

CONSTITUTIONAL LAW NOTES:

CHAPTER 1

Sources of constitutional law

Binding sources

1. The constitution: is a body of rules, which govern the exercise of state authority, as well as the relationships between citizens of the state and organs of state.
2. Legislation
3. Common law: is the unwritten law of SA, in the sense that it isn't contained in legislation.
4. Case law: is the practical application of constitutional principles.
5. International law: S39 (1) states that courts **MUST** consider international law.

Non-binding sources:

1. Academic writings
2. Policy documents
3. Foreign law

The Birth of the constitution

BEFORE 1994: SA law was characterized by a culture of authority. Parliament commanded law and there wasn't room for individuals to challenge government action. People were expected to obey what the government dictated. Parliament was sovereign, so laws could be adopted even if they were unfair or discriminatory and these laws couldn't be challenged in court.

The only judicial review was to ensure that parliament followed the correct procedure when adopting the law. This apartheid regime led to the fact that SA became isolated internationally.

So multi party negotiations were held – these looked at what should be included in the constitution and the way that it should be adopted.

2 contradictory positions:

1. Former liberation movements insisted that the new constitution would only be legitimate if it was adopted by a democratically elected body (**majority**)
2. Other groups were afraid that a constitution adopted by a democratically elected representative wouldn't address the fears of **minority** groups and might result in tyranny of the majority.

Section 35 4 Notes Answers

SJ Ball



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Table of Contents Section 35 4 Notes Answers

1. Understanding the eBook Section 35 4 Notes Answers
 - The Rise of Digital Reading Section 35 4 Notes Answers
 - Advantages of eBooks Over Traditional Books
2. Identifying Section 35 4 Notes Answers
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Section 35 4 Notes Answers
 - User-Friendly Interface
4. Exploring eBook Recommendations from Section 35 4 Notes Answers
 - Personalized Recommendations
 - Section 35 4 Notes Answers User Reviews and Ratings
 - Section 35 4 Notes Answers and Bestseller Lists
5. Accessing Section 35 4 Notes Answers Free and Paid eBooks
 - Section 35 4 Notes Answers Public Domain eBooks

- Section 35 4 Notes Answers eBook Subscription Services
- Section 35 4 Notes Answers Budget-Friendly Options
- 6. Navigating Section 35 4 Notes Answers eBook Formats
 - ePub, PDF, MOBI, and More
 - Section 35 4 Notes Answers Compatibility with Devices
 - Section 35 4 Notes Answers Enhanced eBook Features
- 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Section 35 4 Notes Answers
 - Highlighting and Note-Taking Section 35 4 Notes Answers
 - Interactive Elements Section 35 4 Notes Answers
- 8. Staying Engaged with Section 35 4 Notes Answers
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Section 35 4 Notes Answers
- 9. Balancing eBooks and Physical Books Section 35 4 Notes Answers
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Section 35 4 Notes Answers
- 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine Section 35 4 Notes Answers
 - Setting Reading Goals Section 35 4 Notes Answers
 - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Section 35 4 Notes Answers
 - Fact-Checking eBook Content of Section 35 4 Notes Answers
 - Distinguishing Credible Sources
- 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks

14. Embracing eBook Trends

- Integration of Multimedia Elements
- Interactive and Gamified eBooks

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