
THE RULE OF LAW

The rule of law allows us to live in a country where laws regulate our actions so that we can enjoy our rights and freedoms without hurting others. ***The fundamental principle of the rule of law is the supremacy of law – we all have defined rights and responsibilities and everyone is answerable to the law.***

The following characteristics have been identified as elements of the rule of law:

- The supremacy of law;
- The separation of powers;
- Equality before the law; and
- Clear and prospective legislation.

1. Read the following and identify which aspect/s of the rule of law is/are illustrated or questioned in each of the below:

- a. Judge Marcus Einfield was sentenced to two years imprisonment for perjury and for perverting the course of justice over a \$77 speeding fine.

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- b. WA's mandatory sentencing laws force judges to impose jail terms for assaults against police, ambulance officers, prison guards and security staff on public transport and in the courts.

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- c. Families enjoying a favourite wine or beer at beaches and parks across Perth on Australia Day 2010 were targeted in the same way as drunken louts. The police say that street drinking is illegal 365 days a year for everyone, and they cannot be expected to turn a blind eye.¹

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- d. The proposed Criminal Organisations Control Bill being debated in the WA Parliament proposes to give Courts the power to declare bkie gangs criminal organisations and bkie members will be prohibited from associating with one another.

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¹ Beatrice Thomas and Adrian Watson, 'Police ban 'quiet drink' on Australia Day', *The West Australian* (Perth) 13 Jan, 2010, 20.

- e. Read the following section of the WA Criminal Code and remember that one characteristic of the rule of law is that legislation should be clear and prospective.

Self-defence against provoked assault S249

When a person has unlawfully assaulted another or has provoked an assault from another, and that other assaults him with such violence as to cause reasonable apprehension of death or grievous bodily harm, and to induce him to believe on reasonable grounds that it is necessary for his preservation from death or grievous bodily harm to use force in self-defence, he is not criminally responsible for using such force as is reasonably necessary for such preservation, although such force may cause death or grievous bodily harm.

- f. Is this legislation easy to understand? Describe its meaning in your own words.

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ANTI-GRAFFITI LAWS

From 1 January 2010 it is illegal in Western Australia to sell spray paint and certain marker pens or similar implements to persons less than 18 years of age.

What is the new offence?

Under the new laws, it will be an offence for a person to sell a graffiti implement to a person under the age of 18. The penalty is a maximum fine of \$6,000 for a first offence and a maximum fine of \$12,000 for a subsequent offence.

Sellers and their employees will have to take reasonable steps to be satisfied that the purchaser is not a minor. This can be done by sighting a current driver's licence or other suitable identification.

What is a "graffiti implement"?

'Graffiti implements' are defined in Chapter 24 of the *Criminal Code* (WA) to mean:

- spray paint;
- a pen or marker pen, or similar implement, that –
 1. has a tip over 6mm wide; and
 2. contains a fluid that is not water soluble and can mark a surface.

- g. Why did the Western Australian parliament introduce this legislation?

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h. How would you rate the graffiti legislation in terms of the rule of law?

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i. Name some other laws or proposed laws which illustrate the use/misuse of the Rule of Law.

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PRINCIPLES OF NATURAL JUSTICE/PROCEDURAL JUSTICE

The principles of natural justice/procedural justice originated from the Magna Carta 1215:

39 'No freeman shall be arrested or imprisoned or disseised (to deprive somebody wrongfully of possession of land) or outlawed or exiled or in any other way harmed. Nor will we [the king] proceed against him, or send others to do so, except according to the lawful sentence of his peers and according to the Common Law.'²

The following is a translation of section 39 of the Magna Carta 1215.

39 No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.³

The main principles of natural justice are:

1. Disputes should be heard by an unbiased judge, and
2. Each party should have an equal opportunity to present their case in a trial.

² Magnacartaplus.org, *The 1215 Magna Carta*, <<http://www.magnacartaplus.org/magnacarta/index.htm>>.

³ Ibid.