

LEGISTS CONSTITUTIONAL LAW GUIDE

Chapter One:

Introduction to Constitutional Law

Constitutional law forms the bedrock of Ghana's legal and political system. It outlines the structure, functions, and limits of governmental power and enshrines the fundamental rights of citizens. The 1992 Constitution of Ghana is the supreme law of the land, and all other laws derive their legitimacy from it.

This study is organized into four core parts:

1. Doctrines or Theories of Constitutional Law
2. Major Organs of Government
3. Minor Constitutional Organs and Institutions
4. Human Rights and their Enforcement

1. Doctrines or Theories of Constitutional Law

These are foundational legal principles that underpin the structure and operation of the state under the Constitution.

A. Constitutional Supremacy and Enforcement

- The Constitution is the supreme law of Ghana (Article 1(2)).
- Any law, act or omission inconsistent with the Constitution is void.
- Enforcement mechanisms include Articles 2(1) and 130 citizens can challenge unconstitutional acts in the Supreme Court.

B. Constitutionalism

- A system of governance based on adherence to constitutional principles.
- Emphasizes limited government, accountability, transparency, and respect for rule of law.
- It is about living by the spirit and letter of the Constitution, not just having one.

C. Rule of Law

- Coined by A.V. Dicey: implies equality before the law, legal certainty, and supremacy of law over arbitrary power.

- In Ghana, it is reinforced through independent courts and legal safeguards for individuals.

D. Separation of Powers

- The division of state authority into three branches: Executive, Legislature, and Judiciary.
- Each organ is independent but interdependent, with checks and balances (see Articles 58–107).
- Prevents abuse of power and promotes accountability.

E. Judicial Review

- The power of the courts, especially the Supreme Court, to interpret the Constitution and nullify unconstitutional acts.
- Rooted in Article 2 and Article 130.
- Ensures all branches of government remain within constitutional bounds.

F. Natural Justice

- Principles of fairness in legal and administrative proceedings:
 - *Audi alteram partem* – the right to be heard.
 - *Nemo iudex in causa sua* – no one should judge their own case.
- These principles guide administrative bodies and courts (Article 23).

G. Constitutional Effect of Coups and Revolutions

- Ghana's constitutional history has been interrupted by military coups (1966, 1972, 1979, 1981).
- Each coup suspended the Constitution and led to a new legal order.
- The 1992 Constitution marks a return to constitutional democracy, reinforced by Article 1(2) prohibiting unconstitutional changes of government.

History and Evolution of Ghanaian Constitutions

- 1957: Independence Constitution
- 1960: Republican Constitution
- 1969 & 1979: Second and Third Republic Constitutions
- 1992: Current Fourth Republic Constitution this is the longest lasting, product of consultative process post-military rule.

2. Major Organs of Government

These are the three branches of government defined in the Constitution, each with specific powers and responsibilities.

A. Executive (Articles 57–78)

- Headed by the President ,Head of State, Government, and Commander-in-Chief.
- Includes the Vice President, Council of Ministers, and other executive agencies.
- Responsible for policy implementation, foreign relations, and national administration.

B. Legislature (Articles 93–123)

- Unicameral Parliament: responsible for law-making.
- Exercises oversight over the Executive and approves national budgets.
- Members are elected; Parliament also includes a Speaker and Committees.

C. Judiciary (Articles 125–161)

- Independent arm of government responsible for interpreting the law.
- Headed by the Chief Justice and Supreme Court.
- Includes Court of Appeal, High Courts, Circuit and District Courts.
- Judiciary plays a key role in protecting rights and upholding the Constitution through judicial review.

3. Minor Constitutional Organs and Institutions

These are institutions established by the Constitution to support democracy, human rights, and good governance.

A. Electoral Commission (Article 43–46)

- Independent body responsible for organizing and supervising public elections and referenda.
- Guarantees free and fair elections, a cornerstone of constitutional democracy.

B. Commission on Human Rights and Administrative Justice (CHRAJ) (Article 216–230)

- Mandated to promote and protect fundamental human rights and administrative justice.
- Can investigate complaints against public officials and institutions.
- Also functions as Ghana’s Ombudsman.

C. Committees of Enquiry (Article 278)

- Appointed to investigate matters of public interest.
- Must observe rules of natural justice in their proceedings.
- Their findings can influence policy and legal reforms.

D. Chieftaincy as an Institution (Articles 270–277)

- Recognized by the Constitution as a vital cultural and traditional institution.

- Regulated by the National and Regional Houses of Chiefs.
- Chieftaincy disputes fall outside the jurisdiction of Parliament and government.

E. Media and the National Media Commission (Article 167)

- The media is guaranteed freedom and independence (Article 162).
- The National Media Commission promotes professional standards and protects media freedom.
- No censorship permitted, except for national security, public order or morality.

F. Public Bodies (e.g., Lands Commission, Audit Service)

- Established to manage specific sectors like lands, finance, procurement, and auditing.
- Function independently but within the constitutional framework.
- Subject to parliamentary oversight.

G. Council of State (Article 89–92)

- Advisory body to the President.
- Composed of eminent citizens including former CJs, IGs, and regional representatives.
- Provides non-binding counsel on national issues.

4. Human Rights and Enforcement

Chapter 5 of the Constitution provides a comprehensive bill of rights, enforceable by the courts.

A. Chapter 5 Rights and Freedoms (Articles 12–32)

- Include civil, political, economic, social, and cultural rights.
- Examples: Right to life, personal liberty, dignity, fair trial, equality, privacy, association, religion, and education.
- Also includes socio-economic rights (e.g., work, healthcare, shelter).

B. Enforcement of Human Rights

- **Article 33:** Right to bring an action for enforcement of fundamental rights.
- **Article 2(1):** Allows anyone to challenge a constitutional breach.
- **Article 130:** Exclusive jurisdiction of the Supreme Court in constitutional interpretation.
- **Article 142:** Establishes the High Court's jurisdiction in enforcement of rights.

C. Political Rights

- Right to vote, form political parties, participate in public life.
- Universal adult suffrage guaranteed.

- Electoral Commission ensures the integrity of these rights.

D. Media Rights and Freedoms

- Freedom of expression and media (Articles 162–173).
- No licensing of newspapers or media houses.
- Guarantees free press as essential to democratic governance.

E. International Human Rights Instruments

- Ghana is a signatory to several human rights treaties:
 - African Charter on Human and Peoples' Rights
 - UN Human Rights Treaties (e.g., ICCPR, ICESCR, CEDAW, CRC)
- Courts and CHRAJ may refer to international norms in interpreting rights.

F. Citizenship (Articles 6–11)

- Defines who is a Ghanaian citizen: by birth, descent, registration or naturalization.
- Dual citizenship permitted with conditions.
- Citizenship rights include voting, protection abroad, and access to public services.

Conclusion

The study of Constitutional Law in Ghana involves understanding the fundamental principles, institutions, and rights that govern the state and protect individuals. The 1992 Constitution not only provides a legal framework but also embodies the aspirations of the Ghanaian people for justice, freedom, development, and democratic governance. The effective functioning of constitutional doctrines, institutions, and rights enforcement mechanisms is essential for the sustenance of constitutional democracy in Ghana.