



RHODES UNIVERSITY  
*Where leaders learn*

# Constitutional Litigation 2021

## 1 Introduction

### 1.1 Overview

Constitutional Litigation is an elective semester course 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 the preparation of a matter for constitutional litigation and
- to develop and refine critical thinking in respect of selected 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, that will be combined into one lecture of around 90 minutes. Seminar work will form an essential part of the course, and will be scheduled throughout the semester. 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.

Due to the COVID-19 pandemic, the format of the lectures will be adjusted as follows:

- 1. Pre-recorded lectures on RUConnected;
- 2. Some lectures will be presented via MS Teams; and
- 3. Seminars will be presented via MS Teams

## **4 Course content**

### *Part A Constitutional practice and procedure*

- 1) Litigating the Constitution
  - a) Introduction
    - i) Constitutional matters
  - b) Bill of Rights litigation
    - i) Direct and indirect application of the Bill of Rights
  - c) Responsibilities and roles litigation
    - i) Separation of powers
    - ii) Rule of law
- 2) The jurisdiction of the various courts in relation to constitutional matters
  - a) Constitutional Court
    - i) Other matters – narrow apex jurisdiction
  - b) Supreme Court of Appeal
  - c) High Courts
  - d) Magistrates' Courts
- 3) Remedies in constitutional matters
  - a) Constitutional requirements

- b) Declarations of rights
  - c) Prohibitory and mandatory interdicts
  - d) Orders of invalidity
  - e) Damages
  - f) Other forms of relief
  - g) Enforcing court orders
- 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
- 5) Public interest litigation strategies

*Part B Selected constitutional law topics*

Lectures and seminars to cover a variety of topics

## **5 Resources**

The course outline contains references to a variety of sources on constitutional law and constitutional practice which can be found in the Law Library.

Brickhill, Du Plessis and Penfold *Constitutional Litigation* (2013) Juta is a useful source for many of the topics that form part of the course.

It would also be useful to look at Brickhill J (ed.) *Public Interest Litigation in South Africa* (2018) Juta

## **6 Student assessment**

Class work counts 50% towards the final mark obtained in this course. The class mark will consist of two components. Firstly, a research proposal on an identified topic must be submitted (10% of the class mark), which will be followed by a comprehensive legal article based on the selected constitutional law topic (40% of the final class mark). The research proposal will be submitted in preparation for the research article.

At the end of the semester there is one summative assessment exercise in the form of an exam. The mark obtained in the exam counts 50% towards the final mark.

Please note that we may need to adjust the terms of the summative assessment subject to advice by the Faculty. Any changes will however be communicated well in advance.

The assessment for the course will thus be as follows:

- Research proposal – 10%
- Research article – 40%
- Summative Assessment/Exam – 50%

<b>Intended specific outcomes:</b> <i>On successful completion of this course the students will be able to:</i>	<b>Assessment criteria</b> <i>Students will provide evidence that they are able to use the relevant sources of law, including case law to:</i>
Explain and apply the Bill of Rights and other constitutional constraints in relation to constitutional matters with consideration of jurisdiction of different courts in constitutional and other matters with reference to case law	<ul style="list-style-type: none"> <li>• Explain and critically consider the significance of the distinction between constitutional and non-constitutional matters</li> <li>• Distinguish ways of application of the Bill of Rights and apply the Bill of Rights as a constraint on the exercise of public and private power</li> <li>• Identifying, applying and critically appraise other constitutional constraints on the exercise of power, including separation of powers and the rule of law</li> <li>• Explain and appraise the jurisdiction of the various courts in constitutional matters</li> <li>• Explain how constitutional matters are brought before the courts with reference to court rules</li> <li>• Explain how a party may join or intervene (as amicus or otherwise) in a constitutional matter before a court with reference to court rules</li> <li>• Explain the working of costs orders in constitutional matters with reference to court rules</li> </ul>
Understand the link between causes of action and remedies in constitutional matters	<ul style="list-style-type: none"> <li>• Link causes of action and constitutional remedies</li> <li>• Explain and critically analyse the concepts 'appropriate relief' and 'just and equitable' remedies with reference to case law</li> <li>• Explain and critically analyse remedies granted in constitutional matters</li> </ul>
In respect of seminar work – selected topics for individual students	<ul style="list-style-type: none"> <li>• A clear exposition and critical analysis of the chosen topic, in writing and oral presentation</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 (if undertaken) 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.

## **8 Lecturer**

The course will be presented by Ms Cecile van Schalkwyk.

Email: [cecile@lrc.org.za](mailto:cecile@lrc.org.za) / [C.VanSchalkwyk@ru.ac.za](mailto:C.VanSchalkwyk@ru.ac.za)

Meetings: Legal Resources Centre, 116 High Street, Makhanda (046 622 9230)

- Meetings can be in person, or online via Zoom/ MS Teams, depending on the location of the student, or the Covid restrictions.
- Students are encouraged to make appointments with the lecturer if there are work that they don't understand.