

Suggested citation

*Constitutional law for students: part 2.* 2020. Cape Town: UCT Libraries.

Constitutional Law for Students: Part 2

Published by UCT Libraries

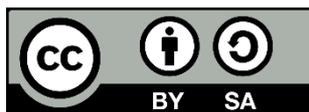
2020

ISBN 978-0-7992-2549-5

DOI [10.15641/0-7992-2549-5](https://doi.org/10.15641/0-7992-2549-5)

This work is licensed under a

[Creative Commons Attribution-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-sa/4.0/)



## PREFACE

Being an LLB student is one of the toughest experiences in the world. It has even been said that you should be working 60 hours per week (including lectures and tutorials) on your studies while studying towards an LLB. The most important course undoubtedly is Constitutional Law. In South Africa we live in a constitutional democracy where the Constitution is the supreme law. A thorough understanding of constitutional law is therefore imperative to all lawyers, irrespective of their area of practice, as the Constitution pervades all areas of law. I can say from personal experience that studying constitutional law is an especially daunting task. Given South Africa's history it is not surprising that the Constitutional Court has passed a significant number of judgments since its inception, students are then expected to know as many of these judgments as may be prescribed by the course convener. I remember, when I did the course, for my final constitutional law exam I had to know two textbooks and 7 course readers.

I began my Masters in Private Law and Human Rights at the University of Cape Town in 2015. During 2015 I also started a law tutoring business. I tutored every core course generally taught in an LLB degree. The law tutoring business has grown throughout the Western Cape with great success. Our team for this project consisted of myself and some of the top LLB and LLM students in the country. I am exceptionally proud and grateful to our team of authors: Geoffrey Allsop, Eshed Cohen, Emily Cooper, Bongji Maseko, Scott Roberts and Abigail Stander.

During December 2018 Dr. Raju and Ms. Claassen contacted me to discuss the possibility of writing a constitutional law textbook specifically designed to assist students, which would be distributed free of charge throughout the continent of Africa. I was elated and gladly accepted the opportunity to be part of this magnanimous social project. The goal was to formulate a textbook that would convey the content in a clear and concise manner while being as comprehensive as possible with respect to the breadth of the topics. Furthermore, the book was required to prepare students for test and exams.

In order to achieve these objectives, the following pedagogy was adopted: Firstly, the authors were all asked to utilize the simplest language possible and to explain all difficult concepts in an easily intellectually digestible manner. Secondly, each chapter would begin with an overview of the topics covered to give students the big picture of the chapter. To achieve this purpose numerous diagrams and tables are utilized. Thirdly, students are provided with case summaries in order to sharpen their understanding of some of the landmark decisions. These summaries also serve as an example of a method that can be used by students to summarize all other cases they will encounter during their LLB. Fourthly, the content of each chapter focuses, on what we believe to be, the most important aspects of the subject, which examiners usually focus their questions on during test and exams. Finally, we have included an array of questions, including multiple choice, short and long questions. We have also included memos to these questions. It is important to note, especially with regard to the short questions and to a higher degree with the long questions (with the multiple choice questions the point is that there is one correct answer), that there is generally no one right answer to a legal question: “there are many ways to skin a cat”, hence the art of advocacy. The memo is therefore merely a guideline on one of the ways the question may be answered; students should therefore not feel constrained by the memorandums constructed.

The aim of this book is to assist students from all walks of life with an additional learning aid to enable them to slay the beast that is constitutional law. Nelson Mandela said, “Education is the most powerful weapon which you can use to change the world”. If that is true, which I have no doubt that it is, then studying an LLB must be equivalent to a nuclear weapon in one’s arsenal. Who is the most powerful entity in a country if not the state itself? How is state power to be controlled? Answer: THE CONSTITUTION.

**Ebrahim Abrahams (LLB)(LLM)(UCT)**

*General Editor*

# Foreword

In 2017, UCT Libraries in collaboration with, the then, Dean of the Faculty of Law (Professor Penny Andrews), submitted an application for a University Capacity Development Programme (UCDP) grant for the development and publication of a constitutional law textbook via open access. The UCDP grant, which was funded by the Department of Higher Education, was intended to advance a coherent approach to support the underpinning principle of transformation. The protest action by the student body across South Africa, for affordable and decolonised education, contributed to the decision to investigate the publication of a diamond open access textbook.

Constitutional law is one of the most failed courses in legal studies. There are many factors contributing to the high failure rate, two of which include the high cost of prescribed textbooks and the denseness of legal text. There are a significant number of students who try to make do, without the prescribed textbook, by relying on limited number of prescribed textbooks that the libraries purchase. The result of poor access to the textbook is posited as a contributor to the high failure rate. The second contributing factor is the dense language which students, from second or later English speaking, have to navigate at their detriment. This textbook will address the aforementioned challenges.

The text for this book was written by some of the brightest students in the law programme at UCT, and peer-reviewed by a leading editor of legal journals. The compilation/writing of the content was managed by Golden Circle Tutoring. The text was written by the students, reviewed by the manager of the tutoring company and then submitted for external peer-review. Given the failure rate, there are mini workbooks incorporated into the textbook to help students do some self-testing; which is deemed useful for improved success.

Another feature of the textbook is its availability in audio format. UCT Libraries assert that the audio format will contribute to inclusivity, that is, students with visual and other challenges will now have access to a critical scholarly text. Another assertion

made is that students will now have the opportunity to listen to the book first before attempting to read it; this supports different learning styles.

The fact that this book is published via diamond open access means that every student in the country, taking a constitutional module/course, will have access to the book without having to pay for it. In the initial stage in the submission of the grant proposal; it was guesstimated that the student body will save millions of Rands. The free access to the textbook addresses the issue of affordable education and the decolonisation of prescribed scholarly literature. UCT Libraries, a driver of social justice within the open access movement, must also be acknowledged for investigating, experimenting in, and rolling-out this innovative open access textbook that will be freely accessible to all students and the public at large.

UCT Libraries would like to acknowledge the encouragement and support of Professor Penny Andrews who drew-up the framework of the book. Golden Circles Tutoring and Ebrahim Abrahams are acknowledged for: managing the compilation of the texts and, the management of the peer-review process. The contributors of the text are Geoffrey Allsop, Eshed Cohen, Emily Cooper, Bongzi Maseko, Scott Roberts and Abigail Stander. The text was narrated by a final year law student, Emma de Doncker, who spent a significant amount of time describing the graphics to ensure that the audio version was accurate and as clear as possible.

The UCT Libraries team responsible for the formatting of the text and the experimentation of the audio format was excellently led by Jill Claassen. Tamzyn Suliaman, from the Libraries' Research and Innovation section, spent significant time experimenting with the audio format and developing standard protocols for the text. The other library colleagues that were involved in this book are Faadiel Latief and Bonga Siyothula. UCT Libraries would like to express its gratitude to Amanda Petra-Barratt and Anthea Metcalf for the guidance with regard to compliance with the UCDP grant and DHET fund guidelines.

To the student body that will be using this textbook, enjoy the hard work of a highly dedicated team that knuckled down to make this book accessible; in more ways.

**Dr Reggie Raju**

Director: Research and Learning,  
UCT Libraries

**Jill Claassen**

Section Manager: Scholarly Communications and Research  
UCT Libraries

# Contents

7.	<b>Introduction to The Bill of Rights</b>	192
	<a href="#">PDF</a> <a href="#">EPUB</a> <a href="#">HTML</a>	
8.	<b>Equality</b>	308
	<a href="#">PDF</a> <a href="#">EPUB</a> <a href="#">HTML</a>	
9.	<b>The Rights to Dignity and Life</b>	354
	<a href="#">PDF</a> <a href="#">EPUB</a> <a href="#">HTML</a>	
10.	<b>Right to Freedom of Religion, Belief and Opinion</b>	390
	<a href="#">PDF</a> <a href="#">EPUB</a> <a href="#">HTML</a>	
11.	<b>Freedom of Expression</b>	430
	<a href="#">PDF</a> <a href="#">EPUB</a> <a href="#">HTML</a>	
12.	<b>Socio-Economic Rights</b>	480
	<a href="#">PDF</a> <a href="#">EPUB</a> <a href="#">HTML</a>	
13.	<b>Property</b>	537
	<a href="#">PDF</a> <a href="#">EPUB</a> <a href="#">HTML</a>	