

# Common law reasoning and institutions law general essay

[Law](#)



**ASSIGN  
BUSTER**

Essay Title: " Although settlement, rather than litigation, poses a number of problems for a civil justice system, these matters have been largely resolved by Lord Wool's reforms." Candidate number: 150353 Student registration number: 120245545 Civil justice system concerns the handling of disputes between citizens arising out of civil. It is the primary duty of the courts to provide a fair and effective justice system for both the rich and the poor, who will be easily accessible to the public and there has to be no misuse of justice. An ideal civil justice system must maintain its processes justly, which will be free from coercion and corruption. The process should be accessible, reviewable and have to ensure that there is absolutely proper dispute resolution. For this process to be absolute the disputes should be processed timely and it should also promote certainty in law. For many years the civil justice process was being criticized for its several inconveniences. Many organizations, like academically and government sides, tried hard to find the basic problems about the system. Attention was paid regarding the identification of the problems and the suitable solutions for those [The Report of The Win Committee in 1968; The Civil Justice Review in The Late 1980s]. According to The Civil Justice Review (CJR) 1988 the main problems were the ever increasing cost, delays and complexities.[1] The system of civil litigation in England was mostly governed by Procedural Rules which were in County Court Rules and The Rule of Supreme Court, before 26th April 1999. But this situation has been changed. On 26th April those rules were entirely replaced by the Civil Procedure Rules (CPR). The process of civil litigation in England was fundamentally altered by the Civil Procedure Rules. Lord IRVINE, the Lord Chancellor in the forward to the rules described their

publication as ' heralding the beginning to the Civil Justice System since the 1870's. The Interim Report of Lord Woolf was presented in June 1995. This report identified several key weakness with the current system. The main obstacle to litigant to get justice was the cost under the previous system. By that system, the losing party would have to pay the winner's cost, which is really expensive. Lord Woolf said that costs were excessive, unaffordable and disproportionate to the value of claims. Delay was also a major problem of this system. In the interim report Lord Woolf said that in 1994 cases took 80 weeks to proceed from issue to trial in the county court. He also indicated that this delay was caused predominantly by lawyers. This system was uncertain and for this uncertainty it causes delay. For delivering a system that has not these problems, Lord Woolf proposed the ' overriding objective', which is in Part 1 of the CPR. The ' Overriding Objective' provides a definition of dealing with a case justly includes: Ensuring that the parties are in equal hand, saving expense, dealing with cases in way which are proportionate to the amount of involved, to the importance of the case, to the complexity of the issues, to the parties financial positions. Ensuring that the case is handled with diligently and adequately and assigning a felicitous share of the courts research to a case during recognizing the need to admeasure resources to other cases. The CPR also states that courts must apply the ' overriding objective' whenever they utilize any power that they have under the CPR or try to interpret any rule.[2]There are three other major change under the CPRFor reducing cost the idea that the court will not assign the parties to conduct exorbitant and heterogeneous investigation and preparation over a case that of approximately same value and unequivocal

in nature. Civil litigation as a last resort emphasis on endorsing parties to mediate any case as early as possible. Alternative Dispute Resolution is being encouraged. Lord Woolf decided the control of litigation must move away from the litigants and their advisors to the court. Lord Woolf emphasis on Judicial Case Management. For this the court could take a impervious grip and not let the parties delay, run up exorbitant cost and wear each other down. Now the court have greater power than before. Now it can decide without the parties claiming it that certain issues are extraneous to the case and can be disposed of. The court can also use the power of controlling evidence deciding whether an expert is essential for a certain issue or not. The GR and duty court to regulate cases is established in Part 1 of CPR. The court must follow the overriding objective by actively managing cases. Actively managing cases includes countenance the parties to coincide with each other in the administration of the affairs. It also includes analyzing the issues at an early stage. It also decides immediately which issues need full inquisition and trial and consequently disposing promptly of the others. Determining the order in which issues are to be resolved also includes in this system. It helps to encourage the parties to use an alternative dispute resolution procedure if the court cogitates that felicitous and facilitating the use of such procedure. It also helps the parties to settle the whole or part of the case. It fixes timetables or otherwise constraining the progress of the case. It considers whether the anticipated benefits of taking an appropriate step countenance the cost of taking it and dealing with as many aspects of the case as it can on the same affair. If the parties doesn't need to attend the court it also deals with it. It includes making use of new technology and

showing guidance to ensure that the trail of a case progresses immediately and smoothly.[3]Pre-Action Protocol is another aspect of CPR. These have been brought into try and make sure that parties are open with each other about what the dispute is about so that optimistically both parties will be able to take a reconciliation about settling the case. If the case is not resolved it ensures that there is less interruption as the claimant is required to give full information about that. In the past the parties were often not open and friendly with each other and did not reciprocate to letters quickly. Under the Pre-Action Protocol for personal injury, the parties endeavor to agree a single expert. In many cases there will therefore be no altercation over the intensity of the injury where there have been before. This has lead to many cases settling without being inaugurated of court. The recent case of Bermuda International Securities Ltd v. K. P. M. G., The Times, March 14, 2001, CA (Waller, Clarke & Rix L. JJ.), shows that the applicants for Pre-Action disclosure believed they had a claim in professional negligence against the respondents. In this case, Rix L. J. explained that, in the extant Pre-Action Protocols, the confession of documents is treated in different ways. In the Pre-Action Protocol for Personal Injury Claims (Civil Procedure Autumn 2000, vol. 1, Autumn 2000, Para. C2-001), confession is required at an early stage. This protocol says that, when the advised defendant answers the claimant's letter of claim, he should encompass with his letter of reply " documents in his possession which are material to the issues between the parties, and which would be likely to be ordered to be disclosed by the court, either on an application for Pre-Action Disclosure, or on disclosure during proceedings" (Para. 3. 10).[4]A new concept which is known as " Tracks" is incorporated by

CPR. There are three different tracks. The tracks are mainly delineated to ensure that procedures adopted to assemble a case for trial match the value of case. Most cases worth less than 5000 pounds go to Small Claim Track. This track has very intelligible and clean maneuvers to make sure that costs do not exceed the value of claim. Cases worth between 5000 to 15000 pounds deal in Fast Track system. By this system a trial is likely to last a day or less than a day. This is designed to deal with moderate value cases and this system has a tight timetable to assure that the case gets to trial swiftly to deal with the problem of delay. Multi Track system is basically for those cases which are worth more than 15000 pounds or trial is likely to last more than one day, for more serious or heterogeneous disputes. The Civil Procedure Rules were intended to bring about a new era in which claims would be resolved speedily and exhaustively. One of Lord Woolf's main aims was to encourage parties to settle; not just by the lure of the terms of their offer, but also by the threat of sanctions when a reasonable offer was not accepted. Part 36 introduced sanctions for the betterment of claimants, intended to be tantamount to those available to defendants by way of payment-in.[5] Part 36 Offers has always been the case that the court view settlement between the parties as being desirable to a trial. It is seen that early settlement has been encouraged by the new CPR, courts also recognize offers to settle the parties. Offers can be made in cases involving money but in cases which do not have a simple cash value. If the defendant wants to make an offer for settling a case he can constitute a Part 36 Offer, this is not an initiation of liability. The claimant then has 21 days in which to accept that offer. The claimant accepts the offer then he will be designated to the money that was

offered, mostly the legal courts. If the claimant discards the offer and at trial wins more than the previous offer, then he will be characterized to what he won at trial and usually the defendant will pay her cost. If the claimant rejects the offer and at trial loses, then he will not be characterized to any money at all and have to pay all of the defendant's cost. In *Susan Dunnett v Railtrack plc* (2002) CA Susan Dunnett's appeal against the first instance decision was dismissed. The Court of Appeal was shown concurrence between the parties in which an offer to settle was made by Railtrack which it appeared Susan Dunnett did not consider was a reasonable nor fair offer. If the claimant rejects the offer and at trial wins less than the offer, then the court considers the defendant's attempt to settle. The claimant will still be characterized to his money but the court will usually recognize that he could have obtained the offer. He will have to pay the defendant's cost. In *Nail vs Jones and Others* (2004) the same scenario happened. A defendant's Part 36 Offer is therefore an offer to settle the case that puts an encumbrance on the claimant. It was introduced by CPR in 1999 before the rules came into force the claimant could make an offer but no aftermath for the defendant of rejecting it. There is now new proceedings for claimants to encourage early settlement. If the offer is abandoned and the claimant wins the trial then he can do two things. He may have to pay enhanced rates of interest on damages awarded. He may have to pay enhanced rates of interest on costs awarded. Last of all we can say that though the new system has many problems, the new system can be said systematic. It can be seen that Lord Woolf's Reform has provided a number of necessary steps for the betterment of this system. For this reform the system is now much more efficient. So it can be said that

Lord Woolf's Reform has resolved many problems of the civil justice system and the present system is now more developed than the previous system.