 *Public Law* 563.

2. *Sources of Constitutional Law*

- a) Statute
- b) Common Law
- c) Judicial Decisions
- d) Custom
- e) Conventions

Boulle, Harris and Hoexter, 10-11. De Smith and Brazier, 21-47.

Carpenter, 17-25.

R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant) [2017] UKSC 5 (24 Jan 2017), paras 47-58; 80, 86, 119-124, 136-147.

R (on the application of Miller and another) v The Prime Minister [2019 UKSC 41].

3. *Classification of Constitutions*

- a) Codified and Uncodified
- b) Rigid and Flexible
- c) Unitary and Federal
- d) Parliamentary and Presidential
- e) Other Classifications.

Devenish, 39-41.

Currie and De Waal, 28-29.

De Smith and Brazier, 10-13.

4. Key Constitutional Concepts

- a) Democracy and Constitutional Democracy
- b) Constitutionalism and Transformative Constitutionalism
- c) Separation of Powers
- d) The Rule of Law
- e) Parliamentary Sovereignty and Constitutional Supremacy
- f) Judicial Review and the Counter-Majoritarian Dilemma
- g) Civil Liberties and Human Rights

De Vos and Freedman, chapter 2.

Currie and De Waal, 10-11;35-37;91-119;75-81;13-14;45-51;21;74-75

De Waal, Currie and Erasmus, 7-18.

Pieterse 'What do we mean when we talk about transformative constitutionalism?' (2005) *SAPL* 155.

Ncgobo 'South Africa's transformative Constitution: towards an appropriate doctrine of separation of powers' (2011) *Stell LR* 37.

O'Regan 'Helen Suzman Memorial Lecture: "A forum of reason: reflections on the role and work of the South African Constitutional Court"' (2012) *SAJHR* 116.

Mathews 'The Rule of Law - A Reassessment' in Kahn (ed) *Fiat Justitia: Essays in Memory of Oliver Denys Schreiner* (1983) 294-311.

Baxter, 77-80.

Galtung *Human rights in another key* (1994) 147-156 (on short loan).

Judgments as referred to in class (some will also feature in sections 3- 5)

Recommended reading:

Du Plessis 'The legitimacy of judicial review in South Africa's new constitutional dispensation' (2000) 33 *CILSA* 227.

Jowell 'The Rule of Law Today' in Jowell and Oliver (eds) *The Changing Constitution* 5th ed (2004) Chapter 1

Hodgson 'The mysteriously appearing and disappearing doctrine of separation of powers: toward a distinctly South Africa doctrine for a more radically transformative Constitution' (2018) 34(1) *SAJHR* 57-90.

5. Major Constitutional Models

- a) The Westminster Model
- b) The American Model
- c) The Social State Model

Devenish 3, 22-23.

Currie and De Waal, 12-21. Boule, Harris and Hoexter, 20-79.

Currie *The Constitution of the Federal Republic of Germany* (1994) Chicago and London, University of Chicago Press 18-24.

[B] THE SOUTH AFRICAN CONSTITUTION

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

Devenish, 25-29, 31-41.

Preamble

S v Mhlungu 1995 (3) SA 867 (CC); 1995 (7) BCLR 793 (CC), para 112.

Section 1

Coetzee v Government of the Republic of South Africa 1995 (10) BCLR 1382 (CC), para 46.

Carephone (Pty) Ltd v Marcus NO 1999 (3) SA 304 (LAC), 1998 (10) BCLR 1326 (LAC), paras 9,18 and 19.

Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council 1999 (1) SA 374 (CC), 1998 (12) BCLR 1458 (CC), paras 53-60.

De Lange v Smuts NO 1998 (3) SA 785 (CC), 1998 (7) BCLR 779 (CC), paras 42-47.

President of the Republic of South Africa v South African Rugby Football Union 2000 (1) SA 1 (CC), 1999 (10) BCLR 1059 (CC), para 148.

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), paras 17-57 and 83-87.

Rail Commuters Action Group v Transnet Ltd 2005 (4) BCLR 301 (CC), paras 74-78.

Recommended reading:

Henderson 'Putting Section 1 to Work: Some Preliminary Thoughts on the First of the Founding Provisions of the New Constitution' (1998) 115 *SALJ* 215.

2. The Structure of Government – Overview (separation of powers and federal division of powers in brief)

De Vos and Freedman, chapter 3 and chapter 8 (p 267 – 274)

3. The National Legislature

De Vos and Freedman, chapter 4. Currie and De Waal, 133-198. O'Regan 'Political parties: the missing link in our Constitution' available at

http://www.law.uct.ac.za/sites/default/files/image_tool/images/99/PoliticalParties-in-the-Constitution-address-27-August-2015.pdf

The Constitution, chapter 4. Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 (and Bill18-2018)

Composition

Who /what makes up this institution?

How are members elected (electoral systems) and qualifications for election?

The role of political parties in our constitutional democracy

Forms of democracy

Powers and functions

Regulating its own processes - parliamentary rules and privileges

Making laws – introduction, tagging, deliberation and public involvement, assent

Electing officials

Keeping the executive accountable

Acting as a forum for national debate

Case Law –

Doctors for Life v The Speaker of the National Assembly 2006 (6) SA 416 (CC), paras 35-38, 67-70, 79-85 and 110-128

My Vote Counts NPC v Speaker of the National Assembly and Others (CCT121/14) [2015] ZACC 31 (30 September 2015), paras 8-18

My Vote Counts NPC v Minister of Justice and Correctional Services and Another 2018 (8) BCLR 893 (CC); 2018 (5) SA 380 (CC), paras 1-5, 32-34

De Lille and Another v Speaker of the National Assembly 1998 (7) BCLR 916 (C); 1998 (3) SA 430 (C), paras 24-34.

Economic Freedom Fighters and Others v Speaker of the National Assembly and Others (21471/2014) [2018] ZAWCHC 4; [2018] 2 All SA 116 (WCC) (29 January 2018)

Mazibuko v Sisulu 2013 (6) SA 249 (CC), paras 43-47, 48, 58

Democratic Alliance v Speaker of the National Assembly and Others 2016 (5) BCLR 577 (CC)

Primedia Broadcasting v Speaker of the National Assembly [2016] 4 All SA 793 (SCA)

Oriani-Ambrosini, MP v Sisulu, MP Speaker of the National Assembly 2012 (6) SA 588 (CC),

paras 27-65.

Women's Legal Centre Trust v President of the Republic of South Africa 2009 (6) SA 94 (CC)

Executive Council, Western Cape Legislature v President of the Republic of South Africa and Others 1995 (4) SA 877 (CC); 1995 (10) BCLR 1289 (CC), paras 51, 61 and 62.

Justice Alliance of South Africa v President of Republic of South Africa, Freedom Under Law v President of Republic of South Africa and, Centre for Applied Legal Studies v President of Republic of South Africa 2011 (5) SA 388 (CC); 2011 (10) BCLR 1017 (CC), paras 53-55.

Doctors for Life v The Speaker of the National Assembly supra

Matatiele Municipality and Others v President of the Republic of South Africa and Others (1) 2006 (5) BCLR 622 (CC); 2006 (5) SA 47 (CC), paras 59-86

Poverty Alleviation Network v President of the Republic of South Africa 2010 (6) BCLR 520 (CC)

South African Veterinary Association v Speaker of the National Assembly and Others (CCT27/18) [2018] ZACC 49 (5 December 2018), paras 18-46

Tongoane v National Minister for Agriculture and Land Affairs 2010 (6) SA 214 (CC); 2010 (8) BCLR 741 (CC) paras 3, 6, 43, 45-70, 106-108.

Democratic Alliance v President of SA 2014 (7) BCLR 800 (WCC) Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others 2016 (5) BCLR 618 (CC), paras 41-75, 84-99

United Democratic Movement v Speaker of the National Assembly 2017 (5) SA 300 (CC)

Economic Freedom Fighters v Speaker of the National Assembly 2018 (3) BCLR 259 (CC); 2018 (2) SA 571 (CC)

4. The National Executive

De Vos and Freedman, chapter 5. Currie and De Waal, 226-257.
Constitution, chapter 5.

Composition

Who makes up this institution?

Powers and functions

What are the powers, functions and constraints that exist in relation to the powers of the executive?

Distinguish HoS and HoE powers and constraints in relation to each.
Decision-making

Case law –

Pharmaceutical Manufacturers supra

Independent Electoral Commission v Langeberg Municipality 2001 (3) SA 925 (CC); 2001 (9) BCLR 883 (CC), paras 25-27

President of the Republic of South Africa and another v Hugo 1997(4) SA 1 (CC); 1997 (6) BCLR 708 (CC), paras 28, 29 and 44.

Mansingh v General Council of the Bar and Others 2014 (2) SA 26 (CC); 2014 BCLR 85 (CC)

President of the Republic of South Africa v South African Rugby Football Union 2000 (1) SA 1 (CC), 1999 (10) BCLR 1059 (CC), paras 138-148, 154-156, 159-160 and 220.

Minister of Defence and Military Veterans v Motau and Others 2014 (8) BCLR 930 (CC); 2014 (5) SA 69 (CC), paras 27-37

Minister of Health and others v Treatment Action Campaign and others 2002 (5) SA 721 (CC), 2002 (10) BCLR 1033 (CC), paras 96-112.

Albutt v Centre for the Study of Violence and Reconciliation and Others (2010 (3) SA 293 (CC); 2010 (5) BCLR 391 (CC), paras 41-43, 49-52.

Masethla v President of the Republic of South Africa 2008 (1) BCLR 1 (CC) paras 74-81 and 173-189

Democratic Alliance v Min of International Relations and Co-operation [2017] 2 All SA 123 (GP)

Electronic Media Network Limited and Others v e.tv (Pty) Limited and Others 2017 (9) BCLR 1108 (CC) paras 1-7, 25-38, 84-85.

Mazibuko v Sisulu, supra para 39-40

Democratic Alliance v President of South Africa 2013 (1) SA 248 (CC)

ARMSA v President of the RSA 2013 (7) BCLR 762 (CC) paras 36-61

Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others 2016 (5) BCLR 618 (CC), paras 25-40 and 72-83.

5. The Judiciary

De Vos and Freedman, chapter 6. Currie and De Waal, 267-314.

Mahomed 'The Independence of the Judiciary' (1998) 115 *SALJ* 658. Chapter 8 of the Constitution.

Composition

Who makes up this institution?

South African Association of Personal Injury Lawyers v Heath and others 2001 (1) SA 883 (CC), 2001 (1) BCLR 77 (CC), paras 24-46.

Minister of Health v Treatment Action Campaign 2002 (5) SA 721 (CC), 2002 (10) BCLR 1033 (CC), paras 96-112.

Van Rooyen v The State 2002 (5) SA 246 (CC), 2002 (8) BCLR 810 (CC), paras 16-35 and 75-85.

Bernert v Absa Bank Ltd 2011 (4) BCLR 329 (CC); 2011 (3) SA 92 (CC), paras 21-22, 28-38, 45-66, 78-79 and 93-99.

Justice Alliance of South Africa v President of Republic of South Africa, Freedom Under Law v President of Republic of South Africa and, Centre for Applied Legal Studies v President of Republic of South Africa 2011 (5) SA 388(CC); 2011 (10) BCLR 1017 (CC)

National Society for the Prevention of Cruelty to Animals v Minister of Agriculture, Forestry and Fisheries 2013 (5) SA 571 (CC)

ARMSA v President of the RSA supra paras 43-45

EFF v Speaker supra

Motata v Minister of Justice and Correctional Services and Another (52010/2016) [2016] ZAGPPHC 1063 (30 December 2016)

Unemployed Peoples Movement v Premier, Province of the Eastern Cape and Others (553/2019) [2020] ZAECGHC 1 (14 January 2020)

6. The Spheres of Government and Co-operative Government

De Vos and Freedman, chapter 8 Currie and De Waal, 119-124.

Intergovernmental Relations Framework Act 13 of 2005.

In re Certification of the Constitution of the Republic of South Africa, 1996 (4) SA 744 (CC), 1996 (10) BCLR 1253 (CC), paras 287-292 and 469-470.

Premier of the Province of the Western Cape v President of the Republic of South Africa 1999 (3) SA 657 (CC), 1999 (4) BCLR 382 (CC), paras 49-62.

Ex parte President of the Republic of South Africa: In re Constitutionality of the Liquor Bill 2000 (1) SA 732 (CC), 2000 (1) BCLR 1 (CC), paras 40-42.

Independent Electoral Commission v Langeberg Municipality 2001 (3) SA 925 (CC), 2001 (9) BCLR 883 (CC), paras 17-31.

National Gambling Board v Premier of KwaZulu-Natal 2002 (2) BCLR 156 (CC), paras 29-39.

City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal 2010 (6) SA 182 (C); 2010 (9) BCLR 859 (CC) paras 43-65

Minister of Police v Premier of the Western Cape 2014 (1) SA 1 (CC), para 27ff, particularly 58ff.

Unemployed Peoples Movement

Recommended reading:

Bray 'The constitutional concept of co-operative government and its application in education' (2002) 65 *THRHR* 514.

Steytler 'Concurrency and co-operative government: the law and practice in South Africa' (2001) 16 *SAPL* 241.

7. The Spheres of Government: Provincial Government

Premier Western Cape v President of the Republic of South Africa 1999 (3) SA 657 (CC), paras 49-62.

Mpehle v Government of the Republic of South Africa and Another 1996 (7) BCLR 921 (Ck).

Matatiele Municipality v President of the Republic of South Africa 2007 (1) BCLR 47 (CC), paras 40-48.

Premier: Limpopo Province v Speaker: Limpopo Provincial Legislature 2011 (11) BCLR 1181 (CC); 2011 (6) SA 396 (CC).

Minister of Police v Premier of the Western Cape supra. Unemployed Peoples Movement

8. The Spheres of Government: Local Government

Freedman 'The legislative authority of the local sphere of government to conserve and protect the environment: a critical analysis of *Le Sueur v Ethekwini Municipality* [2013] ZAKZPHC 6 (30 January 2013)' (2014) *PELJ* (17) 1.

Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council 1999 (1) SA 374 (CC), 1998 (12) BCLR 1458 (CC), paras 26-42 and 52-60.

Mnquma Local Municipality v Premier of the Eastern Cape (231/2009) [2009] ZAECBHC 14 (5 August 2009)

Mogalakwena Local Municipality v Provincial Executive Council, Limpopo (35248/14) [2014] ZAGPPHC 400 (19 June 2014).

Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v The Habitat Council and Others; Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v City of Cape Town and 2014 (4) SA 437 (CC)

Pieterse NO v Lephalale Local Municipality 2017 (2) BCLR 233 (CC)

Unemployed Peoples Movement

Recommended reading:

De Visser 'Powers of local government' (2002) 17 *SAPL* 223.

Mettler 'Provincial-municipal relations: a few challenges' (2003) *Law, Democracy and Development* 217.