Introduction to South African Constitutional Law

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Course Description
South Africa’s 1996 Constitution was adopted through a unique process, involving multi-phase negotiations as well as involvement of a newly created Constitutional Court, to facilitate the transition from an authoritarian apartheid state to a constitutional democracy. This introductory course will highlight the unique nature of the transition as well as several distinct features of the Constitution, focusing on the constitutional arrangements on the legislature, executive and judiciary and the relationship between them as well as on the role of traditional leaders within the democracy. South Africa is a common law jurisdiction and judgments of its Constitutional Court create binding precedent guiding understanding of the constitutional text. As such the course will also introduce students to a few of the pivotal judgments of the Constitutional Court. At the end of the course, students should understand the structure and function of the three branches of government and how traditional leaders are accommodated within the constitutional democracy. Students should also have a good idea of the manner in which these institutions relate to one another and the role they play in the system of checks and balances. A general understanding of the types of legal reasoning employed by South Africa’s Constitutional Court, would be an advantage.

Relevant websites
1) Constitutional Court of South Africa: https://www.concourt.org.za/
Schedule and Prescribed Reading

**Tuesday 4 June: Introducing the South African Constitution: history and norms**

- Negotiating South Africa’s 1996 Constitution;
- Section 1 and the founding values of the Constitution;
- Human dignity, equality and freedom;
- Transformative Constitutionalism; and
- Context: One party dominance and electoral system.

**Prescribed Readings**


**Wednesday 5 June: Structure of the legislature and executive and the system of checks and balances**

- The composition and functioning of the National Assembly and the National Council of Provinces (NCOP);
- The election of the President, the composition of the cabinet and their powers;
- The relationship between the legislature and the executive and the powers of the former to hold the latter accountable; and
- Does the system work optimally and if not why not?

**Prescribed Readings**

3) *United Democratic Movement v Speaker of the National Assembly and Others* (CCT89/17) [2017] ZACC 21; 2017 (8) BCLR 1061 (CC); 2017 (5) SA 300 (CC) (22 June 2017).
4) *Economic Freedom Fighters and Others v Speaker of the National Assembly and Another* (CCT76/17) [2017] ZACC 47; 2018 (3) BCLR 259 (CC); 2018 (2) SA 571 (CC) (29 December 2017) paragraphs 129-145; 173-186; 209-217.

**Tuesday 11 June: The South African Judiciary: holding the executive accountable**

- The structure and composition of South Africa’s judiciary;
- Independence of the Judiciary;
• Powers of the Constitutional Court; and
• Using the rule of law and rationality to hold the executive accountable.

Prescribed Readings
3) *Democratic Alliance v President of South Africa and Others* (CCT 122/11) [2012] ZACC 24; 2012 (12) BCLR 1297 (CC); 2013 (1) SA 248 (CC) (5 October 2012).

Wednesday 12 June: Traditional leaders and democracy
• The nature and history of traditional leadership in South Africa;
• The role of customary law and its relationship to other forms of law;
• The democracy deficit and the manner in which traditional leaders operate; and
• The role of gender in traditional leadership structures and practices.

Prescribed Readings
• Constitution of the Republic of South Africa, 1996 sections 211 and 212.
• *Maledu and Others v Iereleleng Bakgatla Mineral Resources (Pty) Limited and Another* (CCT265/17) [2018] ZACC 41; 2019 (1) BCLR 53 (CC); 2019 (2) SA 1 (CC) (25 October 2018)

Thursday 13 June: Oral examination