

Elements of an effective legal system

Entitlement to a fair and unbiased hearing: Both parties are deemed equal, ensuring a just outcome.

- Strict rules of evidence and procedure.
- Avenues of appeal.
- Impartiality of the judge.
- Presumption of innocence.

Effective access to the legal system: Monetary and cultural barriers need to be addressed.

- Choice of venue for civil disputes ie. Courts or VCAT.
- Koori court assists aboriginal barriers.
- Legal aid provides low cost assistance to parties.

Timely resolution of disputes: Swift resolution maintains confidence in the legal system.

- Trials are held as a continuous event.
- Committal proceedings reduce delays.

Major features of the adversary system

Role of the parties

- Parties have full control over proceedings – ‘party control’.
- Responsible for preparation/presentation of case.
- Parties have the ability to present the best case.

Role of the judge

- Main role to ensure rules of evidence and procedure followed.
- The judge does not take an active part and is therefore impartial.
- Judge decides sanction/remedy.

Need for the rules of evidence and procedure

- Strict formalities: fair & unbiased.
- Continuous hearing.
- Evidence can be admissible/inadmissible.

Standard and Burden of proof

- Burden: who has the responsibility or prove the case in court. Prosecution – criminal, Plaintiff - civil.
- Standard: level of convincing required to prove a case. Criminal – ‘beyond reasonable doubt, Civil – ‘balance of probabilities’.

Need for legal representation

- Vital in comprehending complex rules
- Without it, the party will be disadvantaged

Strengths and weaknesses of the adversary system

Role of the parties

- Strengths: each party acts out of self-interest to present the best case, basic democratic right to defend oneself is upheld.
- Weaknesses: unfavourable evidence may be omitted (possibly not revealing the truth), right to defend oneself is diminished if one cannot afford legal representation.

Rules of evidence and procedure

- Strengths: inadmissible evidence rules exist to ensure unreliable evidence is not heard, oral evidence ensures witnesses can be questioned.
- Weaknesses: some omitted evidence may hide the truth, the intimidating nature of the rules may mean details are misleading.

Need for legal representation

- Strengths: lawyers provide expertise and knowledge on how to present a good case.
- Weaknesses: the outcome may be more a reflection on who has the best legal representation.

Major features of the inquisitorial system

Role of parties

- Not in control of case (diminished role).

Role of judge

- Active role in investigating the case and gathering evidence with the prosecution. They can call/questions witnesses.

Need for the rules of evidence and procedure

- Lesser emphasis on strict procedure, due to emphasis on truth. Greater reliance on written evidence.

Standard and burden of proof

- No strict burden/standard, judge's responsibility.

Need for legal representation

Minor part in assisting judge/asking questions.

Possible reforms to the adversary system

1. **Increase the role of the judge:** Judges have a great deal of knowledge and expertise, however are currently limited to an arbitrary role. By playing a greater role in the trial process, using their expertise to investigate truth and question witnesses. However, this could restrict their impartiality.
2. **Relax rules of evidence and procedure:** Costs and time would be reduced if courts opted for written evidence instead of oral. Similarly, witnesses can give their 'story' uninterrupted and without intimidation.