

# The adversary system essay



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Each party is responsible for the preparation and presentation of their own case and will present the best arguments to support their case. In most cases legal representation will be used

**Role of the Adjudicator** Either a judge or magistrates sitting alone or a judge and a jury The judge is responsible for ensuring that both parties obey the rules of the court, application of the rules of evidence and procedure, ensuring that the burden of proof is satisfied. In criminal cases where there is no jury the judge decides guilt or innocence. In criminal cases where there is a jury the judge will sum up the facts and relevant law and determine the sanction if the defendant is found guilty. In a civil case in which there is no jury the judge will determine liability and the remedy. In a civil case in which there is a jury the jury may be asked to determine liability and the level of damages.

**Roles of Evidence and Procedure** Reliant on the presentation of oral evidence that can be cross examined and tested for truth in the court by both parties Evidence is presented on oath. The vest evidence rule means that evidence should be presented only by an eye-witness in court. Special rules apply for taking expert evidence.

**Standard of Proof** Burden lies with the party bringing the case Criminal – prosecution – beyond reasonable doubt. Civil – plaintiff – balance of probabilities.

**Need for Legal Representation** Due to strict pre-trial procedures representations is often necessary to achieve a just outcome. \* Dietrich Principle – Judge can Order Legal Aid in a criminal trial if he feels the accused

person would not get a fair trial without legal representation and can't afford their own.

Inquisitorial Trial Used in civil law countries. Such as France and Germany. It varies from country to country but general features include: Judge controls the investigation of the case and the examination of evidence. They may be involved in pre trial procedures activity involved in the case including questioning witness, applying the law and making decisions. They actively look for the truth. Not bound by strict rules of evidence. Witness can tell their story in response to questions put by the judge. They use written statements. Innocence may be established in pre trial procedures. Witnesses can talk freely.

Any evidence that helps get to the truth is allowed. Proceedings may be adjourned to allow for further investigation of the issues, whereas the adversary system is run as one continuous event. AS the judge takes a more active role parties do not have the same reliance on legal representation. Parties don't have control over their case. The judge does. No formal burden or standard of proof. They just look for the truth.

Possible Improvements to Adversary System 1. Greater role of judge or magistrate 2. Greater availability of legal aid 3. More use of written statements 4. Witnesses able to tell their own story 5. Reduce delay 6. Judges to ensure out of court settlements are fair

Adversary System Dispute resolution system used in courts throughout common law countries is based on the concept of two opposing parties conducting a verbal battle for the truth before an impartial body.

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