

F.O.R.C.E. STUDY GUIDE - DUE PROCESS

Content-based Questions

1. Which two amendments provide citizens the right of due process?
2. In Europe, at the time of our Founders, trials were usually conducted in secret. What was the huge difference that our American system called for?
3. What does the term “double jeopardy” mean, and is it allowed in our American System?
4. The “Old World” legal systems often were designed to show the ultimate power of the government, and to remind individuals to not challenge that power. That included church systems, as well as secular systems. What was -and is- the goal of the “New World,” or American legal system?
5. “Due Process” in our American system is inherent in both our criminal and our civil courts. Give an example of a civil (not criminal) situation where we can expect and demand due process.
6. The two categories of due process are **Procedural** and **Substantive**. Procedural has to do with the legal procedures or process - the “HOW”. Substantive has to do with the substance or content - the “WHAT”

Mark which type of due process each of these activities represents

- _____ The right to choose whether or not to work and earn money
- _____ The right to refuse to testify against yourself
- _____ The presumption that a defendant is innocent until proven guilty
- _____ The right to an impartial judge
- _____ The right to decide how duties and functions will be shared in your marriage
- _____ The right, in criminal cases, to a trial by a jury of peers
- _____ The right to decide if and how you will practice a religion
- _____ The right to hire an advocate and “fight” a government decision
- _____ The fact that you cannot be tried twice for the same crime
- _____ The right to have as many children as you want to - or to have none

Engaging the Material

1. Picture the Lady of Justice statue. She is holding free-hanging scales in one hand and an unsheathed sword in the other. Sometimes, she wears a blindfold.
 - a. What do each of those 3 objects symbolize?
 - b. Why do you think it is a woman?
 - c. Think about current events - share examples of recent publicized cases where justice did “wear a blindfold”, and cases where it did not seem to. Share your examples.
2. Due Process makes a distinction about what is private and what is public. Does that mean that whatever I chose to do within my own private home must be ok with the law? Of course not. Think of several examples that show that some activities, even inside your own home, are illegal. Do you agree with the way the law gets enforced in your examples?
3. Pick one or two of the Miranda Rights that get recited to a defendant when they are being arrested. Why should or shouldn't those rights get recited out loud? Shouldn't everyone know their rights? Should non-English speaking detainees have the right to an interpreter to hear their Miranda rights?
4. Imagine serving on a jury in a murder trial. The prosecution presents a case that is extremely strong. The defendant's case (presented by a Public Defender) keeps emphasizing the small possibility that the defendant “just happened to be in the wrong place at the wrong time” and got “sucked into” the criminal events taking place. However, most of the evidence makes him look guilty. On the jury, you are supposed to decide how much doubt is “reasonable doubt.” What questions do you ask yourself and your fellow jurors as you collectively deliberate your verdict?
 - a. Does race pertain?
 - b. Gender?
 - c. Does age pertain?
 - d. Does privilege, wealth or fame pertain?
 - e. Does the likely length of a sentence pertain?
5. You are called upon to report for possible jury duty, do you go (if possible), or do you look for a way to avoid jury duty? Why do you make that choice? If everybody did that, how would it affect our legal system?

Content-based Answer Guide

1. The 5th and 14th Amendments

2. The American system wanted proceedings to be public rather than in secret. By doing this, it allowed the accused person a presumption of innocence, and the burden of proof to be on the prosecution.

3. Double jeopardy means that an individual cannot be tried again/charged for the same crime twice. It is not allowed in the United States.

4. The goal of the American legal system is to provide those accused of a crime the right to a fair trial. They have the right to be tried by a jury of their peers and the right to refuse to testify (in other words, take the fifth).

5. Examples can vary.

6. Procedural:

- The right to refuse to testify against yourself
- The right to an impartial judge
- The presumption that a defendant is innocent until proven guilty
- The right, in criminal cases, to a trial by a jury of peers
- The right to hire an advocate and “fight” a government decision
- The fact that you cannot be tried twice for the same crime

Substantive:

- The right to decide how duties and functions will be shared in your marriage
- The right to decide if and how you will practice a religion
- The right to have as many children as you want to - or to have none
- The right to choose whether or not to work and earn money