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ENACTING JUST AND EQUAL LAWS – ENFORCEMENT AND FAIR TRIAL

MAYFLOWER 400 LECTURE

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Introduction

1. It is a great honour to have been asked to give this year's Mayflower Lecture and to join a long list of distinguished former speakers. And to do so on the anniversary of Lady Nancy Astor's arrival as the first female MP – for Plymouth Sutton – on 28 November 1919. She explained her motivation for the appointment thus: "I wanted the world to get better. I knew that it could not possibly do so if it was ruled only by men. In fact, it is amazing how well they have done for 2,000 years, considering…"

2. True to the origins of this lecture, I have taken as my subject: human rights. Although perhaps an aspect of human rights that may tend to be overlooked. My starting point though is, as it should be for this lecture, the Mayflower, and specifically the Mayflower Compact.

3. Having set sail from Plymouth on 16 September 1620, the Mayflower sighted land on 19 November. Specifically, they caught a first glimpse of what is now Cape Cod. They saw what, for Scott Fitzgerald centuries later, would symbolise the American Dream - one of course that he emphasised could never be attained.[1] That it cannot be attained, yet is always nevertheless to be strived for, is, of course, its essential quality.

4. Rather than dwell on such matters the passengers on the Mayflower took a more practical approach. They realised that, if they were to survive, they needed to devise a legal framework for their new community. That framework – arguably America's first attempt at a written constitution – was the Compact. It was a short document, of which the original does not survive. Within it the signatories agreed to

   > '*. . . covenant and combine [themselves] together into a civil Body Politick, for [their] better Ordering and Preservation, and Furtherance of the Ends aforesaid: And by Virtue hereof do enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions, and Offices, from time to time, as shall be thought most meet and convenient for the general Good of the Colony; unto which we promise all due Submission and Obedience.*'

5. On 21 November 1620, the Compact was signed and the agreement to create a society that would enact just and equal laws took effect. It is one thing to enact such laws, it is another to live according to them. And that is where fair trial and enforcement come in. Fair trials are, of course, essential if rights, just and equal laws, are to be vindicated where they have

[1] F. Scott Fitzgerald, *The Great Gatsby*, (Penguin, 1990) at 171-172.

been infringed or otherwise breached. As Lord Reed put it in the case of *R (Unison) v The Lord Chancellor*, without access to courts, and hence to fair trials within those courts,

> '*. . . laws are liable to become a dead letter,*'[2]

6. The right to fair trial has many elements to it, both as it has developed at common law and under article 6 of the European Convention on Human Rights. Both emphasise, for instance, the need for an independent and impartial judiciary, for practical and effective access to justice, for equality of arms between litigants, for public and reasoned justice and so on. There is, however, one aspect of the right to fair trial that can, perhaps, be too often overlooked. That is the right to effective and timely enforcement. It is one thing to provide effective access to the courts and judgment. But without a mechanism to ensure that judgments were implemented, as the European Court of Human Rights put it in *Hornsby v Greece*, the right of access to a fair trial would be illusory, rather than effective. In this year's lecture I want to explore this aspect of the right to fair trial.

The Greatest Possible Coincidence Principle

7. My starting point is what was called by Professor Moreira as long ago now as 1985 '*the greatest possible coincidence principle*',[3] something which sounds more like something you would find Sherlock Holmes talking about. Specifically though, it explains the ultimate purpose of enforcement. Before we get to that let me take a step back.

8. There is an idea that the civil and family courts and tribunals exist to resolve private and public law disputes. It is sometimes referred to critically as the 'dispute resolution story'. On one level, it is undoubtedly correct. Individuals bring their legal disputes to the courts for them to be resolved by the court making findings of fact and applying the law to those facts. The end product, a judgment, is the means by which rights are vindicated, and in that way the dispute over them is resolved.

9. On another level the story is at best a partial one. Our civil courts, family courts and tribunals play a far more significant role than dispute resolution, although this wider role depends upon access to the courts and the judgments they hand down. Through their judgments our courts help provide the socio-legal framework within which individuals and businesses can order their affairs amongst themselves.

10. They thus help to prevent disputes arising because they provide the basis on which members of civil society can gain an understanding of the law and its application, what their rights and obligations are, what the consequences of breaching the law are likely to be, and conversely what the benefits of acting within the law are also likely to be. This may be done with or without legal advice, although the lawyers in this evening's audience would no doubt stress that such an understanding comes best in the light of their advice. One of the courts and tribunals' wider roles then can best be summed up as promoting prevention rather than cure. They have other roles, but they are another story for another day.

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[2] *R (Unison) v The Lord Chancellor* [2017] UKSC 51; [2020] AC 869 at [68].

[3] U. Jacobsson & J. Jacob, *Trends in the Enforcement of Non-money Judgments and Orders – The First International Colloquium on the law of civil procedure*, (Kluwer, 1988) at 11.

11. This preventative role plays a generally unacknowledged but crucially important role in society. It is well-known that our substantive laws are not self-executing, a point emphasised by Jeremy Bentham in one of those moments when he was stressing the necessity of courts and the procedures that enabled them to give effect to the law.[4] For most people and for most of the time the fact that they are not self-executing is not a problem. One of the hallmarks of civil society is that for the most part people abide by the law, give effect to their obligations and respect each other's rights. What we, as judges, see in the courts is truly the exception.

12. Where disputes do arise and individuals and businesses need to resort to the courts to resolve them, to give effect to the law, it is important that they can do so in a timely and cost-effective manner. Here is the first aspect of the greatest possible coincidence principle. Where law is self-effecting its benefits come at a cost. That cost is determined by the nature and complexity of the law itself, and the steps that need to be taken to ensure that those to whom it applies can act in accordance with it effectively. Laws that are well-structured, clear in their scope and application try to minimise such costs. But such costs there will be. Where disputes arise and litigation is commenced additional costs arise: court fees, lawyers' fees, fees associated with gathering evidence, with appointing expert witnesses, and with navigating the courts, their practices and procedures.

13. It is well-known, and no doubt it was at the time of the Mayflower as it is now, that we constantly seek to reform our courts and their processes, to ensure that individuals can litigate efficiently and cost-effectively. Since the 1980s, we have particularly focused on this through reform programmes stemming from the Civil Justice Review, via the Woolf and Jackson reforms, to the Briggs reforms and most recently the HMCT Modernisation Programme. They key point though is that our approach to litigation's costs should be that we strive to minimise them, so that the cost of dispute resolution, of securing a judgment that gives effect to the law, is as close as possible to the cost of self-execution. The two can and will never be fully coincident. But that should not stop us from striving to reform our courts and tribunals so that they keep the two costs as close together as realistically possible.

14. This takes us to Professor Moreira's point. It is one thing to secure a judgment, which brings an end to a legal dispute. That may not always be the end of the story. A judgment may require a defendant, for instance, to pay a debt, to pay the claimant damages, to cease acting in an unlawful way. It may require a company to stop manufacturing a product in breach of a patent. Or it may require a ship to be detained, as security, where claims are brought against a shipowner. In all such circumstances, the judgment itself is insufficient. Something more is needed. And this is where the enforcement process comes in. Enforcement proceedings need to be taken. They too come at a cost. And the objective of this process? If I can borrow from the Professor,

> '*. . . the objective of the enforcement process should consist of the attainment of a practical result coinciding exactly with the one that would be attained through voluntary*

[4] As noted by G. Postema, *The Principle of Utility and the Law of Procedure: Bentham's Theory of Adjudication*, (11) Georgia Law Review (1976 – 1977) 1393 at 1402.

compliance with the judgment or order, and if exact coincidence is not possible, the objective should be to produce a result as near the ideal of coincidence as possible.'[5]

Again we can see both the ideal and the realistic alternative. In both instances, our aim should be to try to minimise the costs that arise over and above the costs of self-execution of the substantive law. This is the greatest possible coincidence principle.

15. Two issues arise from this. First, how might our enforcement processes seek to achieve this objective? And secondly, to what extent does our approach to enforcement strive to attain this objective? If we compare, for instance, the amount of time spent on reforming our enforcement processes across since the 1980s with the time spent on reforming our civil courts processes, we might wonder why so little had been spent on the former and so much on the latter.

Systems change?

16. The first issue we might look at in answering these questions is one centred on how we organise our approach to enforcement: a systems approach.

17. Different countries have taken different approaches to this. Wendy Kennett, the leading English authority on enforcement, identifies three broad models that have been adopted. The first she describes as the administrative model, which is common to Sweden and Finland. It requires the state to establish an executive agency of the State, which is then responsible for the enforcement process. The second model, which can be found in France, Belgium, the Netherlands and some other European countries, she calls the Judicial Officer Model. This places the enforcement process in the hands of a branch of the legal profession, one separate from lawyers. This model evolved from 14th century France and sees enforcement carried out by what are known as Huissiers de Justice.

18. The final model is court-centred. It sees courts responsible for enforcement of judgments, following applications to that effect by creditors. Court-centred models might place the entire enforcement process in the hands of the court and court officers. They might also take a hybrid approach. As you might expect, we take the latter. Enforcement is overseen by the court under provisions contained in our Civil Procedure Rules and carried out by what are commonly known as bailiffs. Where enforcement is carried out through the County Court, they are either authorised by the court although they are mainly employed by private enforcement companies or are employed by the court itself. Where it is carried out in the High Court, we see what are now called High Court Enforcement Agents; individuals who are authorised by the Lord Chancellor and who carry out enforcement of specific judgments further to court order.[6]

19. Each of the models has much to commend it, and potential drawbacks. The administrative model by placing responsibility for enforcement in the hands of state bodies outside the justice system ensures that the courts are not encumbered with the time and cost of enforcement. It thus contributes to minimising the cost of achieving a judgment.

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[5] As his point was summarised by Jack Jacob in U. Jacobsson & J. Jacob (1988) at 11.

[6] Courts Act 20023, schedule 7. For more detail on the various forms of enforcement officer and agents, see L. Conway, *Enforcement Agents & High Court Enforcement Officers (formerly known as bailiffs)*, (House of Commons, Research Briefing, 2024). It is available here: https://researchbriefings.files.parliament.uk/documents/SN04103/SN04103.pdf.

20. The judicial officer model can also promote cost-efficiency and effectiveness, not least through promoting effective competition between its huissiers. And the court-centred model could seek to achieve the same benefits as both of the other two models by promoting public service, competition and, through regulating authorisation as an enforcement agent, high standards. By engaging the court within the enforcement process, it, however, calls on its time and resources, which may, as I noted, adversely affect the court's ability to minimise the time and cost to judgment.

21. If we were considering how best to minimise the cost and time of enforcement, we might, however, spend some time in looking with fresh eyes at the nature of the model that has evolved here. As with very many of our institutions, it can be traced to pre-Norman England. The term 'bailiff' we owe to the Normans. Its Saxon precursor, the shire reeve or sheriff, as it became, was also adopted by the Normans and lived on until recently. It was the term used to refer to what is now the High Court Enforcement Officer. Evolutionary models have much to commend them. They provide stability, matched with the flexibility to change to meet modern circumstances. They can minimise the prospect of reform producing unintended adverse consequences. But, they can also inhibit innovative reform when it is necessary or result in it not going as far or as fast as it needs to go. They can also produce incoherence, overlapping responsibilities or unnecessary multiplication, which benefits no one and, to the contrary, will tend to increase the cost and time taken to secure effective enforcement.

22. The civil courts know all about these problems, as would the Mayflower passengers have done. If they had wanted to pursue legal claims before setting sail, they would have been faced with a welter of different superior courts with variously overlapping, competing, as well as complementary, albeit unique, jurisdictions and procedures. All of which had evolved over time to meet the exigencies and spirit of each passing age. That system, as perfect it seemed to some (and some such as Blackstone did believe it was perfect), was entirely unconducive to securing judgments on the merits of disputes at minimal cost and in a reasonable time. On the contrary it excelled in maximising the cost and time taken to resolve disputes, and in far too many cases did so without resolving them on their merits. Where access to justice was concerned, it was a system that was more than wanting. Unsurprisingly, it did not survive the Victorian era. Rationalisation came in 1873 to 1875 through the Judicature Acts, and the many superior courts became one: the unitary and omnicompetent High Court of England and Wales and above it, a single Court of Appeal. And that was complemented, for lower value claims, by the County Courts, each of which had since 1846 the same jurisdiction and procedure. However, even with that rationalisation, problems remained. And we continue to strive to improve our courts' ability to deliver justice effectively today, not least through regular reform programmes, not least the continuing court modernisation programme.

23. If a reformer were to take a systems approach, a starting point might well be to consider what type of system was best-suited to secure effective enforcement today. This is something that has not often been considered, and where it has, it has not been considered from first principles. In 1969, the Committee on the Enforcement of Judgment Debts, looked at this type of question to a limited extent.[7] It recommended, for instance, that the enforcement of civil debts that were carried out in the Magistrates' courts should be

[7] Report of the Committee on the Enforcement of Judgment Debts (Cmnd. 3909 of 1969) at 76.

transferred to the county courts. A degree of rationalisation, based on the idea that the best way for civil matters to be dealt with was for them to be dealt with in the civil courts and not what was primarily a criminal court. It should be said that the Magistrates' courts continue to have a very significant civil jurisdiction, and continue to deal with a range of enforcement matters, not least council tax enforcement.

24. Step forward in time to 2007, and some significant reform was introduced by Part 3 of the Tribunals, Courts and Enforcement Act. The law concerning how a creditor could secure effective enforcement through taking control of a debtor's goods was, for instance, updated as was the regulation of enforcement agents. Other reforms in the legislation were not, however, brought into force. Again, a degree of rationalisation and updating. Perhaps most telling in this respect is that we have now passed the 25th anniversary of the Civil Procedure Rules' introduction following the Woolf reforms of the 1990s. The rules were intended to be a new procedural code, and their overriding objective referred to them as such. The word 'new' was excised from the rules in 2022. Yet, that no longer new code still does not make complete provision for all aspects of enforcement. What was Order 28 of the old County Court Rules, which concerns judgment summons, which require debtors to attend court where there has been non-payment of a debt, for instance still lives on as a schedule to the CPR. Perhaps an example of the maxim 'make haste slowly.'

25. More recently, Lord Briggs considered whether and to what extent enforcement in the civil courts ought to be reformed. In 2016 the Civil Courts Structure Review considered the approach that ought best to be taken in the civil courts. It proceeded on the basis that enforcement was '*inherently a court process*.'[8] The administrative and judicial models might have suggested that while that might be the case in England and Wales, it need not be the case. In the light of that, however, it went on to conclude that civil enforcement should become the sole province of the County Court, albeit with the ability to transfer enforcement to the High Court where that was necessary on the specific facts of the case.[9] While some reforms were brought into force following that review, rationalisation, as recommended did not. And that does not take into account, that enforcement also remains a matter for the Magistrates' courts as well – they fell outside the remit of the Briggs Review.

26. Most recently, the Civil Justice Council has established a review of enforcement. Its work is at an early stage, and a call for evidence has just closed. Two of the questions that it has raised, and perhaps the most important as they go to the heart of the issue of effective enforcement, are this:

> '*Do you consider there should be any changes to the system of enforcing judgments, or should the status quo be maintained?*
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> *If you consider there should be changes, what changes do you feel should be made to make enforcement more accessible, fair and efficient?*'[10]

27. These questions go beyond the Briggs Review as they invite an examination of whether the enforcement system as a whole stands in need of reform. They therefore invite consideration of whether enforcement should remain an inherently court-based process or whether there is merit in adopting an administrative or judicial model, and if so on what

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[8] M. Briggs, *Civil Court Structure Review – Final Report*, (Judicial Office, July 2016) at 100.
[9] M. Briggs (2016) at 102.
[10] Civil Justice Council, Enforcement Working Group, Call for Evidence, questions 33 and 34.

basis. They also invite consideration of what reforms might be necessary if a court-based model is retained. Should we create an enforcement court, for instance, unify all enforcement in the County Court or in an online court? Is there a need to reform the structure and governance of who carries out the enforcement process and, if so, how and in what ways?

28. The questions raise the question of principled and principle-based reform. That was the approach taken in 1873 to the civil courts. The principles that guided the approach then was that the courts had to operate so as to secure justice, while minimising cost and delay. As the Professor might put it, to give effect to the greatest possible coincidence principle. The same approach could be taken to enforcement. I very much hope that the Civil Justice Council's review looks at the issues in depth and with a view to making recommendations that seek to give effect to that principle to the greatest degree possible. In doing so, they may well consider work currently being completed internationally by UNIDROIT – the International Institute for the Unification of Private Law. It is currently finalising a long term project that is to articulate Best Practices for Effective Enforcement.[11] No doubt it too is looking at how best to give effect to Moreira's principle. Where it can be implemented fully, both creditors and debtors benefit, and in that way so does society as a whole.

The Individual Approach

29. Narrowing down from a systems focus, I want to turn now to the individual case. Here I want to look at individual practices that have been adopted to minimise the cost and time involved in effective enforcement.

30. My starting point here is something that might appear to be an instinctively attractive option. It might be thought that the best way to secure effective enforcement would be to take steps as early as possible in the litigation process. Why wait until judgment to enforce? Why not simply provide the means for a claimant to commence enforcement before they have obtained a judgment in their favour? In other words, why not let a claimant obtain security for judgment?

31. It is, however, very well-established that our courts do not have the power to grant security for judgment. The issue was considered in the 1890s in the case of *Lister & Co v Stubbs*.[12] Lister & Co were manufacturers, silk-spinners and dyers. Stubbs was employed as their foreman dyer, who had for a long time been entrusted by the company to buy products that they used in the dying process. Stubbs took this as an opportunity to supplement his wages. Without his employer's knowledge he made a significant personal profit from orders that he made on their behalf with suppliers. As the judgment puts it he secured for himself '*large sums by way of commission*.' Unsurprisingly, when his employer found out about this they were none too happy. And, inevitably, proceedings commenced.

32. During the course of the litigation, Lister & Co applied for an interlocutory injunction. It sought to restrain Stubbs from dealing with real estate in which he had invested his ill-gotten gains. It also sought to require him to bring his other investments and any remaining money into court. The basis on which the order was sought was that Stubbs held all this property and money as a trustee for Lister. The Court of Appeal rejected that argument. On the

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[11] See https://www.unidroit.org/work-in-progress/enforcement-best-practices/#1644493658788-9cb71890-334f.

[12] *Lister & Co v Stubbs* (1890) 45 ChD 1.

contrary, it held that the relationship between the two was that of creditor and debtor. In such a case, it would be wrong to order the defendant, the debtor, to bring the money into court or for the court to restrain his use of the real estate. As a general principle, a claimant must run the risk that a defendant may, when judgment comes, no longer have assets sufficient to satisfy the judgment.[13] It is not for the courts to interfere with a defendant's substantive rights, particularly their property rights, in this context simply because a claimant is pursuing proceedings against them.

33. That was until Lord Denning MR arrived on the scene in 1975 in the case of *Nippon Yusen Kaisha v Karageorgis*.[14] The case concerned three ships chartered by Japanese shipowners to Greek charters. At some point the charterers failed to pay the hire charges due on two of the ships. The shipowners believed the charterers had funds held in a bank in London. And they feared that they would be transferred out of the jurisdiction. And if they were, then it would no doubt have been difficult for them to secure funds from the defendants to satisfy any debt found to be due to them under a judgment in English and Welsh proceedings. Now, we know that the courts would not grant the shipowners security for judgment.

34. Nevertheless the shipowners applied for an interim injunction, one that restrain the defendant charterers from removing their assets outside the jurisdiction. The application was refused when it came before Mr Justice Donaldson. The shipowners appealed to the Court of Appeal. The appeal was allowed. In giving the leading judgment, Lord Denning MR, noted that such an injunction had never before been granted by the courts. As he put it, '*It has never been the practice of the English courts to seize assets of a defendant in advance of judgment or to restrain the disposal of them.*'[15] He went on to conclude that the time had come for the law to change. As he explained,

> '*It seems to me that the time has come when we should revise our practice. There is no reason why the High Court or this court should not make an order such as is asked for here. It is warranted by section 45 of the Supreme Court of Judicature (Consolidation) Act 1925 which says that the High Court may grant a mandamus or injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the court to be just or convenient so to do. It seems to me that this is just such a case*.'[16]

35. It was just and convenient to do so because there was a strong prima facie case that the money was due and owing, and that the defendant's assets would likely be removed from the jurisdiction in the absence of an injunction and, where enforcement was concerned, that would leave the claimants with 'the greatest difficulty in recovering anything.' It would, in other words, increase the time taken to securing enforcement, and its cost. It would frustrate the court's ability to give effect to the greatest coincidence principle.

36. A short time after that judgment was handed down, the Court of Appeal returned to the question of whether such a form of injunction was permissible. In the rather better-known case of *Mareva Compania Naviera SA v International Bulkcarriers SA*,[17] the court considered whether its previous decision in *Lister & Co* meant that it had no jurisdiction to restrain a defendant in this way. In the *Nippon* case, it had not been referred to its previous decision

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[13] Zuckerman, *Zuckerman on Civil Procedure – Principles of Practice*, (Sweet & Maxwell, 2021) at 10-240.
[14] *Nippon Yusen Kaisha v Karageorgis* [1975] 1 WLR 1093.
[15] *Nippon Yusen Kaisha v Karageorgis* [1975] 1 WLR 1093 at 1094.
[16] *Nippon Yusen Kaisha v Karageorgis* [1975] 1 WLR 1093 at 1094 at 1095.
[17] *Mareva Compania Naviera SA v International Bulkcarriers SA* [1980] 1 All ER 213.

on security for judgment. Again Mr Justice Donaldson had refused to grant the interim injunction, which a different set of shipowners had issued in similar circumstances to those in the earlier case. He did so relying on *Lister & Co.* Again the shipowners appealed the decision. The Court of Appeal again allowed the appeal. Again, it relied on section 45 of the 1925 Act. Additionally, Lord Denning MR explained that the provision, which provided that a court could grant an interim injunction when it was just or convenient to do so had been given a wide interpretation: it was an unlimited power, subject to the requirement that interim injunctions could only be issued to protect a legal or equitable right. Lord Denning MR went on to conclude that

> '. . . *that principle applies to a creditor who has a right to be paid the debt owing to him, even before he has established his right by getting judgment for it. If it appears that the debt is due and owing, and there is a danger that the debtor may dispose of his assets so as to defeat it before judgment, the court has jurisdiction in a proper case to grant an interlocutory judgment so as to prevent him disposing of those assets. It seems to me that this is a proper case for the exercise of this jurisdiction.*'[18]

37. With that affirmation the *Mareva* injunction was born. Now, it is of course, known as the freezing injunction. Not least because it has a chilling effect on the potential for defendants to attempt to frustrate the enforcement process before either a judgment is given or after it has been given but the enforcement process has not been completed. Since those decisions the freezing injunction has developed. Orders for disclosure can be made to support its efficacy. It can apply within the jurisdiction or worldwide. It can also be supported by civil search orders, another one of Lord Denning MR's innovations.[19]

38. These developments make clear how our courts and their processes have evolved so as to help secure the effective administration of justice. When they had no power to order default judgment, they developed a means to ensure that defendants could not frustrate justice by not engaging with the court. When they could order default judgment, that coercive power fell away. When it became easy for defendants to frustrate effective enforcement by moving their assets outside the jurisdiction quickly through, for instance, electronic forms of transfer, the freezing injunction was developed. Each of these processes demonstrate how the courts seek to minimise the cost and time taken to secure effective judgment and enforcement. And particularly with freezing injunctions, how they seek to minimise enforcement cost and time. Whether knowingly or not, they are developments that seek to give effect to Professor Moreira's principle.

The future?

39. Where might this take us? The freezing injunction played a key part in supporting the development of commerce in the City of London in the 1970s when commercial parties could move their assets more easily than they might have been able to do so in the past outside the jurisdiction. For the English and Welsh courts to remain ones that could deliver effective access to judgment and enforcement, for those engaged in domestic disputes and for those engaged in international disputes litigated in London, there was – and remains – a need to provide the means to secure justice. And that entails the need to ensure that

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[18] *Mareva Compania Naviera SA v International Bulkcarriers SA* [1980] 1 All ER 213 at 214-215.
[19] A. Zuckerman at 15.218 and following.

justice's achievement is not capable of being frustrated by the parties or, more generally, by the cost and time taken to secure effective judgment and enforcement.

40. One of my predecessors, Lord Thomas of Cwmgiedd, once commented on the relationship between the Commercial Court and arbitral proceedings. He made the point that it was one of '*maximum support: minimum interference*.'[20] That is that the court should support effective arbitration as much as it could, while leaving arbitral tribunals to resolve disputes before them as much as it possibly could. A similar point can be made about litigation itself. Our civil courts ought to be capable of providing maximum support to parties to proceedings, enabling them to achieve justice and its enforcement effectively, economically and in good time. This may mean that they should develop new procedures to meet the needs of the day, something that our courts can for example explore through their User Groups.

41. Maximum support may also mean developing new procedures to deal effectively with significant developments that flow from the ever increasing digitisation of commerce. That may mean, as we have done, that the courts need to develop their approach to digital assets, NFTs, cryptocurrencies and so on. Where once it may have been relatively straightforward for the courts to issue orders that resulted in a ship being made subject to arrest, ensuring that it was not taken out of the jurisdiction, or to issue an order freezing a bank account, it must also be just as straightforward for them to be able to effect similar orders in the digital sphere. The courts are, of course doing so. Freezing injunctions have, for instance, been issued concerning cryptocurrencies, such as Bitcoin and Ethereum.[21]

42. Further developments will no doubt be needed as time goes on and as the digitisation of markets and society continues. In this regard, both the Civil Justice Council's review and UNIDROIT's Best Practices project which is focusing particularly on how to secure effective enforcement in a digital world, will be of acute importance. We will need to give very careful consideration how to secure an enforcement system that is as effective as it can be, as well as how we can best secure enforcement in individual cases. In all cases we should, however, seek to ensure that we keep the cost and time of enforcement down to a minimum: that ought properly to be our guiding principle where reform is concerned. If it is, like the Mayflower passengers and their attempt to create a practical legal framework through the Compact, we will be able to maintain our commitment to the implementation of a justice system able to secure practical and effective enforcement. And through that we will continue to give effect to just and equal law.

43. Thank you[22].

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[20] Lord Thomas CJ, *Commercial Dispute Resolution: Courts and Arbitration*, (6 April 2017) at [25]. It is available here: https://www.judiciary.uk/wp-content/uploads/2017/04/lcj-speech-national-judges-college-beijing-april2017.pdf.

[21] See, for instance, *Vorotyntseva v Money-4 Limited t/a Nebeus.Com* [2018] EWHC 2596 (Ch).

[22] And with grateful thanks to Dr John Sorabji for his assistance in the preparation of this lecture.