

# Question 1

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Separation of Powers and Checks and Balances The principle of separation of powers refers to the division of governmental authority into the three branches of government i. e. Legislature, Executive and the Judiciary, each with specified duties on which neither of the other branches can encroach; a constitutional doctrine of checks and balances designed to protect the people against tyranny. 1 This 1787 doctrine was meant to prevent the exercise of arbitrary power. The constitution does not entail an express injunction to strictly divide the three powers, but grants them with the authority to legislate, execute, and adjudicate, and further provides the means in which the branches could resist interference from others. This was also the position of Montesquieu, 2 who was concerned with the preservation of political liberty.

Theoretically, each branch has unique and particular functions that are suitable to either. The constitution provides the powers of the legislature, which is generally to make laws and to legislate. The executive has the authority to made decisions on administration and enforcing laws, and the judiciary is mandated with interpreting laws and punishing those who break them. The goal of the Constitution is to prevent tyranny by dispersing power so that no one body has a monopoly. An absolute separation of these powers with none overlapping with the other is not practical and would put the government at a standstill.

The doctrine does not demand absolute or rigid separation as it is not possible. The Federal Constitution offers a relaxed version of the separation of powers. These roles actually overlap and one power finds itself doing the work of the other in the process of doing its duties. They also cat as checks and balances for each other. For example, the power to make laws belong to

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the parliament and courts has the interpretative role of the same laws. Courts also checks on the executive by reviewing their decisions and striking them on grounds of judicial review. The executive also interferes with the judiciary as it appoints judges in the judiciary and is clothed with the powers of prerogative pardon. This undermines courts executive powers to prevent interference with their proceedings and to secure enforcement of their decisions. Further, the Senate has a role in appointments and treaties checks on the President. The Congress also has the authority to prevent fraud and abuse of authority in the other two branches.

Therefore, separation of powers is only a theoretical rather than a practical doctrine. From this, it is quite doubtful whether it is necessary to attribute that clear distinction of roles to a theory of the separation of powers as put forth by Lord Diplock in *Duport Steels v Sirs*.<sup>3</sup> Clear separation of powers is impossible in a democratic society.

#### Bibliography

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Phillips, O. Hood Phillips' Constitutional and Administrative Law (1987 Sweet and Maxwell London)

[1980] 1 W. L. R. 142, 157. Also, *Chokolongo v Attorney General of Trinidad and Tobago* [1981] 1 W. L. R. 106, 110 per Lord Diplock