



RHODES UNIVERSITY
Where leaders learn

Constitutional Litigation

2009

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 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 B 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 C Selected constitutional law concepts

As per discussion on 20 July 2010.

R Kruger

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