



RHODES UNIVERSITY

Where leaders learn

Constitutional Law A 2019

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 2 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 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

10 credits which translate to 100 hours to be spent on this course. The course is offered at NQF level 7.

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 **requires intensive reading** and students are expected to read judgments, articles and other prescribed material on their own. Core concepts will for the most part be explained in podcasts posted on RUCConnected. 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 responsibility for their learning by independent study according to the guidance provided by the detailed course outline and in 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. The tutorial schedule and tutorial worksheets for each week are available on RUCConnected. Materials discussed during tutorials form part of the course material and are examinable.

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, 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.

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.

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.

For topics 3, 4, and 5 time in class will be spent looking at the case studies of Hawks/Scorpions and constitutional accountability measures, including commissions of enquiry and other means of ensuring executive accountability.. The readings relevant to these discussion are listed on p 9 and these must be read by students in preparation of the class discussions.

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.

5 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

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 (marked by the lecturer), one test (marked by an assistant/lecturer), one tutorial worksheet (marked by a teaching assistant) and the submission of all tutorial assignments at the commencement of the tutorial. 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 + 2.5% tutorial worksheet + 2.5% submission of tutorial worksheets.

Feedback will be provided on assessment 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. These are presented in table form on the next page:

Intended specific outcomes <i>On successful completion of this course the students will be able to:</i>	Assessment criteria <i>Students will provide evidence that they can:</i>
Identify, list and explain the significance of the different sources of constitutional law	<ul style="list-style-type: none">• Name the sources of constitutional law;• Provide a description of each source;• Indicate the importance of particular sources for South African constitutional law against the background of the history of the South African Constitution.
Explain the content and significance of key constitutional law concepts and relate these concepts to major constitutional models	<ul style="list-style-type: none">• Explain what is meant by 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;

	<ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> ✓ Codified and uncodified constitutions; ✓ Rigid and flexible constitutions; ✓ Presidential and parliamentary constitutions; ✓ Unitary and federal constitutions; ✓ Republican and monarchical. • Relate the SA Constitution to these modes of classification.
<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
<p>Understand and explain the doctrine of separation of powers in the South</p>	<ul style="list-style-type: none"> • Explain the concept of separation of powers;

<p>African context with reference to constitutional provisions, judgments, reports and analyses</p>	<ul style="list-style-type: none"> • 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 legislative competencies from judgments, reports and analyses in critical analysis • Give advice in hypothetical situations involving the composition and 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 from judgments, reports and analyses in critical analysis • Give advice in hypothetical situations involving the executive 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 constitutional provisions, judgments, reports and analyses</p>	<ul style="list-style-type: none"> • Describe the composition, role and functions of the judiciary in SA. • 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 judicial independence with reference to authority
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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

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. This will be done by means of case studies.

Important information regarding assessment

Written test: date to be confirmed

Class assignment on RUConnected.

Tutorial worksheets on RUConnected

R KRÜGER

January 2019

I would like to acknowledge the role of Judge Clive Plasket drafting of the handout outlining the substantive concepts which remains a staple which is available in PDF format on RUConnected.

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