

a) How is the independence of the judiciary guaranteed in Australia?

While the Westminster system had largely developed because of the doctrine of separation of powers, the Australian system of government is largely based on the Westminster. This doctrine of separation of powers proposes that the three institutions of government, the legislature, the executive and the judiciary should be exercised as separate and independent branches. It is this doctrine that stresses the need for the independence of the judiciary from the other two government institutions in order to protect the freedom of individuals. It is under this doctrine that no person can be a Member of Parliament and a judge at the same time. The doctrine of separation of powers offers several advantages, it proposes separate, specialized and efficient branches of government and it also reduces the abuse of government power by dividing it.

a) Why is the independence of the judiciary an important feature of Australia's system of justice?

The judiciary is the government branch that is concerned with the administration of justice. The judiciary is absolutely separate from the executive and the legislature, so it can check the concentration of government power. The independence of the judiciary is crucial of a democratic community because when judges are presiding over cases, there must be no interference and intimidation from the external forces. The independence issues touches upon the conflict of authority and freedom. If the doctrine of separation of powers did not exist, the authority would not be prevented from interfering in the administration of justice, therefore the basic freedoms of the citizens would not be guaranteed. It is up to the judiciary to exercise according to the law. It would be without the independence of the judiciary that the principles of rule of law and natural justice would be jeopardy and other institutions of government would interfere in the administration of justice.

There are three main elements of the independence of the judiciary they are, permanency of tenure, dismissal by parliament and fixed remuneration. Permanency of tenure means that judges are appointed by the executive government and have a permanent tenure until they have to retire at the age of seventy. It was a constitutional referendum in 1977 that placed this requirement on federal judges. Also state laws have been made, for the state judges to retire at the same age. The only exception is the Family court justices; they have to retire at the age of sixty-five.

Judges can only be dismissed on the grounds of proved misbehaviour or incapacity and can only be dismissed by parliament representatives. This is a very serious undertaking and has been used in the Australian parliament, but no federal judges have ever been dismissed. The constitution provides that a salary of a judge cannot be reduced. This is to prevent manipulation of salaries to a low level, which would force judges to retire from the bench. This would be suitable to an indirect interference in the independence on the judicature. However parliament can increase judges salary if the wish to.

Judges also must not interfere with each other's deliberations and decisions. While judges hear and make judgments and administer laws, the doctrine of precedent is so

entrenched as a rule of conduct that it is the golden rule for judges to follow legal principles created as precedents in superior courts. Judicial independence is also necessary because a judge cannot hear an appeal from a case that she or he have just presided over, this would lead to an inconsistency in deciding the appeal.

Judges also have judicial independence. They have a law that protects them from having threats of civil litigation for their statements in their judgments. It is also a criminal offence for a person to interfere with a judge's performance while they are performing their duties. The rule of law is strictly applied; to acknowledge that everyone has an equal standing before the law and accepted judicial practices must be followed.

b) Give two examples how judges must comply with the rule of law.

The doctrine of precedent is a fixed rule of the judicial conduct. It is the inferior courts that have the obligations to follow the legal principles created in the superior courts. This when decisions made in the superior courts become binding precedents on inferior courts and judges cannot ignore them. For example if a District Court judge ignores the legal principle made in the Supreme Court, then on appeal it certain that the decision will be reversed because accepted judicial rules were not followed.

It is the principle of independent judiciary that conforms to the rule against bias. Everyone expects their justice to be administered by a member of the judiciary who is independent from the legislative and executive powers of the government and completely impartial to the case before them for resolution. Judges are expected to be disqualified themselves when they have any interference with the financial or other interests in the outcome of a case. This is the fundamental principle for the application of constitutional law as it is to criminal law. For example a person, who is challenging the legality of legislation at a great cost, would expect the judge to resolve the case on its merit rather than the power of the government institution.

