Dispute Resolution

ADVERSARIAL AND INQUISITORIAL APPROACHES
- Adversarial approach: where judges in courts act as impartial referees, the parties attempting to prove and disprove facts and to dispute various points of applicable law
- Inquisitorial approach: where judges seek out facts and issues of law by questioning parties and witnesses

THE ADVERSARIAL SYSTEM
- The cornerstone of English legal procedure
- Court is seen as an arena where a contest is waged and one party emerges as the winner
- Parties dictate form, content and pace of proceedings
- Proceedings dominated by advocates
- Based on assumption of reasonably equally matched representation

THE INQUISITORIAL SYSTEM
- Seen in continental civil law systems
- Main burden of presenting case at court falls on the court itself
- Court calls witnesses
- Presiding judge examines witnesses
- Effectively no cross examination
- Oral testimony regarded as less significant: more written statements by witnesses

TRIBUNALS
- Court substitutes: NOT a form of ADR as there is no choice about taking a dispute to a tribunal if that is the forum decreed by law for resolution of the problem (cf consensual nature of ADR)
- Adjudicative: reach judicial decision by finding the facts and applying the law - like the courts
- Deal with matters which the State has decided to take outside the Court system
- Existed since 1799, but present system developed since 1945
- Development parallel with development of welfare state in areas previously considered private
- Examples: social security, housing, education, employment: now over 100 different tribunals
- New legal rights led to new decisions on those rights
- Disenchantment with ability of courts to address these decisions
- New rights for people with few resources required low cost forum for dispute resolution
- Often complex legislation: preference for specialist forums

TRIBUNALS IN THE ENGLISH LEGAL SYSTEM
- Court substitutes: policy decision to take a particular sphere of adjudication away from courts
- Parties are mostly citizen versus state (though employment tribunals the exception - citizen versus citizen)
- Volume of cases heard by tribunals about 6 times that of cases in High Court and County Court combined - nearly a million cases a year

APPEALS FROM TRIBUNALS
- Historically there was a right of appeal from some tribunals, not all
- Sometimes to another level of tribunals (eg Employment Appeal Tribunal, Immigration Appeals Tribunal), sometimes to High Court (QBD) on points of law