The Adversarial and Inquisitorial trial systems:
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DEFINITION:

Adversarial Trial System: This trial system is used most commonly in Canada and Untied States of America. This system seeks the truth by having two opposing parties; represented by lawyers, argue a case in front of an impartial (indifferent) judge who weighs the evidence presented. (Pg. 59, lines 2-3 of The Canadian and International Law textbook)

- The Presumption of Innocence is found most commonly in the Adversary System. (Charter of Rights and Freedoms sec. 7 (d)
- This is often found in Criminal Case Law

Inquisitorial Trial System: This trial system is used most commonly in Europe and around certain Civil Court Cases in Canada and the United States (for example Judge Judy.) This system seeks the truth through questioning of witnesses, in which judges play a larger role and the lawyers become secondary or not present. This is accounted to the judges are no longer indifferent and question the witnesses rather than the lawyers.

- Unlike in the Adversary Trial the “Burden of proof” is placed on the defendant meaning he or she must prove himself or herself innocent. The only time this is seen in Adversarial trials is in the case when “reverse onus” or “Clause 33 of the Charter” is applied.

PROS and Cons:

Adversarial System:

Pros:

- The Judge cannot comment until both sides are heard.
- This makes the Judge appear less biased in the case lessening the chance for public protest of verdict.

Cons:

- The discovery with evidence rests with two parties, which may be uneven.
- If a jury is involved the verdict may be swayed by the most compelling arguments rather than evidence or proof. Thus causing unfair judgments.

Inquisitorial Trial System:

Pros:

- The decision rests in the hands of an expert in the area of the crime.
- There is no chance of public being swayed by fancy arguments.

Cons:

- Judgment rests on one person therefore issues of bias.

History of the Adversarial Trial System:

The Modern Adversarial trial system used in Canada and the United States is rooted into the American Revolution that happened in 1775 and ended in 1785 officially. The modern adversary system reflects the standard that everyone is entitled to a day in court before a free, impartial, and independent judge. Adversary theory holds that requiring each side to develop and present its own proofs and arguments is the surest way to uncover the information that will enable the judge or jury to resolve the conflict. This System is then necessary to uphold the Charter Right: “Innocent till proven guilty” if this system is not used in the criminal courtroom a act known as “reverse onus” is applied meaning that the burden of proof has switched parties in the conflict. (West’s Encyclopedia of American Law: Adversarial Trial System)
**History of the Inquisitorial Trial System:**

The Catholic Church developed the inquisitorial system during the medieval period. The ecclesiastical courts in thirteenth-century England adopted the method of adjudication by requiring witnesses and defendants to take an inquisitorial oath administered by the judge, who then questioned the witnesses. In an inquisitorial oath, the witness swore to truthfully answer all questions asked of him or her. The system flourished in England into the sixteenth century, when it became infamous for its use in the Court of the Star Chamber, a court reserved for complex, contested cases. Under the reign of King Henry VIII, the power of the Star Chamber was expanded, and the court used torture to compel the taking of the inquisitorial oath. The Star Chamber was eventually eliminated as repugnant to basic liberty, and England gradually moved towards the adversarial trial system. However this system’s significance is held in the still used Oath in the courtroom. It was later revised during the French Revolution before they dropped it from court. (West’s Encyclopedia of American Law: The Inquisitorial Trial System)

**Famous Cases:** One of the most famous cases that represented the adversarial trial system was the case of OJ Simpson. He was tried in 1995 for murder. The verdict was not guilty as established by the jury. He was accused of killing his wife. After the verdict was giving Simpson swore that he would dedicate his life to finding his wife’s killer.