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## 1. ROLE OF LAWYERS

### Perceptions of the Lawyer & Stereotypes

- Lawyers are mostly perceived as elitist, aloof, greedy, devious (LLM, p. 12)
- ‘many people have inaccurate or distorted views of what lawyers do, based in some instances on subjective personal experience and in others on images gleaned from literature, film or newspaper reportage’ (LLM, p. 12)
- Often stereotyped: the manipulator, amorality of taking on a client for the fee regardless of the justice, aiding the rich and powerful to evade the law (LLM, p. 12)
- ‘perceptions born of lack of understanding of the way in which lawyers serve their clients’ (LLM, p.12)
- Stephen Nathanson offers some popular perceptions of lawyers...
  1. *The lawyer as distorter of truth*
    - Derived from the misunderstanding of the adversary system & lawyers role. Role is to represent client and persuade court on the basis of evidence, NOT find ‘truth’ or ‘justice’.
  2. *The lawyer as paper generator*
    - Much work of a lawyer involves a lot of paper work (drafting, analysing, organising documents). Reality is that the paper record is necessary for the efficient conduct of legal business.
  3. *The lawyer as sorcerer*
    - Legal jargon obscures the truth and confuses the layperson – creating an image of superiority and trickery.
  4. *The lawyer as hero*
    - Exemplified by Atticus Finch. The lawyer who stands up for what he believes is right, regardless of public approbation or pressure.

### What is ‘Legal Work’?

- Broad terms: to advise and represent clients, for fees for service.
- The practice of law may thus be regarded as problem solving (LLM, p. 18).
- To resolve a dispute, to investigate a claim, to avoid a disadvantage, to recover a loss or compensation, to negotiate an agreement
- Can be litigious or non-litigious

## **6. ROLE OF THE JUDICIARY**

LLM, Chapter 5, p. 96.

### **Role of a Judge**

- To adjudicate disputes in a court of law
- The environment [of the judiciary] is political in the sense that the decisions of the court have had political consequences, but not in the sense that the judges themselves had adopted a particular political ideology in the application of their judgements (LLM, p. 99)

### **What is Meant by Judicial Independence/Separation of Powers?**

- Separation of powers refers to the rule of law, which ensures there is independent between the government, judiciary and legislative body.
- Judges are expected to be independent of the government in their administration of the law. (LLM, p. 96)
- Independence is integral and essential to the maintenance of impartiality and objectivity in the administration of the law, and thus to the expectation of citizens that justice will be done according to law.
- ‘It is not a question of independence for judges, but, rather, independence of the justice system, with the judges free to do justice without fear or favour and protected from the power and influence of the State and from all other influences that may affect their impartiality’ (Stephen, cited in LLM, p. 96)
- ‘independence of judgement is the very essence of the doing of justice’ (Stephen, cited in LLM, p.96)

### **How Does the Judiciary Remain Independent?**

- It is improper for any person to seek to influence a judge in the exercise of their jurisdiction, to do so is a criminal offence
  - Crimes Act 1900 (NSW) ss 312, 319: Perverting the Course of Justice
- Judges salaries are fixed independently of government
- Judicial pronouncements are privileged against defamation action
- The adoption of court dress (robes & judicial wig) which serve to provide a measure of anonymity and thus of apparent impartiality

## 7. ACCESS TO JUSTICE: SOCIAL/CULTURAL

### Factors Contributing to Social & Legal Inequality

#### *Location and Delivery of Legal Services (LLM, p.157-158)*

- 41% of legal practices (NSW & ACT)
- 30% of legal practices (VIC)
- 16.5% of legal practices (QLD)
- 41% of total employment & 45% total income– NSW & ACT
- All of the top tier law firms, most government and corporate lawyers, and almost all barristers are located in/adjacent to the CBD of those cities.
- ‘as smaller rural communities decline in tandem with the economic and demographic changes affecting them, the availability of legal services in those areas has also declined’ (LLM, p. 158)
- Withdrawal of many government services in smaller towns, and closure of local courts at summary levels. Access to the summary courts for those people has shifted to the nearest regional centre.
- HOWEVER, intermediate courts and Supreme courts continue to operate circuit hearings in major regional centres.
- ‘access for people in rural areas, and to a lesser extent in regional cities, is more limited in terms of choice of venue and time, and more likely to be more costly by reason of having to travel and take time off work for longer periods than if these facilities were more localised.’ (LLM, p. 158).

#### *Focus on Oral Communication/Language Barriers*

- The adversarial nature of our court process also means that those who are unable to effectively communicate face a real disadvantage, particularly where the person has no legal representation.
- Article 14(1) International Covenant on Civil and Political Rights: ‘all people shall be equal before the courts and tribunals’
- Article 14(3)(b) those facing a criminal charge are entitled to a free use of an interpreter
- However, there are limited statutory rights to an interpreter in court proceedings, limited to criminal proceedings