



**RHODES UNIVERSITY**  
*Where leaders learn*

## **Constitutional Law A 2024**

### **1 Introduction**

#### **1.1 Overview**

Constitutional Law A is a compulsory semester course for LLBU 2 students. It is further one of the four component courses of Legal Theory 2, 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 notional hours to be spent on this course. The course is offered at NQF level 7.

NQF level 7 requires students to demonstrate 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 methods in the field in context, solve unfamiliar 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 an own opinion.

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

## 2 Outcomes

At the end of this course, students should be able to identify and explain the meaning and content of key constitutional law concepts and relate these concepts to major constitutional models and pertinently to South African constitutional law. Students are required to demonstrate insight and understanding to the application of the identified concepts with in the South African context with reference to case law.

## 3 Teaching methods

This course **requires intensive reading** and students are expected to read judgments, articles and other prescribed material on their own.

Lectures will be presented in the allocated slots in accordance with the lecture schedule available on RUConnected. Lectures will be interactive and students are required to participate in class discussions.

**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.**

Legal Theory 2 has a tutorial programme. Details regarding the programme will be supplied in due course. Materials discussed during tutorials form part of the course material and are examinable.

## 4 Course content

### Term 1

The focus in term 1 is on acquiring knowledge and understanding the field of constitutional law.

#### Constitutions and Constitutional Law

- Codified and uncodified constitutions
  - The South African Constitution

#### Sources of Constitutional Law

- Why do we consider the sources of law?
- What are the sources of law and constitutional law specifically?
- What is the relevance of each of the sources for SA constitutional law?

#### The South African Constitution in historical context

#### Key Constitutional Concepts

- Constitutionalism
  - Models of constitutionalism (the American, Westminster and German models)
- Constitutionalism in South Africa and transformative constitutionalism
- Democracy
  - Representative democracy
  - Participatory democracy

- Constitutional democracy
- Separation of powers
  - The purpose of separation of powers
  - Composition and functions of the legislature, executive and judiciary under the Constitution
  - Constitutional supremacy and parliamentary sovereignty
  - Judicial review and the counter-majoritarian dilemma
- The rule of law
  - Theories of the rule of law
  - Key judgments on the rule of law
- Human rights as constraints on the exercise of governmental power
- Presidential and parliamentary constitutions
  - The SA hybrid
- Unitary and federal division of power
  - Co-operative governance under the Constitution

## Term 2

The focus in term 2 is on acquiring knowledge and gaining understanding of case law illustrating the application of constitutional concepts in relation to judicial review of different aspects of the powers and functions of the national legislature, national executive and the judiciary.

In addition, the course considers the notion of cooperative government more pertinently with a view to understand how multi-level government works as provided for in the Constitution through a consideration of legislation and court decisions.

## **5 Resources**

The prescribed textbook for the first semester is:

De Vos and Freedman (eds) *South African Constitutional Law in Context* 2<sup>nd</sup> ed (2021)  
OUP: Cape Town.

The book is available as an ebook in the library. Hard copies are available on short loan in the law library and in the main library. **The listed readings from this book and from other prescribed materials 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 which may aid your understanding of constitutional law concepts are:

Devenish *The South African Constitution* (2005)

Rautenbach and Malherbe *Constitutional Law* 7<sup>th</sup> ed (2018)

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)

Woolman and Bishop *Constitutional Law of South Africa* available at <https://constitutionallawofsouthafrica.co.za/>

Journal articles referred to in course outline.

Court judgments referred to in course outline and recordings.

Materials on RUCConnected

## 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.**

Class assessment counts 40% of your final mark. The work of the class comprises one written assignment of 1500 words (counting 20% towards your final mark), a test (counting 10% towards your final mark) and tutorial assignment (counting 10% towards your final mark). Feedback will be provided on these tasks. Students are also encouraged to raise questions regarding the course content throughout the semester. In addition, students are required to complete and submit one formative tutorial task and attend tutorials as scheduled.

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 60% 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:

<b>Intended specific outcomes</b>	<b>Assessment criteria</b>
<i>On successful completion of this course the students will be able to:</i>	<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"><li>• Name the sources of constitutional law;</li><li>• Provide a description of each source and its background and relevance;</li><li>• Indicate the importance of particular sources for South African constitutional law against the background of the history of the South African Constitution.</li></ul>

<p>Outline and discuss the historical development of constitutional law in South Africa with specific reference to the era of constitutional democracy.</p>	<ul style="list-style-type: none"> <li>● Understand the historical context within which the Constitution came into being;</li> <li>● Explain the key events and their significance in the process of drafting the Constitution.</li> <li>● Critique the process of constitution-making.</li> </ul>
<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"> <li>● Integrate information regarding constitutional concepts extracted from court judgments;</li> <li>● Relate different constitutional concepts to different constitutional models;</li> <li>● Show in what ways the selected constitutional models have impacted on the South African Constitution</li> <li>● Solve constitutional law problems by application of constitutional concepts with reference to authority</li> </ul>
<p>Classify the South African Constitution in terms of the modes of classification identified</p>	<ul style="list-style-type: none"> <li>● Explain the selected modes of classification: <ul style="list-style-type: none"> <li>- Codified and uncodified constitutions;</li> <li>- Rigid and flexible constitutions;</li> <li>- Presidential and parliamentary constitutions;</li> <li>- Unitary and federal constitutions;</li> </ul> </li> <li>● Relate the SA Constitution to these modes of classification.</li> </ul>
<p>Know and explain the composition and functions of the elected branches of state in the national sphere, as well as that of the judiciary.</p>	<ul style="list-style-type: none"> <li>● Know, understand and explain the different roles and functions of the key branches of state and the constitutional underpinnings of their roles.</li> </ul>
<p>Understand and explain application of the doctrine of separation of powers in the South African context</p>	<ul style="list-style-type: none"> <li>● Know, understand and explain, with reference to constitutional provisions and precedent, the extent and limitation of the power of judicial review, stemming from constitutional supremacy within the framework of separation of powers. Give advice in hypothetical matters involving</li> </ul>

	the separation of powers with reference to authority
Know and explain the purpose and functioning of multi-level government in South Africa.	<ul style="list-style-type: none"> <li>• Know, understand and explain, with reference to constitutional provisions and precedent what the notion of co-operative government entails; how the Constitution allocates original legislative and executive powers to the provincial and local spheres of government, and how conflicts of law stemming from the exercise of powers by the different spheres of government are resolved.</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 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.

**R KRÜGER**  
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