

Francis Burt Law Education Programme

DEMOCRACY AND LAW IN ACTION YEAR 8 STUDENT PRE-VISIT RESOURCE

1. LEGAL VOCABULARY

a. Match the vocabulary to the correct definition.

state counsel

security of tenure

law

civil law

judge

bail

plaintiff

democracy

accused

defence counsel

criminal law

separation of powers

DEFINITION	TERM
Law which aims to stop anti-social behaviour and danger in our community. People found guilty of this type of law can possibly have their freedom, or liberty, taken away, i.e. imprisonment is an option.	
Presides over a District or Supreme Court and is impartial. She/He makes sure that the accused gets a fair trial. If the accused is found guilty s/he must decide on an appropriate sentence.	
The lawyer representing the State of WA in the District and Supreme Courts. This lawyer must prove beyond reasonable doubt that the accused person is guilty.	
A lawyer who represents the accused in a criminal court. This lawyer aims to create reasonable doubt about the guilt of the accused. In a civil court this lawyer is defending the case brought before the court by the plaintiff.	
Refers to the system of rules which a particular country or community recognises as regulating the actions of its members and which it may enforce by the imposition of penalties and sanctions ¹ .	
The person charged with committing a criminal offence. This person is presumed innocent until proven guilty.	
The party in a civil matter that brought a case against another party before the court. The lawyer for this party must prove their case on the balance of probabilities.	

1. School Curriculum and Standards Authority, *Humanities and Social Sciences Glossary*, (July 2016) > http://k10outline.scsa.wa.edu.au/home/p-10-curriculum/curriculum-browser/humanities-and-social-sciences/humanities-overview/HASS_Glossary.pdf < 10.

DEFINITION	TERM
An agreement by the accused to return to the court at a set time and date. It usually involves an undertaking by the accused to surrender an amount of money <i>if</i> the accused does not appear as required. Failure to appear as required is a criminal offence and will result in the accused having to surrender an amount of money <i>if</i> that was a condition.	
The division between the executive, legislature (parliament) and judiciary. These three arms of government act as checks and balances on each other to stop concentration of power in one group.	
A form of government in which the people, either directly or indirectly, take part in governing. This word comes from Greek and means rule by the people.	
Law which focuses on formal disagreements between two or more people in our community. Imprisonment is not an option in this type of law.	
In Western Australia a judge is appointed until the age of 70, and cannot be removed from office except by the Governor following an address from both houses of parliament - the Legislative Assembly and the Legislative Council. This is an important part of judicial independence so that governments cannot influence the decisions of a judge ² .	

b. Brainstorm other legal vocabulary that you know and make a list.

2. STATUTE AND COMMON LAW

Using the [link](#) read the sections “Common law: law made by courts” and “Statute law: laws made by parliaments”. Answer the following questions.



a. What is Statute Law?

2. Supreme Court of Western Australia, *Separation of Powers*, (July 2016) > http://www.supremecourt.wa.gov.au/S/separation_of_powers.aspx?uid=1910-3759-9835-2395 <



b. List the steps to creating a statute law

c. What is Common Law?

d. How may a common law precedent arise?

3. RULE OF LAW

Watch the [Rule of Law Institute's video](#) on the rule of law and complete the [worksheet](#).

4. MANDATORY SENTENCING

Using the Rule of Law Institute website read the information about [Mandatory Sentencing](#).

a. What is mandatory sentencing?

b. What is the main issue about mandatory sentencing?

c. Scroll down to the section on Western Australia and click on the link "Does Mandatory Sentencing work?" What are some of the arguments for or against mandatory sentencing?

d. Optional Activity – Research further arguments for and against mandatory sentencing and conduct a class debate on the topic.



5. FREEDOMS THAT ENABLE ACTIVE PARTICIPATION IN AUSTRALIA'S DEMOCRACY WITHIN THE BOUNDS OF THE LAW – FREEDOM OF SPEECH AND FREEDOM OF RELIGION

Australia is a democratic society. In 1901 the people of the colonies united and a federal Australian system of government was formed. A constitution was written to provide rules about the government and law. The Constitution provides for elections to be held for Parliament.

By electing representatives to Parliament the people have a say in the making of our laws. However, the Australian Constitution does not explicitly protect some of our freedoms. Freedom of speech receives limited protection through the operation of the common law and under the Constitution.

In March 2016 the Australian Law Reform Commission tabled a report on 'Traditional Rights and Freedoms – Encroachments by Commonwealth Laws'. See the following extracts from that report and then answer the questions below:



Freedom of speech

- 1.24 *Freedom of speech has been described as 'the freedom par excellence; for without it, no other freedom could survive' and is closely linked to other fundamental freedoms, such as freedom of religion, thought, and conscience.*
- 1.25 *In Australia, legislation prohibits, or renders unlawful, speech or expression in many different contexts - including in relation to various terrorism offences and terrorism-related secrecy offences, other secrecy laws and the Racial Discrimination Act 1975 (Cth) (RDA). At the same time, many limitations on speech have long been recognised by the common law itself, such as incitement to crime, obscenity and sedition.*
- 1.26 *The ALRC has not established whether s 18C of the RDA has, in practice, caused unjustifiable interferences with freedom of speech. Part IIA of the RDA, of which s 18C forms a part, would benefit from more thorough review in relation to freedom of speech. However, any such review should take place in conjunction with consideration of anti-vilification laws more generally.*
- 1.27 *There is also reason to review the range of legislative provisions that protect the processes of tribunals, commissions of inquiry and regulators; and whether Commonwealth secrecy laws provide for proportionate limitations on freedom of speech.*

a. In your own words describe what freedom of speech means:

Freedom of religion

- 1.28 *Religious freedom encompasses freedom of conscience and belief, the right to observe or exercise religious beliefs, and freedom from coercion or discrimination on the grounds of religious (or non-religious) belief.*
- 1.29 *There are very few, if any, provisions in Commonwealth laws that interfere with freedom of religion. The main areas of tension arise where religious freedom intersects with anti-discrimination laws, which have the potential to limit the exercise of freedom of conscience outside liturgical and worship settings.*
- 1.30 *There is no obvious evidence that Commonwealth anti-discrimination laws significantly encroach on freedom of religion in Australia, especially given the existing exemptions for religious organisations. Nevertheless, concerns about freedom of religion should be considered in future initiatives directed towards the consolidation of Commonwealth anti-discrimination laws, or harmonisation of Commonwealth, state and territory anti-discrimination laws.*

b. In your own words describe what freedom of religion means:

c. Describe what freedoms referred to above you are able to use in your everyday life?

d. Why is it important that you are able to continue to have those freedoms in your everyday life?

e. Can you think of reasons where it could be justified that a person's speech is lawfully restricted?

6. SEPARATION OF POWERS

In our democratic society there are three arms of government – the executive, the legislative (parliament) and the judiciary. Read the information on the Supreme Court website on [separation of powers](#) and answer the following questions:

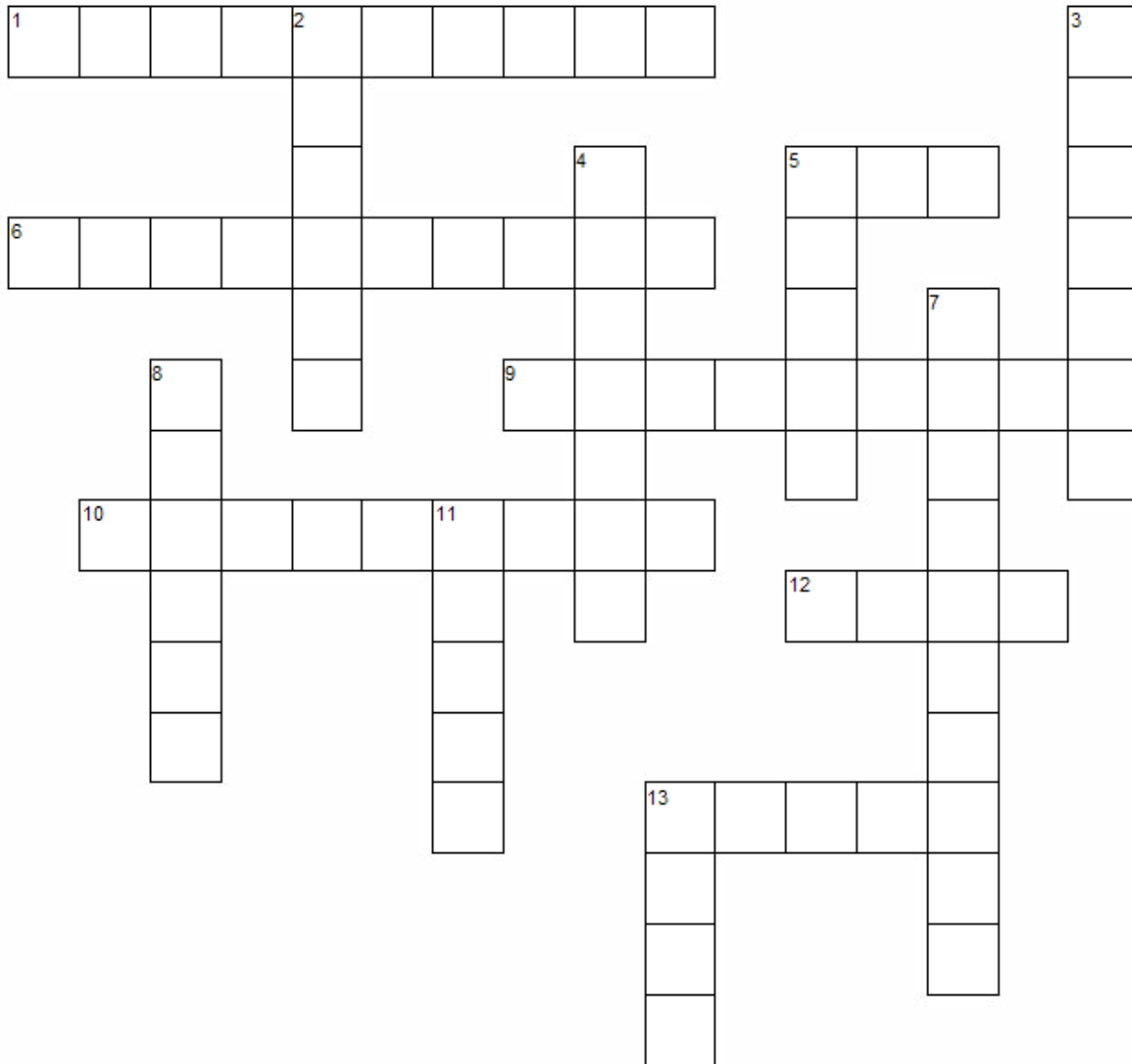


a. Why is it important for the judiciary to be independent?

b. What does security of tenure mean?

c. What could happen if we did not have security of tenure for judges?

7. LEGAL CROSSWORD



www.CrosswordWeaver.com

ACROSS

1. The person in charge of a trial over the lowest criminal court in WA; ensures that the accused gets a fair trial; decides whether the accused is guilty or not guilty; decides on the sentence if the accused person is found guilty.
5. The area in which the barristers sit.
6. Usually a specially trained police officer who represents the State of WA in a Magistrates Court.
9. The accused is considered to be innocent until proven guilty beyond all reasonable doubt. This is known as the presumption of _____.
10. A lawyer who argues cases in court.
12. The area in which the accused person sits.
13. The person in charge of a trial in a District or Supreme Court; ensures that the accused gets a fair trial; decides on the sentence if the accused person is found guilty.

DOWN

2. The accused only has to provide his/her name and address when questioned; known as the right to remain _____.
3. The person charged with the offence.
4. The lawyer who represents the accused person is called the _____ for the Accused.
5. The area in which the judge sits.
7. A written accusation that one or more persons have committed a certain crime.
8. A criminal accusation against someone.
11. The lawyer who represents the people of Western Australia in a trial is responsible for providing that the accused is guilty. S/he is called the _____ Counsel.
13. Listen carefully to the evidence in a trial; decide whether the accused is guilty or not guilty in the WA Supreme or District Courts.



8. POINTS TO THINK ABOUT BEFORE YOUR VISIT TO THE FRANCIS BURT LAW EDUCATION PROGRAMME

Think about the correct answers to the points below before you visit the Francis Burt Law Education Programme. You will review your answers after your visit.

a. Generally speaking there are two types of law in WA; civil and criminal law	True	False
b. If you are accused of a crime in WA you must prove to the court that you are not guilty.	True	False
c. The Federal Court is the highest court in Australia.	True	False
d. Jury duty is a civic responsibility of everyone who has their name on the electoral roll in WA except in special situations and except for people in special types of jobs.	True	False
e. Everyone must swear an oath on the Bible when giving evidence in WA courts.	True	False
f. Everyone is treated equally by the courts and the law in WA.	True	False
g. The government can remove a judge from his/her position at any time.	True	False
h. An accused person must give evidence if he/she pleads not guilty and the matter goes to trial.	True	False
i. Each Australian State and Territory has its own laws and courts	True	False
j. Under the rule of law every Australian has the same legal rights and legal responsibilities	True	False



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