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THE ROLLS

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Judicial Roundtable Discussion: Technology in a New World

Introduction

1. Municipal justice systems in general and commercial courts in particular need urgently to acquire a better understanding of the disputes that they will actually be required to resolve in the new technological era.
2. The debate this morning should be less about how we can do digitally what we used to do using analogue methods, and more about understanding how technology will fundamentally affect the disputes themselves.
3. Most jurisdictions internationally have done well to undertake remote hearings during the pandemic, and even to move away from paper towards an entirely paper-free digital environment. But none of that is using new technologies, nor is it changing either the way we resolve disputes or the kinds of dispute we are resolving. These two things must now be our focus.
4. I will start with the kinds of disputes that will need resolving in the future.

The kinds of dispute that will need to be resolved

5. We are on the verge of a digital revolution in commercial life. It will not be long before almost all business will be undertaken by the use of electronic documentation, electronic signatures, smart legal contracts and on-chain records. Immutable digital records will abrogate the need for courts to resolve many of the factual disputes that now arise.
6. Electronic documentation is particularly significant as it will liberate the transfer of property at all levels from its remaining documentary boundaries. But the UNCITRAL Model Law on Electronic Transferable Records was concluded back in 2017 and has thus far only been enacted in Bahrain, Singapore and Abu Dhabi (and by the latter two jurisdictions only in 2021).
7. There have been a number of impediments to the inevitable eventual and ubiquitous use of on-chain smart contracts.
8. The first impediment was the lack of a clear understanding of the legal status of cryptoassets and smart contracts, something that the UK Jurisdiction Taskforce took forward in respect of English Law with its Legal Statement on the subject at the end of 2019.
9. The second impediment is the absence of dependable Central Bank Digital Currencies (CBDCs) to allow smart contracts to execute automatically. Several Central Banks have

trialled CBDCs, and some may be about to launch them, but there is no CBDC currently in which international businesses can have real confidence.

10. The third impediment is the absence, thus far, of a universally accepted method of digitising commercial and legal documentation. The problem is highly soluble, but the options available are not at the moment uniform.
11. The fourth impediment is the absence of a universal dispute resolution process for smart contracts and cryptoassets. The UKJT will, however, shortly publish a set of Digital Dispute Resolution Rules, providing for arbitral or expert dispute resolution in very short periods, arbitrators or experts to implement decisions directly on-chain using a private key, and optional anonymity of the parties.
12. Once these impediments are overcome, as they surely will be, commercial courts and arbitral tribunals will be resolving an increasing volume of on-chain and electronic documentation disputes. Trading on the financial and insurance markets, trading in physical and intellectual property, and the documentation of transportation is all likely to be undertaken electronically. Lawyers, judges and arbitrators will need quickly to acquire a comprehensive understanding of how these technologies work.
13. Let me turn now to the way in which we resolve disputes.

The way disputes are resolved

14. Our justice and trial systems are still very much based on a 19th century model, even if the hearings can now be undertaken remotely. In an era in which everything can be delivered with 2 or 3 clicks on a smartphone, I do not think that international business people will accept the cost and delay caused by our current approach. But, as yet, very little thought has gone into the fundamental reforms that are necessary.
15. In the UK, we are moving towards an holistic online environment for most civil disputes. I see no reason why the model cannot be rolled out to the resolution of larger commercial cases. Online dispute resolution has a number of advantages.
16. It allows for a single transferable data set to be created for each case. It allows for asynchronous interactions between the court on the one hand and the parties, the witnesses, the experts and their lawyers on the other hand. It allows also for integrated ADR interventions at all stages of the dispute, in place of a single staged mediation which may or not be effective. Moreover, it should speed up the process considerably.
17. Finally, an online dispute resolution process will allow for the considered and appropriate use of artificial intelligence to aid the dispute resolution process. AI can be used to analyse and make sense of increasingly large data sets. It can assist in bringing about mediated solutions. And it can distil the relevant legal precedents. We do not, I think, need to fear the use of algorithmic technologies that are already present in almost every other aspect of our lives. Although we do, of course, need to ensure that we understand what the algorithms are doing to prevent bias and unfairness.

Conclusions

18. This has been a very rapid tour d'horizon around what commercial disputes and commercial dispute resolution might look like in just a very few years from now.
19. What it shows, I think, is that lawyers and judges will need to demonstrate flexibility and be prepared to learn new skills. The business communities that our justice systems exist to serve will not forgive us if we refuse to adapt to ensure that we can resolve the disputes that arise in a new streamlined technological environment in an equally streamlined and adept technological manner.
20. In short, the days of lengthy paper pleadings and bundles are numbered. On a personal note, I can say that I now operate without using any paper at all. I have found that one can determine even the complex cases without it. Truly, it is a liberation!