

Study Guide for the Australian Collaboration Fact and Issue Sheet

THE RULE OF LAW

FOR REVIEW

1 The main characteristics of the rule of law

- 1a. What does the phrase “rule of law” mean?
- 1b. Explain the notion of “universality” in relation to both politics and society.
- 1c. Why should laws be prospective rather than retrospective?
- 1d. Consider the four central ideas supporting the rule of law. Which one do you think is most important?

2 Related concepts

- 2a. What does the phrase “separation of powers” mean?
- 2b. Explain the different tasks of the judiciary, the legislature and the executive.
- 2c. Why is the separation of powers so important?
- 2d. Why is it important for people to remain innocent until proven guilty? Can you think of an example in daily life where assumptions were made about someone’s guilt or innocence before the whole picture was known?
- 2e. Why is it important for people to know of what crime they have been accused and to be able to request a judicial review if they are imprisoned? What are these rights normally called?
- 2f. What is “common law”?

3 Critiques of the rule of law and responses

- 3a. Name three ways in which the rule of law can be undermined.
- 3b. How does the rule of law reduce the fear of harm and oppression?
- 3c. Name three ways in which the rule of law encourages good relations and beneficial interactions between citizens.
- 3d. What is the difference between “rule of law” and “rule by law”?

FOR DISCUSSION

- 1. Topic for a Think/Pair/Share activity:
Under the heading “Supportive and culturally appropriate institutions”, The Fact and Issue Sheet lists four features that should be present in the institutions that support the rule of law. Think about why each of these features is necessary. What would happen if these features were not present? For example, what would happen if courts were not independent? Or if government decision-makers had the power to decide whether specific actions were legal or illegal? Can you think of any events or attitudes in recent Australian history that threaten any of these essential features?
- 2. Prepare a two-minute speech for the affirmative or negative side of a class debate on one of the following topics:
 - “The government should be able to introduce new legislation, even when such legislation impinges on individual rights, when it is in the best interests of the nation as a whole”.
 - “Given that some people can pay for an excellent lawyer while others cannot, the notion of “equality before the law” is a myth rather than a reality”.
 - “Australians are not sufficiently aware of the laws by which they must abide. There should be a compulsory test on Australian laws that people are obliged to take, similar to the test for road rules prior to driving”.

FOR RESEARCH

1. Do some further research on the notion of “common law”. Where did common law originate? What are the positive aspects of common law? What are its potential failings? You can start your research here:

http://www1.curriculum.edu.au/ddunits/guide/g3b_common.htm

http://en.wikipedia.org/wiki/Common_law

<http://www.ourcivilisation.com/cooray/btof/chap185.htm>

2. Do a small project on the appointment of high court judges in Australia. How are they appointed? How long do they retain their position? What do you think about the system of appointing high court judges given the comments in the Fact and Issue sheet on the separation of powers? You can start your research here:

http://www.hcourt.gov.au/speeches/kirbyj/kirbyj_judiciallife.htm

http://www.apo.org.au/webboard/comment_results.html?filename_num=165790

<http://www.abc.net.au/news/stories/2007/08/14/2004277.htm>

3. For advanced students:

Do some further research on the adversarial system used in the Australian criminal justice system. What is the adversarial system? What the advantages and disadvantages of this system? What alternative systems exist? You can start your research here:

<http://www.abc.net.au/rn/talks/8.30/lawrpt/lstories/lr220801.htm>

<http://www.cdpp.gov.au/Director/Speeches/19970924bm.aspx>

http://en.wikipedia.org/wiki/Inquisitorial_system