



**RHODES UNIVERSITY**  
*Where leaders learn*

# **Constitutional Law B**

## **2011**

### **1 Introduction**

#### **Overview**

Constitutional Law B 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 II course, a major subject 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) and the values which underpin the legal order of South African constitutional democracy. 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. A clear indication will be given of the rights that will be discussed. 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 10 hours to be spent on this course per week.

## **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 that will tend to be relatively formal. Class discussions will be held when the topic of discussion and time permit. **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.

Legal Theory II 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 types of rights it contains
- 2) The obligations it imposes
- 3) The bodies which it binds
- 4) The persons who may seek its protection (section 38)
- 5) Its effect on statute law, common law and customary law
- 6) States of emergency

##### **B The Bill of Rights: Application**

- 1) Constitutional interpretation
- 2) Constitutional analysis: the two-stage approach
- 3) International and comparative law
- 4) 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. Access 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

Prescribed textbook:

Currie I *et al* *The Bill of Rights Handbook* 5<sup>th</sup> ed (2005) Juta & Co: Kenwyn. This book is referred to as Currie *et al* in the reading list.

There is a supplement to this book which I refer to as 'Supplement' in the outline.

All students are furthermore required to read the judgments of Chaskalson P, Mahomed J and O'Regan J in *S v Makwanyane* 1995 (6) BCLR 665 (CC), 1995 (3) SA 391 (CC), 1995 (2) SACR 1 (CC). I expect students to be able to extract the main lines of argument taken in these three judgments and to be able to explain each of these in relation to the others. Test and exam questions may focus on one or all of these judgments.

Other materials referred to in the reading list include cases and materials available on short loan.

## 6 Student assessment

There are three pieces of assessment for this course. All students are required to hand in a class assignment, a tutorial assignment and to write a test. The marks obtained in these tasks will count 30% towards the final marks obtained by students (class assignment 15%, tutorial assignment 5% and test 10%). Feedback will be provided on these tasks to enable students to identify and rectify problems. The feedback will be provided orally and in writing where possible.

At the end of the semester there is one summative assessment exercise in the form of a 2-hour exam. Students can expect theory and application type questions in this exam. The mark obtained in the exam counts 70% towards the final mark.

<b>Intended specific outcomes</b> <i>Once a student has engaged with the course, its processes and materials, the student should be able to:</i>	<b>Assessment criteria</b> <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"> <li>• Explain the classification of human rights contained in the Bill of Rights;</li> <li>• Outline and explain the obligations imposed by the Bill of Rights;</li> </ul>

	<ul style="list-style-type: none"> <li>• Explain which bodies are bound by the Bill of Rights;</li> <li>• Explain who benefits from the protection of the Bill of Rights;</li> <li>• 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;</li> <li>• Outline the impact of states of emergencies on various entrenched human rights.</li> </ul>
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"> <li>• Explain the interpretative approaches employed by the Constitutional Court in respect of the Bill of Rights</li> <li>• Utilise the interpretative approaches in the interpretation of human rights.</li> </ul>
Apply provisions of the Bill of Rights in respect of hypothetical situations	<ul style="list-style-type: none"> <li>• Explain the two-stage approach of constitutional adjudication as employed by the Constitutional Court;</li> <li>• Explain the scope and application of selected human rights with reference to court judgments;</li> <li>• Utilise the two-stage approach in hypothetical situations involving alleged human rights violations.</li> </ul>
Understand and explain the role of Chapter 9 institutions in respect of the protection of fundamental rights	<ul style="list-style-type: none"> <li>• Explain and relate the importance of selected Chapter 9 institutions for the protection and enhancement of human rights in South Africa.</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 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 representative with the lecturer. Informal evaluation may be conducted through the course of the semester.