



RHODES UNIVERSITY
Where leaders learn

Constitutional Law B

2022

1 Introduction

Overview

Constitutional Law B is a semester course that in the curriculum of the LLB degree offered in the Faculty of Law, and it is a component semester course in the Legal Theory 2 course, offered by the Law Department in the Faculties of Humanities, Science and Commerce.

The purpose of the course is to introduce and familiarise students with the rights contained in the Bill of Rights (Chapter 2 of the Constitution of the Republic of South Africa, 1996), the values which underpin the legal order of South African constitutional democracy, the interpretation and application of the provisions of the Bill of Rights. The protection of fundamental rights through the court system, and to a lesser extent their protection by Chapter 9 institutions, will thus be the focus of the course.

Constitutional Law B will not deal with certain fundamental rights that will be considered in other courses, for example the right to administrative justice (section 33) will be discussed in Administrative Law and the rights of arrested, detained and accused persons (section 35) will be discussed in Criminal Procedure and the Law of Evidence. The rights considered pertinently in this course will be identified as such in the course outline.

This course forms an important base for all other courses, since section 2 of the Constitution explicitly states that the Constitution is the supreme law of the Republic and section 7(1) designates the Bill of Rights as the cornerstone of democracy in South Africa.

Credit value

10 credits which translate to 100 notional hours per semester of which only 26 are contact hours. The bulk of the time spent on the course is earmarked for reading of the prescribed material in conjunction with the guidance provided, self-study and consolidation of knowledge and understanding by students in their own time.

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;
- know how to read, analyse and extract principles from law reports and other source materials at a basic level;
- 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 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, students will be able to:

- 2.1.1 understand and explain the structure, purpose and working of the Bill of Rights;
- 2.1.2 understand and explain approaches to constitutional interpretation and more specifically the interpretative approaches of the Constitutional Court in respect of the Bill of Rights;
- 2.1.3 apply provisions of the Bill of Rights in respect of hypothetical situations;
- 2.1.4 understand and explain the role of Chapter 9 institutions in respect of the protection of fundamental rights.

3 Teaching method

This course is taught by way of two lectures per week throughout the semester incorporating class discussions. **Students are expected to prepare for lectures by doing the prescribed readings beforehand and are encouraged to engage in lecture room discussions. Lectures on their own do not constitute the course or cover all course content. 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 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 due course.

4 Course content

A The Bill of Rights: Purpose and Structure

- 1) The historical and textual context
- 2) The types of rights
- 3) The obligations
- 4) The bodies bound
- 5) The persons benefit from and who may seek the protection (section 38) of the Bill of Rights
- 6) The radiating effect of the Bill of Rights statute law, common law and customary law
- 7) States of emergency

B The Bill of Rights: Application

- 1) Constitutional analysis: the two-stage approach
- 2) Constitutional interpretation
- 3) The limitation of rights

C The Bill of Rights in operation

[Not all the rights listed below will be discussed. The lecturer will give a clear indication as to the rights to be studied.]

- 1) Rights to physical and mental integrity
 - a. Equality
 - b. Life and dignity
 - c. Freedom and privacy
- 2) Rights to intellectual integrity
 - a. Religion, opinion and belief
 - b. Expression
- 3) Associational rights
 - a. Association
 - b. Movement and residence
 - c. Assembly
 - d. Political rights
- 4) Socio-economic rights
 - a. Justiciability of socio-economic rights
 - b. State obligations and international law
 - c. Access to housing
 - d. Access to health care
 - e. Access to social security and social assistance
 - f. The right to education
- 5) Rights to legal and administrative integrity
 - a. Just administrative action
 - b. Access to information
 - c. Access to court
 - d. Right to a fair trial

D Extra-judicial protection of fundamental rights

- 1) Protection by Chapter 9 institutions
 - a. The Public Protector
 - b. The Human Rights Commission
 - c. The Commission on Gender Equality

5 Resources

The prescribed text for this course is:

Currie I and De Waal J *The Bill of Rights Handbook* 6th ed (2013) Juta. **This book is available as an ebook in the library.** It is referred to as 'Currie' in the reading list.

Students who wish to read further are encouraged to look at www.constitutionallawofsouthafrica.co.za Part 2.

Other materials referred to in the reading list include cases which you may access online and materials available on short loan or through the library website on the online databases.

6 Student assessment

Your class mark counts 40% of your final mark, and is made up of once closed-book class test which counts 30% and one tutorial task which counts 10%.

Intended specific outcomes <i>Once a student has engaged with the course, its processes and materials, the student should be able to:</i>	Assessment criteria <i>Students should provide evidence that they can: (The evidence should include references to case law where appropriate)</i>
Understand and explain the structure, purpose and working of the Bill of Rights	<ul style="list-style-type: none">• Explain the classification of human rights contained in the Bill of Rights;• Outline and explain the obligations imposed by the Bill of Rights;• Explain which bodies are bound by the Bill of Rights;• Explain who benefits from the protection of the Bill of Rights;• Explain the difference and effect of direct and indirect application of the Bill of Rights on statute law, common law and customary law with reference to case law;• Outline the impact of states of emergencies on various entrenched human rights.
Understand and explain approaches to constitutional interpretation and more specifically the interpretative approaches of the Constitutional Court in respect of the Bill of Rights	<ul style="list-style-type: none">• Explain the interpretative approaches employed by the Constitutional Court in respect of the Bill of Rights• Utilise the interpretative approaches in the interpretation of human rights.
Apply provisions of the Bill of Rights in respect of hypothetical situations	<ul style="list-style-type: none">• Explain the two-stage approach of constitutional adjudication as employed by the Constitutional Court;• Explain the scope and application of selected human rights with reference to court judgments;• Utilise the two-stage approach in hypothetical situations involving alleged human rights violations.

Understand and explain the role of Chapter 9 institutions in respect of the protection of fundamental rights	<ul style="list-style-type: none">• Explain and relate the importance of selected Chapter 9 institutions for the protection and enhancement of human rights in South Africa.
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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 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 representatives with the lecturer. Informal evaluation may be conducted through the course of the semester.