

Adversarial and inquisitorial systems



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The adversarial system, otherwise known as the adversary system, is a system of the law which is primarily adopted and used in most countries that have common law systems.

The adversarial system depends on the skill of every advocate that represents the position of his or her corresponding party which also involves a person who is neutral oftentimes referred to as the judge who attempts to determine the truth of the case involved. It is also observed that the adversarial system is the structure which is primarily two-sided which serves as the basis for the operation of the criminal trial courts of the United States of America.

In essence, the system places the prosecution against the defending party whereby justice is obtained in the case when the most effective adversary achieves convincing the jury or a specific judge that the most effective adversary's perspectives and claims with regard to the case are the correct ones (Brekke, Enko, Clavet, & Seelau, 1991).

Further, it has been observed that the adversarial system is a notable feature of the tradition of the common law of Anglo-America. In essence, this system is seen as the contrasting system of the inquisitorial system which is usual in the legal practice in most European countries which is practically taken from the civil law employed in ancient Roman times.

Convincing the judge or the jury that the claims of a certain side from either of the two sides are with the most merit concerning legal assertions of guilt is of penultimate importance (Thibaut, Walker, & Lind, 1972).

It appears that there is hardly any solid and concretely identifiable historical basis for the existence of the adversarial system. Nevertheless, there are writers who argue that we can trace the history of the adversarial system through the medieval method of trial by combat. In this type of medieval trial, some litigants, most prominently women were given the option to choose a champion who will represent them.

Further, it appears that the employment of the jury system in the legal system of common laws may have a great deal to do in fostering the adversarial system.

Apart from that, current or contemporary times suggest that there are numerous individuals believing that the adversarial system remains the best method to resolve an issue that is being disputed and determine the factual and truthful claims to the case (Friedman & Scheiber, 1995).

Among the basic features notable in the adversarial system is that an accused individual before the court is not required or forced to provide evidence in a criminal adversarial proceeding inasmuch as the accused individual is also free from the questioning of either the judge or the prosecutor with the exception of the willful decision of the accused allow the judge or prosecutor to proceed with the questioning.

Further, if the accused individual decides to provide his or her testimonies, the individual will be placed under cross-examination and can be given the verdict of guilty with regard to perjury (O'Reilly, 1994).

The decision of the counsel in determining the specific evidences to be called as a crucial tactic in all cases under the adversarial system can be traced

from the fact that the option and decision to sustain the 'right to silence' of the accused individual hinders any form of cross-examination or even direct examination of the position of the individual.

With this in mind, there remains the probability that the lawyer may manipulate the truth concerning the hindrance to the examination of the accused. Nevertheless, the system necessitates the skills of the legal counsels from the prosecuting and defending sides to be equally placed and subjected to a judge who is presumed and believed to be impartial.

In the adversarial system, the judges appear to be more inclined towards securing the due process of law to be a fair play in all circumstances during the legal battle. Fundamental justice is also seen as one of the main interests and directives of the judge under the same system. Moreover, these judges bring about the decision as to what evidence can be taken and accepted by the court in the persistence of a dispute.

These judicial decisions usually spring from the call of the legal counsel rather than the own motion of the judges. Nonetheless, there are several common law jurisdictions wherein judges merely take the function of deciding on the rejection or admission of evidences into the legal records (Goldstein, 1974).