

# Introduction to Legal Studies

Spring 2007

Discussion Questions for Thursday, March 15<sup>th</sup>

*How does the law know?*

1. Jerome Frank, in his article from *Before the Law*, sets out a hypothetical about A's fraudulent taking of B's pig. B then sues A for return of the pig. Frank asks, "If A wins that suit, does the decision in his favor constitute the enforcement of that legal rule, even if A won through perjured testimony or because the trial court erroneously believed an honest but mistaken witness?" What do you think?
2. Frank contrasts the "fight" versus "truth" theory of trials. Can you think of a better way to discern the truth of an issue than through an adversarial trial such as we have in the United States? If not, what are the drawbacks of the adversarial trial system? What are the advantages?
3. The civil law tradition – the legal system used by almost every country in the world outside the former nations of the British Empire (including the United States) – makes use of a very different approach to trials. Labeled an "Inquisitorial" system (ours is an "Adversarial" system), trials in civil law countries place much power in the hands of the judge to direct investigations, gather evidence, and make a decision. What are the advantages and drawbacks to such a system? For more information on such systems, look at: <http://www.umass.edu/legal/Hilbink/250/A%20Primer%20on%20the%20Civil-Law%20System.pdf>. For the entire report from which this excerpt derives, look at: [http://www.fjc.gov/public/pdf.nsf/lookup/CivilLaw.pdf/\\$file/CivilLaw.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/CivilLaw.pdf/$file/CivilLaw.pdf)