

# What is civil justice system law general essay

Law



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What is civil justice system? There are several definitions for the civil justice system. Every civilized system of government requires that the state should make available to all its citizens a means for the just and peaceful settlement of disputes between them as to their respective legal rights. The means provided are courts of justice to which every citizen has a constitutional right of access. Lord Diplock in *Bremer Vulkan Schiffbau und Maschinenfabrik v South India Shipping Corp.* [1981] AC 909, HL, p. 976. The justification of a legal system and procedures must be one of lesser evils, that legal resolution of disputes is preferable to blood feuds, rampant crime and violence. M. Bayles, 'Principles for legal procedure', *Law and Philosophy*, 5: 1 (1986), 33-57, 57. The first impulse of a rudimentary soul is to do justice by his own hand. Only at the cost of mighty historical efforts has it been possible to supplant in the human soul the idea of self-obtained justice by the idea of justice entrusted to authorities. Eduardo J. Couture, 'The nature of the judicial process', *Tulane Law Review*, 25 (1950), 1-28, 7. There have been over 60 official reports on the subject of civil processing the past. Latest published reports were Evershed Report in 1953, the report of the Winn Committee in 1968, the Cantley Working Party in 1979, the Civil Justice Review in the late 1980s and the Woolf. All those reports are focused on the same objects like how to reduce complexity, delay and the cost of civil litigation. What are the problems before reforms? This is a mere compare of the pre-Woolf and post-Woolf civil landscape without baseline statistics. As research for the Department of Consumer Affairs (DCA) on the pre-Woolf litigation landscape (pre-1999) demonstrates that: \* 50% - 83% of defended cases in the county courts were personal injury (PI) claims\* overall at least 75% of cases were within the small claims or fast track financial limit; in <https://assignbuster.com/what-is-civil-justice-system-law-general-essay/>

most courts this figure was 85% or more\* the higher the value of the claim, the more likely both sides were to have legal representation\* PI cases had high settlement rates and a small number of trials. Non-PI cases had a higher proportion of trials, and a much higher proportion of cases withdrawn. Debt cases were most likely to end in trial (38%) and in all of those the claimant succeeded. In 96% of all cases going to trial the claimant was successful\* In all types of cases 50% of awards or settlements were for £1, 000 - £5, 000, and a further 25% - 33% were for £5, 000 - £10, 000. Costs in non-PI cases were relatively modest, and in PI cases around 50% had costs of £2, 000 or less, 24% had over £4, 000. Wolf Reforms Lord Woolf's approach to reform was to encourage the early settlement of disputes through a combination of pre-action protocols, active case management by the courts, and cost penalties for parties who unreasonably refused to attempt negotiation or consider ADR. Such evidence as there is indicates that the Woolf reforms are working, to the extent that pre-action protocols are promoting settlement before application is made to the court; most cases are settling earlier, and fewer cases are settling at the door of the court. In fact, most cases are now settled without a hearing. Lord Woolf, Access to Justice (Final Report, July 1996), identified a number of principles which the civil justice system should meet in order to ensure access to justice. The system should:(a) Be just in the results it delivers;(b) Be fair in the way it treats litigants;(c) Offer appropriate procedures at a reasonable cost;(d) Deal with cases with reasonable speed;(e) Be understandable to those who use it;(f) Be responsive to the needs of those who use it;(g) Provide as much certainty as the nature of the particular case allows; and(h) Be effective: adequately resourced and organized. The defects Lord Woolf identified in our present <https://assignbuster.com/what-is-civil-justice-system-law-general-essay/>

system were that it is:(a) Too expensive in that the costs often exceed the value of the claim;(b) Too slow in bringing cases to a conclusion;(c) Too unequal: there is a lack of equality between the powerful, wealthy litigant and the under resourced litigant;(d) Too uncertain: the difficulty of forecasting what litigation will cost and how long it will last induces the fear of the unknown;(e) Incomprehensible to many litigants;(f) Too fragmented in the way it is organized since there is no one with clear overall responsibility for the administration of civil justice; and(g) Too adversarial as cases are run by the parties, not by the courts and the rules of court, all too often, are ignored by the parties and not enforced by the court. The Basic Reforms of Woolf's system is needed where the courts are responsible for the management of cases. The courts should decide what procedures are suitable for each case; set realistic timetables; and ensure that the procedures and timetables are complied with. Defended cases should be allocated to one of three tracks:(a) An expanded small claims jurisdiction with a financial limit of £3, 000;(b) A new fast track for straightforward cases up to £10, 000, with strictly limited procedures, fixed timetables (20-30 weeks to trial) and fixed costs; and(c) A new multi-track for cases above £10, 000, providing individual hands on management by judicial teams for the heaviest cases, and standard or tailor made directions where these are appropriate. Lord Woolf's Inquiry was also asked to produce a single, simpler procedural code to apply to civil litigation in the High Court and county courts. The Final Report was accompanied by a draft of the general rules which would form the core of the new code. Pros and Cons of wolf reforms\* However, costs have increased, or have at least been front-loaded. In particular, in cases where mediation has been attempted and agreement has

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not been reached, costs are clearly higher for the parties.\* Litigation will be avoided wherever possible. People will be encouraged to start court proceedings to resolve disputes only as a last resort, and after using other more appropriate means when available.\* Litigation will be less adversarial and more co-operative. There will be an expectation of openness and co-operation between parties from the outset, supported by pre-litigation protocols on disclosure and experts.\* Litigation will be less complex. There will be a single set of rules applying to the High Court and the county courts. The rules will be simpler.\* The timescale of litigation will be shorter and more certain. All cases will progress to trial in accordance with a timetable set and monitored by the court.\* The cost of litigation will be more affordable, more predictable, and more proportionate to the value and complexity of individual cases. There will be fixed costs for cases on the fast track. Estimates of costs for multi-track cases will be published or approved by the court.\* Parties of limited financial means will be able to conduct litigation on a more equal footing. Litigants who are not legally represented will be able to get more help from advice services and from the courts.\* There will be clear lines of judicial and administrative responsibility for the civil justice system. The Head of Civil Justice will have overall responsibility for the civil justice system.\* The structure of the courts and the deployment of judges will be designed to meet the needs of litigants. Heavier and more complex civil cases will be concentrated at trial centers which have the resources needed, including specialist judges, to ensure that the work is dealt with effectively.\* Judges will be deployed effectively so that they can manage litigation in accordance with the new rules and protocols. Judges will be given the training they need to manage cases.\* The civil justice system will

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be responsive to the needs of litigants. Courts will provide advice and assistance to litigants through court based or duty advice & assistance schemes, especially in courts with substantial levels of debt and housing work. Final conclusion It can be concluded, overall the Reforms were supported by both branches of the legal profession, judiciary and both the lay and the legal press welcomed them. Promoting settlement and avoiding litigation can be the biggest boon to litigants who otherwise when get entangled in the costly and everlasting court procedures suffer a lot. The reforms intended to focus on reduction in cost and delay, however they did not escape criticism and reduction in cost is still considered to be a debatable area. But the reforms were a step in the right direction and were deemed triumphant as they have resulted in justice being accessible to wider proportion of society especially when problem is of small nature and can be quickly and cheaply dealt with in lower courts. Wholistically, the advantages of the Reforms outshine the disadvantages. The reforms were a positive way for the future; still a lot of work needs to be done in a few areas for making timely, inexpensive justice available to the lay man. Reduction in cost of litigation as a consequence of reforms was not fully realized but nonetheless it cannot be said that reforms had a detrimental impact on civil justice overall as timely exchange of information between the parties does promote culture of co-operation and settlement if not always and as a result of the reforms problem of delay in litigation were well catered. There was a move away from the adversarial culture and increase in out of court settlements was seen. It can be concluded that the foundation stone for a better and prosperous litigation culture has been laid, what needs to be done now is to rectify the shortcomings of the Woolf reforms and build on the so

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called revolutionary much needed positive reforms aiming to avoid litigation and promoting timely settlement of disputes, so that parties no longer are faced with the never ending litigation process.