DISPUTE RESOLUTION AND FACT FINDING METHODS (pt. 1)

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INTRODUCTION

• Disputes which are differences between two or more persons always arise due to many factors including differences in orientation. In order to resolve these disputes, facts have to be ascertained to help the adjudicator determine who is right or wrong.

• There are both adjudicatory and non-adjudicatory methods of dispute resolution.

• The need for fact finding is more of a priority in adjudicatory methods of dispute resolution.
ADJUDICATORY AND NON ADJUDICATORY METHODS OF DISPUTE RESOLUTION

• The adjudicatory procedures include litigation and arbitration. They involve the handing down of an official decision or judgment after hearing the parties. They lead to a binding ruling that decides the case.

• The non-adjudicatory procedures contribute to resolution of disputes by agreement of the parties without adjudication. They include, Negotiation, Mediation and Conciliation.
LITIGATION

• Litigation is a process of taking a case to court having jurisdiction to hear the case so that judgment can be given

• The case is called a suit or a lawsuit

• The courts are established by the state and given their jurisdiction by the law. See section 6 of the 1999 Constitution and chapter VII (section 230 -296) of the 1999 constitution

• The Rules of Court prescribe the process for initiating a lawsuit in the court and it usually begins with applying for an originating process which may be a writ of summons or a petition or an origination motion or summons.
LITIGATION (CONTD)

- Litigation may be civil or criminal with their accompanying terminology
- A prosecutor initiates criminal proceedings while a plaintiff or a petitioner initiates civil proceedings
- A party against whom criminal proceedings is initiated is the accused while the person against whom civil proceeding is initiated is the defendant or respondent.
- In criminal proceedings, the accused is charged with an offence while in civil proceedings the defendant is sued for a civil wrong
LITIGATION (CONTD)

• In criminal proceedings, the accused pleads guilty or not guilty, while in civil proceedings he may plead liable or not liable

• If a criminal prosecution succeeds, the result is a conviction, but if the civil proceedings succeeds, the result is judgment for the plaintiff

• In criminal proceedings before the court of first instance, the name of the prosecutor is written first in the title of the case, for example Police v Obi or State v Obi or D.P.P v Obi, meaning that the police or the state or the Director of Public Prosecution are the prosecutors respectively. The Versus is pronounced against in criminal cases
• In civil proceedings before a court of first instance, the name of the plaintiff is written before that of the defendant example, Ada v Obi, meaning that Ada is the plaintiff and Obi is the defendant. The versus is pronounced as “and”. Thus the above case title is pronounced Ada and Obi.

• Some civil proceedings involving the interpretation of wills and trust deeds may begin with the expression “In the matter of” or “In re” or simply “Re” eg. “In re Abiodun”

• Applications for the writ of habeas corpus or for the orders of certiorari, mandamus and prohibition are usually titled with the inclusion of the term “ex parte” (which means on the application of) e.g R v University of Cambridge ex parte Dr Bentley.
ADVERSARIAL AND INQUISITORIAL SYSTEMS

• These are methods of fact finding in the adjudicatory method of dispute resolution and features basically in litigation.

• In adversarial system, two parties take opposing sides in arguing the guilt or innocence of a party. The two sides are usually the state and the accused person. It is a contest between the two parties to lead evidence that will establish the guilt or innocence of the accused.

• Inquisitorial system on the other hand, a judge is involved in the preparation of evidence along with the police and in how the various parties are to present their case at the trial.
ADVERSARIAL SYSTEM

• It gives litigants and their counsel a lot of control over the process of litigation in the manner in which facts are collected and presented, procurement of evidence, the testimony of witnesses etc

• Here the parties have the obligation to assemble their witnesses and present evidence in a manner most favorable to them and adverse to their opponent

• Here counsel on both side are adversaries and engage in contentious argument with each other accusing one another as the cause of the dispute that led to the action in court
The role of the judge is limited to that of a referee or umpire who is to ensure that evidence is presented according to laid down rules for example the rule against admitting hearsay evidence or making sure that the necessary foundations are laid before admitting documentary evidence.

The common law mainly practices adversarial system of fact finding except in the operation of certain tribunals or judicial enquiries and commissions.

Most proceedings under the adversarial system are oral in nature and the documents collected by the parties are admitted only after they are introduced by a witness.
INQUISITORIAL SYSTEM

• The investigating judge has a lot of control over the way in which the evidence is collected and presented.

• Written proceedings prevail here as the evidence gathered by the investigating judge is submitted to the court as the case file (dossier de la cause) for scrutiny by both parties and the judges.

• The judge plays an active role in trying to discover the truth. He has power to question the witnesses in a bid to discover the truth as well as being cognizant of the evidence already gathered by the investigating judge through reading the case file.

• It is basically practiced in civil law countries and in tribunals and judicial enquiries and commissions.
ADVANTAGES OF ADVERSARIAL METHOD

• Element of bias is reduced
• Presents equal opportunity to the parties to present their case
• The possibility of ingenious arguments leads to development of the law
DISADVANTAGES OF ADVERSARIAL METHOD

• It gives the party that can afford better legal representation a better chance and thus breeds inequality (the sporting theory of justice)
• It is in the nature of a legal fight so can breed acrimony even after the case is won or lost
• The need to win at all costs may lead to sharp practices like forgery of documents etc
• Being a legal battle, it may be long and drawn out leading to delay in the justice system and excessive cost
• The delay may impair the fact finding efficiency of the system when the memory of the witnesses are no longer sharp
ADVANTAGES OF INQUISITORIAL METHOD

• It results in quick disposal of cases and lesser costs
• Its procedures are less formal and simple
• Since the gathering of evidence depends on the efficiency of the investigating judge, it promotes equal access to justice
DISADVANTAGES OF INQUISITORIAL SYSTEM

• There may not be sufficient incentive for the investigating judge to go to extra lengths in his investigation to find out the truth
• It may lead to hasty trial which may occasion injustice or miscarriage of justice