

Constitutional Law Notes

(C1)

Constitutional law consists of legal rules relating to characteristics of the state.

Characteristics of the state include:

- Territory
- People/population
- Government authority and government organs
- Independence
- Juristic personality
- Legal system

Constitutional law as part of the law

- The legal rules of a state normally apply within a particular physical space, the territory of that state.
- With certain exceptions, the legal rules of a state apply to all persons present in the territory of that state, irrespective of whether citizens or aliens.
- Rules of law apply to natural and juristic persons.

A state may be regarded as a juristic person. A major part of constitutional law consists of rules that regulate the institution, functioning and powers of government bodies which act and exercise government authority on behalf of the state.

- Rules of law are created by custom (common law and customary law), legislative actions (legislation or statutory law) and the courts.

Legal rules always reflect the religious, ethical, moral, social, economic and political convictions of those who have made it.

The South African Constitution expressly articulates specific values. Section 1 of the Constitution provides that the Republic is one, sovereign, democratic state founded on the following values:

(a) Human dignity, the achievement of equality and the advancement of human rights and freedoms

(b) Non-racialism and non-sexism

(c) Supremacy of the constitution and the rule of law.

(d) Universal adult suffrage, a national common voter's roll, regular elections, and a multi-party system of democratic government to ensure accountability, responsiveness and openness.

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