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## MAGCO LEGAL LESSONS #29

### LEGAL TOPIC: THE CONSTITUTION OF TRINIDAD AND TOBAGO

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### *SUPREMACY OF THE CONSTITUTION*

The Constitution of The Republic of Trinidad And Tobago Act Chapter 1:01 (hereinafter referred to as “the Constitution”) is the supreme law of the land. The Constitution declares that the Republic of Trinidad and Tobago is a sovereign democratic State: **Section 1 (1) of the Constitution. Section 2 of the Constitution** states that it is the supreme law of Trinidad and Tobago, and any other law that is inconsistent with the Constitution is void to the extent of the inconsistency.

### *ARMS OF GOVERNMENT*

There are three arms of Government namely, the Executive, the Legislature and the Judiciary. We will now look at each arm of Government in turn.

#### *Executive*

By virtue of **section 22 of the Constitution**, a President of Trinidad and Tobago is elected in accordance with the provisions of the third Chapter and is the Head of State and Commander-in-Chief of the armed forces.

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## ***Legislature***

**Section 39 of the Constitution** provides for the Legislature or Parliament of Trinidad and Tobago. The section states that the Parliament of Trinidad and Tobago shall consist of the President, the Senate and the House of Representatives.

The Senate consist of THIRTY-ONE (31) members.

The House of Representatives consists of FORTY ONE (41) members or such number of members as corresponds with the number of constituencies: **Section 46(2) of the Constitution**.

**Section 53 of the Constitution** confers a wide power of law-making to the Parliament of Trinidad and Tobago. The section states,

*“53. Parliament may make laws for the peace, order and good government of Trinidad and Tobago, so, however, that the provisions of this Constitution or (in so far as it forms part of the law of Trinidad and Tobago) the Trinidad and Tobago Independence Act 1962 of the United Kingdom may not be altered except in accordance with the provisions of section 54.”*

## ***Judiciary***

**Chapter 7** provides for the Judicature. **Section 99 of the Constitution** provides for a Supreme Court of Judicature for Trinidad and Tobago consisting of a High Court of Justice and a Court of Appeal with such jurisdiction and powers as are conferred on those Courts respectively by this Constitution or any other law. The Constitution provides, *inter alia*, for the appointment (**section 104**), tenure (**section 106**) and removal from office of judges (**section 137**).

The principle of judicial independence has been widely acknowledged as an integral feature of Trinidad and Tobago’s Constitution and in this context it refers to the independence of the Judiciary from the direction, manipulation and/or control by the other two arms of Government, being the Legislature and the Executive. Thus the Judiciary must have that independence to be able to tell the Legislature, or even the Executive, that they’re in the wrong, once the case is appropriate and merits such a decision.

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In the case of **Hinds v Queen [1977] A.C. 195**, Lord Diplock, while considering the principle of judicial independence stated,

*“What ... is implicit in the very structure of a constitution on the Westminster Model is that judicial power, however it is to be distributed from time to time between various courts, is to continue to be vested in persons appointed to hold judicial office in the manner and on the terms laid down in the Chapter dealing with the Judicature, even though this is not expressly stated in the Constitution.”*

It is important to understand that the feature of judicial independence is not self-contained in a single provision of the Constitution but rather, it emanates from the entirety of Chapter 7 of the Constitution.

## **SEPARATION OF POWERS**

The preamble of the Constitution recognises the respect for principles of social justice, our belief in a democratic society, due respect for lawfully constituted authority, respect for moral and spiritual values and the rule of law. An important element in our functioning democracy is the doctrine of the separation of powers. The Constitution entrenches the principle of the separation of powers between the legislature, the executive, and the judiciary. What this simply means is that each arm of Government has separate and distinct roles, rights and responsibilities and each should stay in their own lane. This is why sometimes you hear persons complaining of Judicial over-reach, where they claim that the Courts, by their decisions are attempting to make Laws; which is the exclusive preserve of the Legislature. According to the Court in **Ahnee v DPP DPP [1999] 2 WLR 1305**, under the Constitution one branch of government may not trespass upon the province of any other. The Court recognized that the Constitution gave to each arm of government such powers as were deemed to be necessary in order to discharge the functions of a legislature, an executive and a judiciary. Practically, however, it is important to note that there is an air of interdependence which each arm has on the other in the operationalisation of civil society. In the case of **Matthews v The State of Trinidad and Tobago [2004] 3 WLR 812** the Privy Council noted that *“the*

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*principle of the separation of powers is not an overriding supra-constitutional principle but a description of how the powers under a real constitution are divided”.*

The doctrine of separation of powers should not then be viewed as distinct, airtight, compartmentalisation of powers but merely a system of checks and balances in the distribution of power to protect the citizens from autocracy: **Hinds (supra)**. The concept of separation of the three arms of government is integral to modern government. The doctrine distributes power in a manner which prevents abuse of power by any arm of government and encourages co-operation between the said arms.

In *the locus classicus* case of **Hinds (supra)**, Lord Diplock discussed the doctrine of the separation of powers in the context of the Westminster model Constitutions such as ours. The Learned Judge described the doctrine as “*a basic principle*” and by demonstrating how the doctrine, though not expressly stated in the Constitution, was nonetheless incorporated therein,

*“Because of this a great deal can be, and in drafting practice often is, left to necessary implication from the adoption in the new constitution of a governmental structure which makes provision for a legislature, an executive and judicature. It is taken for granted that the basic principle of separation of powers will apply to the exercise of their respective functions by these three organs of government. Thus the constitution does not normally contain any express prohibition upon the exercise of legislative powers by the executive or of judicial powers by either the executive or the legislature.*

The Court went on to explain that it is implicit in the very structure of a Constitution on the Westminster model that judicial power however it be distributed from time to time between various courts, is to continue to be vested in persons appointed to hold judicial office in the manner and on the terms laid down in the Chapter dealing with the judicature, even though this is not expressly stated in the Constitution: **Liyanage v The Queen [1967] 1 A.C. 259, 287-288**. The Constitution includes a

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Chapter dealing with fundamental rights and freedoms. In **Hinds (supra)**, the Court posited that the provisions of this Chapter form part of the substantive law of the state and “*until amended by whatever special procedure is laid down in the Constitution for this purpose, impose a fetter upon the exercise by the legislature, the executive and the judiciary of the plenitude of their respective powers.*”

## **FUNDAMENTAL HUMAN RIGHTS**

The Constitution guarantees persons their fundamental rights. **Chapter 1 of the Constitution** recognises and protects the Fundamental Human Rights and Freedoms. **Section 4 of the Constitution** states,

*“4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:*

*(a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;*

*(b) the right of the individual to equality before the law and the protection of the law;*

*(c) the right of the individual to respect for his private and family life;*

*(d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;*

*(e) the right to join political parties and to express political views;*

*(f) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward;*

*(g) freedom of movement;*

*(h) freedom of conscience and religious belief and observance;*

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- (i) freedom of thought and expression;*
- (j) freedom of association and assembly; and*
- (k) freedom of the press.”*

**Section 5(1) of the Constitution** prohibits the abrogation, abridgment or infringement of the rights in section 4 of the Constitution. It states:

*“5. (1) Except as is otherwise expressly provided in this Chapter and in section 54,4 no law may abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared. “*

However, **section 13 of the Constitution** provides an exception whereby Parliament can make laws which are inconsistent with **sections 4 and 5 of the Constitution**. It states,

*“13. (1) An Act to which this section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 and, if any such Act does so declare, it shall have effect accordingly unless the Act is shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.”*

In order for any law inconsistent with sections 4 and 5 of the Constitution to be deemed valid, the Bill for the Act must be passed by both Houses of Parliament and at the final vote thereon in each House must be supported by the votes of not less than three-fifths of all the members of that House: **Section 13 (2) of the Constitution**.

### ***PROVISION FOR REDRESS***

**Section 14 of the Constitution** provides the mechanisms by which the rights in Chapter 1 (including those in section 4) may be enforced before the Courts. The section states,

*“14. (1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of this Chapter has been, is being, or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress by way of originating motion.”*

### **SAVINGS LAW CLAUSE**

The savings clause in the Constitution of Trinidad and Tobago is a general savings clause that saves all existing law from challenge including laws which are incompatible with the fundamental rights guarantee also in the Constitution.

**Section 6** provides:

*“6. (1) Nothing in sections 4 and 5 shall invalidate—*

*(a) an existing law;*

*(b) an enactment that repeals and re-enacts an existing law without alteration; or*

*(c) an enactment that alters an existing law but does not derogate from any fundamental right guaranteed by this Chapter in a manner in which or to an extent to which the existing law did not previously derogate from that right.*

*(2) Where an enactment repeals and re-enacts with modifications an existing law and is held to derogate from any fundamental right guaranteed by this Chapter in a manner in which or to an extent to which the existing law did not previously derogate from that right then, subject to sections 13 and 54, the provisions of the existing law shall be substituted for such of the provisions of the enactment as are held to derogate from the fundamental right in a manner in which or to an extent to which the existing law did not previously derogate from that right.”*

In the case of **Matthew (supra)** the appellant appealed against the mandatory death sentence imposed upon him under legislation following his conviction for

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murder. It was common ground that the penalty contravened the right to life enshrined in the Constitution of Trinidad and Tobago by virtue of section 4 of the Constitution. The Court held, *inter alia*, that **section 6(1) of the Constitution** expressly provided that nothing in **sections 4 and 5 of the Constitution** was to invalidate any existing law. Since section 4 of the particular Act was already in existence when the Constitution came into force, whether or not it is an infringement of the right to life or even whether it was a cruel and unusual punishment, it was prevented by **section 6(1) of the Constitution** from being unconstitutional. In that case, Lord Hoffman stated that,

*“The language and purpose of section 6(1) are so clear that whatever may be their Lordships' views about the morality or efficacy of the death penalty, they are bound as a court of law to give effect to it”.*

The Court also held that in contrast with the broad and liberal construction to be given to constitutional provisions generally, and in particular those directed to the protection of human rights, the proper approach to the interpretation of savings clauses should be “strict and narrow.”

Of course the Constitution is a living breathing thing and as time goes by it would be in need of revision, improvement and reform however because of the fundamental and tremendously powerful nature of this document, any such reform is always fraught with controversy, discordance and contention but it still represents the necessary growing pains of a young Nation such as ours.

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