



Francis Burt Law Education Programme

OUR DEMOCRATIC RIGHTS YEAR 9 TEACHER PRE-VISIT RESOURCE

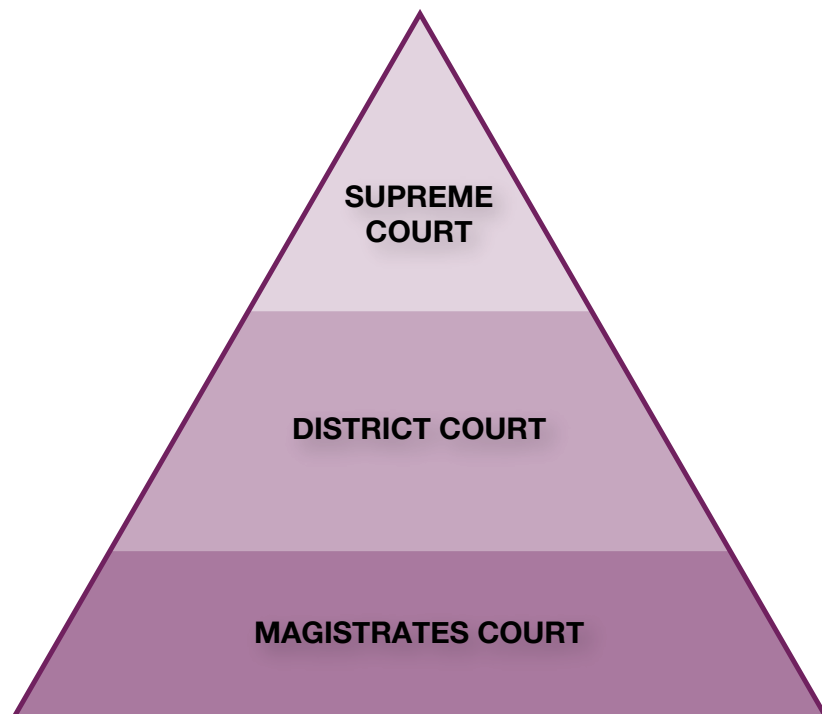
1. COURT HIERARCHY

The 3 main criminal and civil courts in the Western Australian system are named the:

- Supreme Court;
- District Court; and the
- Magistrates Court.

The High Court can review decisions made by all the State Courts.

Complete the chart below showing the names of the other two courts in the Western Australian court hierarchy (levels).



2. WHICH COURT?

Write the following descriptions next to the matching court in the table below:



- Deals with offences which attract a maximum term of imprisonment of 3 years.
- Deals with homicide and serious breaches of Commonwealth drug enforcement laws. As the highest Western Australian court, any matters that are particularly serious or complex can be dealt with by this court.
- Deals with crimes where a possible sentence is more than 3 years imprisonment, except for homicide offences and serious breaches of Commonwealth drug enforcement laws.

SUPREME COURT	Deals with homicide offences and serious breaches of Commonwealth drug enforcement laws. As the highest Western Australian court, any matters that are particularly serious or complex can be heard by this court.
DISTRICT COURT	Deals with crimes where a possible sentence is more than 3 years imprisonment, except for homicide offences and serious breaches of Commonwealth drug enforcement laws.
MAGISTRATES COURT	Deals with offences with a maximum possible term of imprisonment of 3 years.

An additional online source of information specific to the West Australia court hierarchy is available via the Supreme Court of Western Australia's website's ['Court Structure' page](#).

With a partner, brainstorm three/four types of charges that would go to each of the courts named in the table below:

MAGISTRATES COURT	DISTRICT COURT	SUPREME COURT
<i>Stealing</i>	<i>Serious Assault</i>	<i>Murder</i>
<i>Driving offences, e.g. Driving Under the Influence (DUI), driving while under suspension etc.</i>	<i>Drug Dealing</i>	<i>Manslaughter</i>
	<i>All sexual offences</i>	<i>Importing a commercial</i>
<i>Drug possession, i.e. possessing a small amount of drugs</i>		<i>Importing a commercial quantity of prohibited drugs</i>
<i>Civil matters up to \$75,000</i>	<i>Civil matters above \$75,000 and below \$750,000</i>	<i>Civil matters above \$750,000</i>

Teachers may not be sure of the jurisdiction of some of the charges listed by the students. In such cases encourage the students to question the Education Officers about the jurisdiction of such charges when they visit the Francis Burt Law Education Programme.

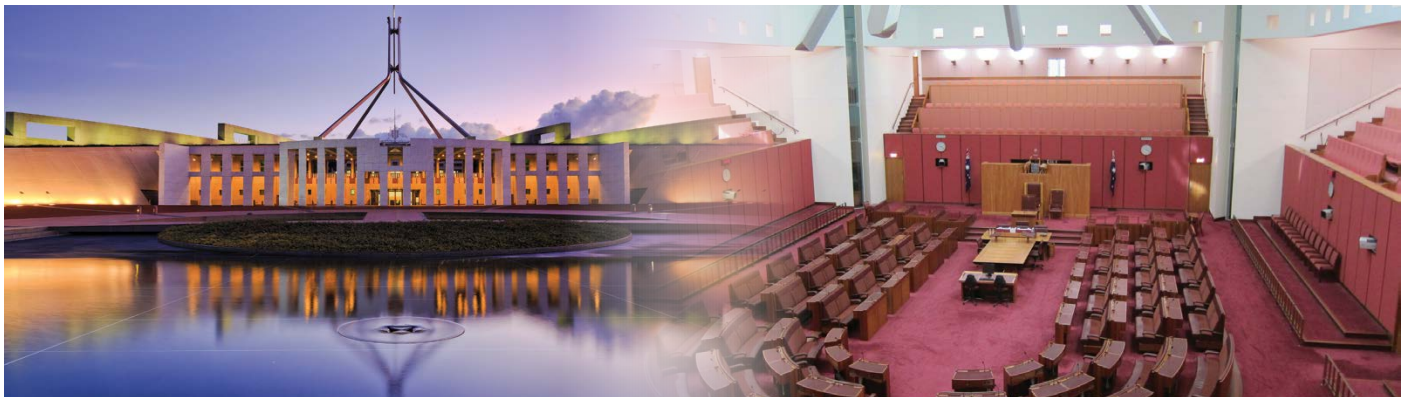


Which court would hear each of the following cases?

- Tom is accused of threatening Sarah with a pair of scissors and stealing her purse containing \$5.00.
District Court - armed robbery.
- Ben is accused of having a cannabis pipe in his possession with detectable traces of an illegal drug.
Magistrates Court – possession of a smoking implement.
- Jonathan is accused of assaulting Mary and causing her serious and permanent injury.
District Court – grievous bodily harm. Less serious assaults are heard in the Magistrates Court.
- Jonathan is accused of reckless driving and driving without a license.
Magistrates Court – reckless driving and driving without authority.
- Maria is accused of importing a trafficable quantity of methamphetamine into Western Australia.
Supreme Court – importing commercial quantities of border controlled drugs.
It is important for the students to note that the accused in both the scenario 1 would be charged with armed robbery. The reason for this is that a weapon was used to threaten people for the purpose of stealing something, i.e. a pair of scissors.

DISCUSSION POINTS

- Why do you think the courts in Western Australia are divided into three main levels?
A hierarchy of courts allows cases to be dealt with more efficiently, i.e. each court specialises in particular crimes and that specialisation ensures the matters are dealt with appropriately.
The court hierarchy also provides opportunities for the hearing of appeals against decisions of lower courts and tribunals.
- Apart from the three main levels of court in Western Australia, what other courts are you familiar with?
There are numerous other courts in WA such as the Children’s Court, the Coroner’s Court, the Drug Court and the Family Court.
- What are some of the most challenging issues that the courts in Western Australia have to deal with in your opinion?
Unfortunately there are numerous challenging issues for the courts to deal with. Some of those issues include; the over representation of Aboriginal people in the justice system, domestic violence, child abuse, sexual offences and drug and alcohol abuse.
- Traditionally judges and lawyers in the Supreme Court and District Court wore wigs for criminal matters, however this tradition stopped in January 2010. In your opinion, was stopping this tradition a good or bad thing? Explain with reasons.
Mixed opinions should be expected. Encourage the students to justify their point of view with reasons.



3. SEPARATION OF POWERS: THE THREE ARMS OF GOVERNMENT

The Roles of the Three Arms of Government

Click on the hyperlinks below to the [Parliamentary Education Office](#) website and the [Supreme Court of Western Australia website](#) and complete the tasks below.

[Separation of Powers](#) – Parliamentary Education Office

[Separation of Powers](#) – Supreme Court of Western Australia

TASKS

- a. What are the three arms of government?

The Parliament: The politicians elected to the WA parliament and the Federal parliament, in both houses, are the Legislature, i.e. the State Legislature and the Federal Legislature.

The Executive: The Governor, Premier and the State Ministers are the WA State Executive. The Governor General, Prime Minister and the Federal Ministers are the Federal/ Commonwealth Executive.

The Judiciary (Justices, Judges and Magistrates): The Justices in the Supreme Court of Western Australia, the Judges in the District Court and the Magistrates in Magistrates Court are the WA Judiciary. The Justices in the High Court and Federal Court are the Federal/ Commonwealth Judiciary.

- b. What is Parliament responsible for?

Parliament is responsible for making laws and for changing laws.

- c. What is the Executive responsible for?

The Executive is responsible for putting new laws and changed laws into action; implementing laws.

- d. What is the Judiciary (Judges) responsible for?

The Judiciary is responsible for making judgements about the law.



Security of Tenure for Judges

Security of tenure ensures the independence of the judiciary from the other arms of government in Australia. Research what security of tenure means and complete the following tasks: **Separation of Powers**, Supreme Court of Western Australia website.

- e. What does security of tenure for judges mean?

Security of tenure means that a judge cannot be removed from his/her position except in exceptional circumstances. A judge must retire when s/he reaches the age of 70. The only other situation in which a judge can be removed from his/her position is after addresses calling for the judge's removal in both houses of parliament (Note: This has never happened in WA.).

- f. Why is security of tenure for judges important?

Security of tenure is important because it helps to ensure that the judiciary cannot be influenced by the government and its policies. For example if the government could remove a judge from his/her position at anytime the government could pressure the judiciary and this may influence a judge's decision. This would be unjust as a judge's decision must be based only on the law and the evidence before him/her in court.

- g. Describe a fictional scenario between a politician and a judge which could occur in a legal system where security of tenure does not exist.

There are likely to be many varied scenarios put forward, however most of them are likely to involve a politician under pressure either from lobbyists and/or political pressure to influence a decision or decisions of a court.

It would be best to focus on what injustices could possibly occur in such legal systems.

4. LEGAL VOCABULARY

Match the vocabulary to the correct definition.

statutory interpretation, judgment, verdict, dispute resolution, precedent, appeal, adjourn, jurisdiction.



DEFINITION	TERM
The process by which a court interprets and applies legislation. Sometimes the words in legislation have a plain or straightforward meaning, however where the meaning is unclear the meaning of the words in the legislation will be determined by the judge.	statutory interpretation
The decision of a court of law or a judge. This term tends to be more commonly used for civil and appeal matters rather than criminal matters.	judgment
The final decision of whether a person is guilty or not guilty of a criminal offence. This term is used for criminal matters	verdict

DEFINITION	TERM
A process to work towards resolving disputes between two or more parties without the need for a court determined judgment. The most common method tends to be mediation	dispute resolution
A previous legal case or legal decision that must be followed in similar circumstances.	precedent
A complaint to a higher court about an alleged error of fact or error of law by a lower court. Appeal hearings are only granted when either the State or the Defence (criminal matter) or Plaintiff or Defence (civil matter) has satisfied the court that an alleged error of fact or error of law exists.	appeal
When the court ends either for the day or in its entirety or when the court takes a break.	adjourn
The official responsibility of a court to deal with particular types of matters.	jurisdiction

You may wish to make the table into cards. The students will be familiar with some of the job titles/ vocabulary whilst others will be totally unfamiliar. Encourage them to work together, to make informed judgments and to eliminate.

5. THE GOLDEN PRINCIPLES

The three principles that follow are often described as the golden principles of the Australian legal system for criminal matters and were inherited from the British legal system:

1. The Presumption of Innocence;
2. The Burden of Proof; and
3. The Standard of Proof.



TASK

Research the meaning of each of the principles and note in your own words what they mean.

- a. The Presumption of Innocence

Everyone accused of a crime is always thought to be innocent until proven guilty.

- b. The Burden of Proof

The responsibility to prove something is on the prosecution. The prosecution must prove that the accused is guilty.

The accused/defence does not have to prove anything. The defence aims to create reasonable doubt.

c. The Standard of Proof

The level of proof required to find a person guilty of a crime. The standard of proof for criminal matters is beyond reasonable doubt. For civil matters the standard is on the balance of probabilities.

It is interesting to ask the students to explain in their own words what beyond reasonable doubt means to them. All being normal they will all have slightly and/or significantly different understandings of the standard of proof. This is interesting and would seem to reflect the understandings that jurors bring to the role when performing jury duty.

You might also discuss why the standard of proof for criminal matters is higher than the standard for civil matters. In short, a possible consequence of being found guilty of a criminal matter is having your freedom, or liberty, taken away from you and being imprisoned.

Note: We have created a [Year 9 Kahoot! Quiz](#)

6. FACTORS UNDERMINING THE PRINCIPLES OF JUSTICE: SOCIAL MEDIA



In recent years the use and abuse of social media by jurors has become an issue. When performing jury duty it is essential that jurors decide whether the accused is guilty or not guilty on the evidence, and only on the evidence, presented in court. In addition jurors must not speak about the case nor the evidence with other people outside of the jury.

TASKS

- a. Why is it important that jurors decide whether the accused is guilty or not guilty on the evidence, and only on the evidence, presented in court?

Anything beyond the evidence presented in court is irrelevant and it would be unjust for a juror to consider anything beyond the evidence presented in court when deciding whether the accused is guilty or not guilty.

It is also important to note there is no opportunity for either party, prosecution or defence, to address anything not presented in court.

Also, all evidence needs to be tested in open court. The other side needs the opportunity to refute or respond to all the material that is presented to the jury, so that if the jury takes into account material gathered from outside the trial, there is no way to check its veracity or to hear 'the other side'. In addition, external material, even if correct (such as previous convictions or a successful appeal of a conviction on this matters) may prejudice their views on the accused and not allow them to give a fair and impartial assessment of the evidence.

- b. Why is it important that jurors not speak about the case nor the evidence with other people outside of the jury?

The opinions of other people outside the jury are irrelevant as only the evidence presented in court can be used to determine whether the accused is guilty or not guilty.

It is interesting to note that people outside of the jury are likely to have a variety of opinions regarding different types of criminal matters and their opinions are likely to be biased. Whilst jurors bring such opinions and biases to their role as a juror the judge, through directions to the jury, aims to ensure that the jury's verdict is based on the evidence, and only the evidence, presented in court.



Use and Abuse of Social Media by Jurors

In recent years there have been several examples of issues related to social media use and abuse by jurors in several criminal trials in Western Australia as outlined below:

2016: Supreme Court of Western Australia

- Murder trial
- First trial abandoned after one of the jurors was found to have been posting details on Facebook regarding the matter.
 - Note: Jurors are told by judges throughout the trial not to communicate about the matter on social media.

2015: District Court of Western Australia

- Possession of prohibited drug with the intention to sell or supply (Drug dealing) trial
- Re-trial abandoned after one of the jurors was contacted by his/her partner who advised that the accused had been found guilty in the original trial and the court of appeal had ordered that a re-trial take place.
 - Note: Jurors are told by judges throughout the trial not to communicate about the matter on social media.

At this point in time contempt of court charges haven't been brought against jurors in Western Australia, however it would seem that it is just a matter of time before this happens.

The following are links to two 2016 matters that were affected by social media abuse by jurors in WA:

- [Calls to overhaul WA jury system after juror dismissed for Facebook post](#)
- [Justice Michael Corboy 'speechless with rage' at having to abort Ronald Leslie Pennington's third trial after juror shared text message](#)

There are also issues surrounding the use and abuse of social media by other parties in court matters as outlined in Radio National's [Social media and the Courts](#) Law Report feature.

[Jurors using social media to look up victims and criminals](#)

TASKS

- c. Identify how the use of social media by jurors can undermine the principles of the criminal justice system.

Jurors posting details on a criminal matter during a trial undermines the principle of the accused having a fair trial in front of an unbiased jury. Through posting details online such jurors automatically invite the input and suggestions of parties outside of the jury. Through such input and suggestions the opinions of parties who have not heard the evidence in court are provided and that input and any suggestions have the possibility of influencing jurors which could potentially create an unjust/unfair verdict. It is essential that jurors base their verdict solely on the evidence and only the evidence presented in court.



- d. Identify ways for the courts to address the use and abuse of social media by jurors.

It is likely that students will suggest a variety of ways to address this issue. Some of the suggestions may include removing phones from people taking part in jury duty, asking the social media platforms to block access for people doing jury duty and/or isolating people who are taking part in jury duty for the entirety of the trial.

- e. Would you support mandatory penalties for jurors using and abusing social media during the hearing of a matter in which they are involved? Why? If yes, what would be an appropriate penalty in your opinion?

Again, there are likely to be a variety of opinions. Encourage students to support their responses with reasons.

Regarding appropriate penalties, encourage the students to consider and be aware of the need for the penalty to match severity of the crime.

The current position: On the general issue of deterrence for jurors, the court wants to make sure the other jurors will come forward if they learn about misuse of social media, or the gathering of external information from sources such as Google. The concern is that if jurors thought their fellow juror would probably go to jail (*if the penalty became too heavy*) they might be reluctant to come forward and 'rat/dob' on the one who was doing the wrong thing. Basically, the courts want to hear about the problem, rather than risk having a jury returning a verdict based on material that wasn't presented in the trial.

The following link provides further resources on the use and abuse of social media by jurors and ways to address this issue: [Trial by social media: Why we need to properly educate juries.](#)

7. POINTS TO THINK ABOUT BEFORE YOUR VISIT

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.

This activity was developed to compare the student's legal knowledge/awareness pre and post-visit. Teachers may decide to discuss the correct answers prior to the Francis Burt Law Education Programme tour, however be aware that the same questions are in the post-visit package.



Instructions:

Read the sentences below and mark them true or false.

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. A very important legal principle is the burden of proof. That is, the onus/responsibility is on the State to prove that the accused is guilty. The State must prove the accused person's guilt beyond reasonable doubt. That is the standard of proof. Another important legal principle is the presumption of innocence, i.e. the accused is always presumed to be innocent until proven guilty.	True	False

Instructions:

Read the sentences below and mark them true or false.

<p>c. The Federal Court is the highest court in Australia.</p> <p>The highest court in Australia is the High Court. The jurisdiction of the High Court is cases of special federal significance including interpretation of the Constitution, challenges relating to the validity of laws and the hearing of appeals where there has been an alleged injustice, from Federal, State and Territory courts.</p> <p>The jurisdiction of the Federal Court of Australia covers approximately 150 statutes of the Australian Parliament and includes copyright, fair trading, patents and the recently introduced Fair Work Australia the national workplace relations tribunal.</p> <p>It is interesting to note that Federal criminal matters are heard by the State and Territory courts, i.e. The Commonwealth Director of Public Prosecutions prosecutes Federal matters in the State and Territory courts.</p>	True	False
<p>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.</p> <p>Significant amendments were made to the <i>Juries Act WA</i> in 2011. Those amendments included deferring jury duty for six months on request, increasing the minimum fine to \$800 for failing to respond to a jury duty summons and reducing the number of occupations which make a person ineligible for jury duty.</p>	True	False
<p>e. You have the right to trial by jury if you are accused of a crime in WA.</p> <p>You have the right to trial by jury if you are accused of a <i>serious</i> crime in WA. Therefore, juries are used in District Court and Supreme Court trials. In the Magistrates Court juries are not used in trials. Instead of a jury a Magistrate hears the matter and s/he must reach a verdict based on the evidence presented.</p> <p>The standard of proof required to find an accused person guilty of a crime is the same for a jury and a magistrate, i.e. beyond reasonable doubt.</p>	True	False
<p>f. Everyone must swear an oath on the Bible when giving evidence in WA courts.</p> <p>If you are not religious you can make an affirmation; a solemn promise without any religious connection. In addition the courts have the holy book and oath for most recognised religions, e.g. The Koran/Muslim oath, No holy book/Buddhist oath, The Pentateuch/Jewish oath etc.</p>	True	False
<p>g. Everyone in Australia is treated equally by the courts and the law except for the Prime Minister and the Queen who have special privileges.</p> <p>An essential element of our legal system is that everyone must be treated equally and that everyone is answerable before the law, i.e. the courts and the law in WA and Australia must not discriminate.</p> <p>However, it is important to remember that the same laws and systems can affect different people differently, this is the difference between equality (treating everyone the same) and equity (providing people with everything they need to be successful/achieve the same outcome). A clear example of this is that all hearings are provided in English, however not all Australians speak English as a first language and there are insufficient interpreters available for Aboriginal and Torres Strait Islander languages.</p>	True	False

Instructions:

Read the sentences below and mark them true or false.

<p>h. The government can remove a judge from his/her position at anytime.</p> <p>A judge can only be removed from his/her position if s/he breaks the law and a possible sentence is imprisonment. When a judge reaches the age of 70 s/he must step down.</p> <p>This system is referred to as security of tenure for judges. Security of tenure for judges is important as it helps to ensure that they can act without fear or favour in their role.</p>	True	False
<p>i. An accused person must give evidence if s/he pleads not guilty and the matter goes to trial.</p> <p>An accused person does not have to give evidence if s/he pleads not guilty and the matter goes to trial. It is important to remember that an accused person does not have to prove that s/he is not guilty. On the contrary, it is the State that must prove beyond reasonable doubt that the accused is guilty, i.e. the burden of proof is on the prosecution.</p> <p>In Western Australia, the so called 'right to silence' (note: there is no legislation which enshrines this as a right) actually results from the rules of the Supreme Court which aim to avoid self-incrimination. As the State has a lot of resources at its disposal it is assumed that justice can still be done in circumstances when an accused person remains silent.</p>	True	False
<p>j. The verdict of a jury must always be unanimous in WA.</p> <p>The verdict of the jury must always be unanimous for murder trials in WA and also for Commonwealth criminal matters. For all other charges a majority verdict (10 of the twelve jurors agreeing) will be accepted by the judge once the jury has deliberated for a minimum of 3 hours.</p> <p>After completing the pre-visit activities it would be good to discuss the standard of behaviour expected when the group visits the Francis Burt Law Education Programme.</p>	True	False



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