

DUNDAS & WILSON

## **Arrested Development and Judicial Parallelism**

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## **Basis of International Co-operation**

- Common Law
  - EC Regulation
  - Old Colonial Mafia – Section 426
  - UNCITRAL Model Law - CBIR
  - Other “Clubs”
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## Common Law

- The aptly named “Navigator”
  - Attitudes of Trading Nation States
  - “Comity” or
  - No Treaty or Statute
  - How can I help?
  - *Cambridge Rubin and New Cap*
  - Choose your remedy very carefully
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## EC Regulation 1346/2000

- CoMI is the Key
  - First to move advantage
  - Selective Comity
  - Interplay with Judgments Regulation
  - Mandatory Procedure
  - Scope Narrowing
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## Old Colonial Mafia

- Section 426 IA 1986
  - “If we can we should”
  - Strong Sense of respect
  - Courts countenance assisting aggressors
  - Statutory Obligation
  - Very reciprocal enforcement
  - *HIH, New Cap, England v Smith*
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## UNCITRAL Model Law

- Not Reciprocal at all
  - Incoming fire recognition
  - Depends on enactment
  - Limits of assistance dependent on statute
  - Limits on Forum Shopping
  - Definitional and procedural differences
  - CLOUT
  - CBIR and Chapter 15
  - *Condor and Metcalfe*
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## What to Look For

- Collective Remedies
  - Recognisable core features Preferences/ Fraudulent Transfers
  - *Seagon, Gourdain, Madoff*
  - Private remedies are out of fashion
  - One man's solution is another man's problem
  - *Schemmers and Stanford*
  - *UKSC: Rubin v Eurofinance 7-8 March 2012*
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