HUMAN RIGHTS LAW (PBL634S)

Course Outline 2006

1 CONVENOR AND CONTACT DETAILS

Course convenor: Dr Danwood M Chirwa
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2 PRESENTATION AND ASSESSMENT

Human Rights Law is presented in the second semester. Dr Danwood M Chirwa is the course convenor. Presentation of the course will take the form of seminars. Dr Chirwa will lead the discussions of most of the seminars. Some seminars will be conducted by guest lecturers. The last two seminars will be conducted by the participants. The structure of the course and its assessment will be as follows:

- The course will be taught in a series of 11 weekly seminars held on Wednesday evenings between 5 pm and 7pm (or at another mutually acceptable time). The Venue is Room 5G. The topics of the seminars are included in this outline.
- Participants are required to write two assignments over the course of the semester. Each participant will present the second assignment towards the end of the course. The two assignments will contribute a total of 40% to the final mark.
- Class attendance is compulsory. Class participation will count 10% towards the final mark.
- An examination will be administered at the end of the course and will contribute 50% towards the final mark.

*Note: Amendments to the seminar topics and reading materials may be made during the course depending on legal developments in the field.*
3 OBJECTIVES OF THE COURSE

This course seeks to track the development of human rights jurisprudence in South Africa through the study of selected human rights topics. It seeks to provide students with an in-depth understanding of the South Africa Bill of Rights and the jurisprudence it has generated thus far. While the focus will be on the jurisprudence of the Constitutional Court, the jurisprudence of the High Courts and Supreme Court of Appeal will also be considered. More specifically, it will investigate the role of the Bill of Rights in transforming and reconstructing the South African Society in the new constitutional dispensation. The analysis of the Bill of Rights shall be conducted in an international and comparative perspective.

4 LEARNING OUTCOMES

By the end of the course you should be able to demonstrate:

- an advanced understanding of the South African Bill of Rights and its jurisprudence;
- the ability to critically analyse the South African Bill of Rights and its jurisprudence in international and comparative perspectives;
- an adequate understanding of the transformative potential of the Bill of Rights;
- how the Bill of Rights can be used to protect marginalised groups;
- the ability to answer problem questions and write essays logically, coherently and concisely; and
- the ability to communicate clearly in writing and orally.

5 ACHIEVEMENT

These learning outcomes will be achieved by students through:

- attending in lectures;
- reading reported cases, legislation, books and book chapters, articles and other relevant materials;
- writing assignments and examinations;
- participating in discussion in seminars;
- presenting assignments; and
- receiving specific and general feedback from lecturers aimed at fostering improvement.
6 SEMINAR TOPICS

SEMINAR ONE: 8/10 August 2006 – Adv. Johan De Vaal

INTRODUCTION (WITH A SPECIAL FOCUS ON JUSTICIABILITY)

NB: This and the following seminar will deal with introductory aspects of the Bill of Rights, namely – the structure of human rights litigation, justiciability, interpretation and limitation. Students are expected to read the first seven chapters of I Currie & J de Vaal The Bill of Rights Handbook (2005).

Questions for discussion

In Ferreira v Levin NO 1996 (1) SA 984 (CC); 1996 (1) BCLR 1 (CC), the South African Constitutional Court adopted an extremely broad approach to standing with regard to human rights suits. Has there been a change in this approach over the last few years.

Has this approach facilitated public interest litigation? Has the Courts approach to ripeness, mootness been similarly progressive. If not why not?

Readings:

*Ferreira v Levin NO 1996 (1) SA 984 (CC); 1996 (1) BCLR 1 (CC)
*Lawyers for Human Rights v Minister of Home Affairs 2004 (4) 125 (CC)
*Permanent Secretary, Department of Welfare, Eastern Cape v Ngxuza 2001 (4) SA 1184 (SCA)
*Maluleke v MEC, Health and Welfare, Northern Province 1999 (4) SA 267 (T)
*JT Publishing v Minister of Safety and Security 1997 (3) SA 514 (CC)
*President of the Ordinary Court Martial NO v Freedom of Expression Institute 1999 (4) BCLR 682 (CC)
*Independent Electoral Commission v Langeberg Municipality 2001 (3) 925 (CC)


Question for discussion

In *Islamic Unity Convention v Independent Broadcasting Authority* 2002 (4) SA 294 (CC), the Court held ‘It is already settled jurisprudence of this Court that a Court should not ordinarily decide a constitutional issue unless it is necessary to do so.’

This rule was abolished by the ‘one system of law approach’ adopted by the Constitutional Court in *Pharmaceutical Manufacturers Assoc of SA: In re Ex p President of the RSA* 2000 (2) SA 674 (CC) from paragraph 44. See also the following statement in *Van der Walt v Metcash Trading Ltd* 2002 (4) SA 317 (CC) at para 32:

> Whether one can speak of a non-constitutional issue in a constitutional democracy where the Constitution is the supreme law and all law and conduct has to conform to the Constitution is not free from doubt. However, as Judges who swore to uphold the Constitution, we must accept that such distinction exists and try to make sense of that distinction. It is therefore necessary to determine whether the conduct of the SCA as evidenced by these cases fell foul of the Constitution.

Will the ‘one system of law’ approach lead to a greater impact of the Constitution on private law than the Mhlungu/Zantsi rule referred to the Constitutional Court in *Islamic Unity Convention v Independent Broadcasting Authority*? Discuss with particular reference to the influence of the Constitution on the law of contract.

Readings:


*Camichele v Minister of Safety and Security* 2001 (4) SA 938 (CC), 2001 BCLR (10) 995 (CC).

*NK v Minister of Safety and Security* (CCT 52/04) (handed down on 13 June 2005).

*Du Plessis v De Klerk* 1996 (3) SA 850 (CC); 1996 (5) BCLR 658 (CC).

*Khumalo and others v Holomisa* 2002 (5) SA 401 (CC); 2002 (8) BCLR 771 (CC).


SEMINAR THREE: 23 August 2006 – Dr Danwood Chirwa

INTRODUCTION TO THE JUDICIAL PROTECTION OF SOCIO-ECONOMIC RIGHTS

Questions for discussion
Consider the arguments for and against socio-economic rights and give an opinion as to whether you would recommend their inclusion in a constitution?

Discuss various models of protecting socio-economic rights and their advantages and disadvantages.


SEMINAR FOUR: 6 September 2006 – Dr Danwood Chirwa

SOCIO-ECONOMIC RIGHTS JURISPRUDENCE IN SOUTH AFRICA

Questions for discussion
Identify the merits and demerits of the reasonableness standard adopted by the South African Constitutional Court as a benchmark for measuring compliance by the state with socio-economic rights obligations?

Was the Constitutional Court right to reject the minimum core concept as a key benchmark for holding the state accountable for socio-economic rights?

Readings:

* Modder East Squatters v Modderklip Boerdery (Pty) Ltd 2004 (8) BCLR 821 (SCA).

* Government of the RSA v Grootboom 2000 (11) BCLR 1169.

* Khosa and others v Minister of Social Development and others 2004 (6) BCLR 569.

* Minister of Health v Treatment Action Campaign (1) 2002 (10) BCLR 1033 (CC).
Soobramoney v Minister of Health 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696 (CC).


SEMINAR FIVE: 8 September 2006 – Dr Danwood Chirwa

REMEDIES FOR HUMAN RIGHTS (ESPECIALLY SOCIO-ECONOMIC RIGHTS)

Questions for discussion

Are the remedies that South African courts have granted in relation to socio-economic rights, been appropriate and effective? If not, what remedies would be appropriate and effective for these rights?

Reading materials

* Fose v Minister of Safety and Security 1997 (3) SA 786 (CC).

* Government of the RSA v Grootboom 2000 (11) BCLR 1169.

* Minister of Health v Treatment Action Campaign (1) 2002 (10) BCLR 1033.

* Jayiya v MEC for Welfare, Eastern Cape 2004 (2) SA 611 (SCA); [2003] 2 ALL SA 223.

* Kate v MEC for the Department of Welfare, Eastern Cape 2005 (1) SA 141 (SE).


SEMINAR SIX: 20 September 2006 – Prof Pierre De Vos

EQUALITY AND SOCIAL JUSTICE

Questions for discussion

What is equality, protected in section 9 of the Constitution, supposed to achieve? In other words, what is or should its end-goal be?
Does the notion of substantive equality (with reference to the so called “impact test” endorsed by the Constitutional Court) place a positive duty on the state and other actors to take steps to “achieve” equality and if so, what are the limits of the required action?

What is the relationship between the right to equality guaranteed in section 9 of the Constitution and the social and economic rights protected in section 26 and 27?

Readings
* Pretoria City Council v Walker 1998 (2) SA 363 (CC); 1998 (3) BCLR 257 (CC).
* Khosa and Others v Minister of Social Development and Others 2004 (6) BCLR 569 (CC).
* Minister of Finance v Van Heerden 2004 (6) 121 (CC).
* Jooste v Score Supermarket Trading (Pty) Ltd (Minister of Labour Intervening) 1999 (2) sa 1 (CC); 1999 (2) BCLR 139.
* Volks NO v Robinson and Others 2005 (5) BCLR 446.


**SEMINAR SEVEN: 27 September 2006 – Dr Danwood Chirwa**

**JUST ADMINISTRATIVE ACTION**

**Question for discussion**

What is the appropriate role of courts in regulating the exercise of public functions and powers in South Africa’s post-apartheid and new constitutional order?

**Readings:**
Minister of Health and another v New Clicks SA (Pty) Ltd & others 2005 JOL 15636 (CC).
President of the RSA v Sarfu 1999 (10) BCLR 1059 (CC).
* Pharmaceutical Manufacturers Association of SA v President of the RSA 2000 (3) BCLR 241 (CC).
* Logbro Properties CC v Bedderson NO and others 2003 (2) SA 460 (SCA).
* Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others 2004 (7) 687 (CC).


SEMINAR EIGHT: 4 October 2006 – Dr Danwood Chirwa
THE CONSTITUTION AND SOCIAL ISSUES

Questions for discussion:
What is the appropriate role for courts in a constitutional democracy in regulating the most private: The human body? How do courts balance public interest and private dignity?

Readings:
* Prince v President, Cape Law Soc 2002 (2) SA 794 (CC) (2002 (1) SACR 431; 2002 (3) BCLR 231): Use of Marijuana


* Fourie and Bonthuys v The Minister of Home Affairs (SCA, 30 November 2004): gay marriage.

* Case and Another v Minister of Safety and Security and Others; Curtis v Minister of Safety and Security and Others 1996 (3) SA 617 (CC) (1996 (5) BCLR 609): pornography

* De Reuck v Director of Public Prosecutions, Witwatersrand Local Division 2004 (1) SA 406 (CC) (2003 (12) BCLR 1333): pornography

* Wessel le Roux ‘Sex work, the right to occupational freedom and the constitutional politics of recognition’ (2003) 120 (3) South African Law Journal 452.


Question for discussion

Does section 25 of the South African Constitution and the manner in which it has been interpreted by South Africa courts thus far establish an appropriate formula to facilitate land reform in the South African context?

Reading materials

*Mkontwana v Nelson Mandela Metropolitan Municipality and Another* 2005 (1) SA 530 (CC).


*Minister of Transport v Du Toit* 2005 (1) SA 16 (SCA).


T Allen ‘Commonwealth Constitutions and the right not to be deprived of property’ (1993) 42 *International and Comparative Law Quarterly* 523.


Students are free to write on a topic of their choice within the confines of the course.