Constitutional Litigation

By Max du Plessis, Glenn Penfold and Jason Brickhill
Cape Town
Juta
(2013) 1st edition
Price: R 325 (incl VAT)
216 pages (soft cover)

Constitutional Litigation is a valuable addition to the library of books on post-apartheid constitutional law in South Africa. Authored by three lawyers, skilled in the craft of constitutional litigation themselves, the book offers practical guidance as to the procedure of constitutional litigation.

Twenty years into constitutional democracy, the law of South Africa has been shaken to its roots by the imperative that all law, including common law, must comply with the Constitution, particularly the Bill of Rights. No area of law, not even that of contract law, is immune from constitutional scrutiny. The result has been a burgeoning area of legal practice that requires the astute application of constitutional principles and provisions to legal disputes. The Constitution goes further and stipulates that the state must take certain steps in relation to the realisation of rights in the Bill of Rights. This has led to a new body of law in which the state is held accountable for its (non)compliance with these duties, often in relation to socio-economic rights.

The book guides the practitioner through rules of procedure that are specific to constitutional litigation in a manner that is easy to follow. The contents are comprehensive and with over ten chapters, the book covers the typical procedural issues that a practitioner will encounter in constitutional litigation. In addition to the prosaic procedural matters of leave to appeal, confirmation proceedings and the like, the book also takes one through the terrain of the relaxed standing requirements in constitutional matters, the expanded role of amici curiae and the various remedial options that are available to parties. These subjects involve more than a mechanical technique of constitutional litigation, but a nuanced understanding of what is at stake in such litigation. Given the breadth of the subject-matter it is not surprising that the authors do not study the topics in great depth. Instead, they offer detailed references that will allow a reader who wishes to explore an issue to be pointed in the right direction.

As an aid to readers, the book also reproduces the rules of the Constitutional Court, the Constitutional Court Practice Directives and rules of various courts governing amici curiae as appendices. In keeping with the functional style of the book, the authors also dedicate a chapter to ‘Hearings in the Constitutional Court’, with such pragmatic advice as how to address the justices of the court such as, by their surname rather than the antiquated form of address in other superior courts; a habit that can take counsel a few attempts to break.

This book is recommended reading for those wanting to hone their skills in constitutional practice. It is certainly my hope that it will contribute to a swelling of the ranks of constitutional lawyers. For, 20 years on, the Constitution has proven its mettle and will remain an important source of the development of our law as our democracy matures.

Adila Hassim is a member of the Thulamela Group of Advocates and is head of litigation at Section27.