JOURNAL OF CIVIL LITIGATION AND PRACTICE

Volume 5, Number 2

June 2016

COMMENTS

ARTICLES

This article examines recent developments in England that involve the innovative use of technology to change court processes and the resolution of small civil claims of between £10,000 and £25,000. The article commences with an overview of proposals for an Online Court developed by the Civil Justice Council under the chairmanship of Professor Richard Susskind. Clearly the issue of reform of the civil justice process was an idea whose time had come because the organisation JUSTICE released a report shortly after that of the Civil Justice Council that in many respects endorsed and developed the Susskind Report, although it should be acknowledged that Professor Susskind was involved with both bodies. By the middle of 2015, matters had developed to the point where LordJustice Briggs was charged with reviewing Civil Courts Structure and, in his interim report of December 2015, gives detailed consideration to the proposals for an Online Court. This article reviews those proposals and goes on to suggest some further measures that may be considered in bringing an Online Court to fruition. The essential theme is that new information and communications technologies can be used innovatively to change and improve processes which, although initially disruptive, may transform the civil justice system for the better. The article closes with some suggestions where artificial intelligence systems may be deployed in the civil court and judicial processes.

An asymmetrical jurisdiction clause is a jurisdiction agreement within a contract which purports to operate differently with respect to the different parties to the contract. Typically, such a clause will require one party to bring proceedings only in a named court, but allow the other party to bring proceedings in that court or any other court of competent jurisdiction. Such clauses offer a range of advantages over traditional jurisdiction agreements for a party with a stronger bargaining position in a cross-border transaction. Asymmetrical jurisdiction agreements are valid in common law jurisdictions, including Australia and New Zealand, that have not significantly modified their private international law by legislation. However, the English position is significantly complicated by the rules on jurisdiction prescribed under the Brussels I bis Regulation. While the better view is that they are still valid, they expose the stronger party to a series of litigation risks. A traditional exclusive jurisdiction agreement may accordingly be preferable for parties contemplating an asymmetrical jurisdiction agreement in favour of the English courts.