

LEGAL STUDIES: *CRIME*

Evaluate the effectiveness of the criminal trial process.

The Adversary criminal trial process is used in Australia, United States and many Commonwealth countries, as it was introduced by Britain to its colonies. There are two parties putting forward their argument before an impartial third party, usually a Judge, Magistrate or Jury. The prosecution tries to prove that the defence committed the act brought forward by the former party. In the Australian criminal trial process, the Judge decides questions of law only, whilst the jury decides facts, however if there is no jury the Judge or Magistrate will take on both roles, usually in the local court.

The Adversary criminal trial process is generally effective at achieving justice for the community, primarily because a 'jury of your peers' is used to decide guilt or innocence with as little prejudice or bias that is often inevitably taken into account when this role is undertaken by only a Judge or Magistrate. The Jury Act 1977 (NSW) is responsible for explaining who is fit to be a juror and how a jury must be used to properly achieve justice. Because the judges remain independent from the investigation process it allows for the defence to look deeper into aspects that judges may overlook because of a belief that the accused is likely guilty because they fit a criminal stereotype. These benefits are what make the process effective at achieving justice.

There are also some disadvantages that make the process less effective at achieving justice. Victims that have been assaulted, especially sexually, by the accused, it can be extremely confrontational for the witness to appear in court. For this reason it is common for the victim to refuse to press charges to avoid the stress, seen in the case *R v Skaf*, thus making the system fairly ineffective at achieving justice in these circumstances. In an attempt to overcome this problem the Criminal Procedure Amendment (Evidence) Act 2005 was introduced to allow transcript evidence to be used. Because the accused can hire their own lawyer, it allows for people of a higher socio-economic status to be able to afford a more efficient lawyer and be more likely to have the charges dropped or a lesser sentence than someone who uses a less expensive or Legal Aid lawyer. This is an issue of equality which is not as significant a problem in the Inquisitorial System as there are no opposing parties. There is also a focus on the accused only, rather than finding out what happened, which can waste time and money if the accused is innocent. All of these reasons result in a diminution of justice, especially fairness and equality.

The Inquisitorial System is used in many Continental European countries like France and Germany, but also in special courts of those using the Adversary criminal trial process, like the Coroner's Court of Australia. The inquisitorial Coroner's Court is used when the Adversary criminal trial process will be incapable of achieve justice as police are unable to gather sufficient evidence to bring a case forward, or they have either multiple or no suspects to bring to trial. The Magistrates take on the role of investigating the crime and are given more powers than police to aid in investigating, like the ability to demand witnesses to be called forward to give evidence. When enough evidence is collected the Magistrate can forward the case and the accused to a higher court for trial. This is an effective solution to the major problems of the Adversary criminal trial process when it is ineffective at achieving justice.