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Modified Universalism and its Parallel in the South African Common Law

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Acknowledgment

INSOL International is pleased to publish this new technical paper, "Modified Universalism and its Parallel in the South African Common Law", authored by Yuri Saunders, Barrister, Stanbrook Prudhoe.

This paper has been adapted from the work originally submitted by the author as part of INSOL's Global Insolvency Practice Course.

The paper provides an overview of the development of "modified universalism", which has come to be regarded as an underlying norm of cross-border insolvency law and policy. This is the idea that, in an insolvency matter involving assets and creditors in multiple jurisdictions, the insolvency estate should be administered, as far as possible and within the constraints of public policy, as a single proceeding under a single law.

The paper also considers how the development of modified universalism aligns with the current common law approach to cross-border recognition in South Africa.

This topic remains of great importance in countries which are yet to adopt the UNCITRAL Model Law on Cross-Border Insolvency. In those countries, cross-border cooperation and recognition depends on principles of comity and resort to the fundamental tenets of modified universalism.

With only 53 States having adopted the Model Law in 56 jurisdictions, there is scope for modified universalism to be developed and refined further in cross-border insolvency jurisprudence in coming years.

INSOL expresses its sincere thanks to the author for his work and expertise in writing this paper.

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Modified Universalism and its Parallel in the South African Common Law

By Yuri Saunders, INSOL Fellow and Barrister, Stanbrook Prudhoe*

1. Introduction – the formulation of a modern "universalism"

This paper will trace the development of the principle of "modified universalism" in cross-border insolvency law. It will also compare the most recent interpretation and application of modified universalism at an appellate level globally to the common law approach in South Africa. The South African approach has a longer history of offering the kind of assistance which was aspired to in the development of modified universalism.

Prior to the introduction of modified universalism, the common law approach to assisting foreign office holders was significantly more predictable. Predictable not in reference to matters of *stare decisis* – which, admittedly, have challenged the application of modified universalism – but predictable in the sense that it was more consistent with what one had come to expect. The English courts would apply English law without thought as to surrendering jurisdiction for the sake of comity. So, for example, in *In re Suidair International Airways, LD (Application of Vickers-Armstrongs, LD)*,[1] Wynn-Parry J held that the English court could only administer the assets of a South African company located in England according to English law, without deference or regard to South African law.

Around 56 years later, the Judicial Committee of the Privy Council heard the appeal in *Cambridge Gas Transportation Corporation v Official Committee of Unsecured Creditors of Navigator Holdings Plc.*[2] That case introduced a paradigm shift consistent with what has come to be known as "universalism" in insolvency and private international law discourse. Universalism is the aspiration that there be a single set of bankruptcy proceedings that collects, administers and then distributes of all a debtor's assets, wherever those assets may be situated throughout the world.[3]

In *Cambridge Gas,* the Privy Council had to decide whether effect should be given in the Isle of Man to an insolvency order which was made following United States Chapter 11 bankruptcy proceedings. The proceedings related to a group of Liberian ship-owning companies and the effect of the Chapter 11 proceedings was to vest the shares of an Isle of Man company in the committee of creditors. In respect of that vesting order, the United States court did not have jurisdiction *in rem* over the shares because they were shares of a non-United States company. The United States court also did not have jurisdiction *in personam* over the shareholders as they were not present in the United States and took no part in the United States proceedings.

Lord Hoffmann, relying on, among other things, the South African case *In re African Farms Ltd,*[4] which advanced the proposition that recognition of a foreign insolvency by the court

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* The views expressed in this technical paper are the views of the authors and not of INSOL International, London.

1 [1951] Ch 165.

2 [2007] 1 AC 508.

3 Gerard McCormack, "Universalism in Insolvency Proceedings and the Common Law" (2012) 32(2) *Oxford Journal of Legal Studies* 325, 327.

4 [1906] TS 373.

carries with it "active assistance", ascribed to insolvency proceedings a role which had universal application. In addressing the limits of such an approach, Lord Hoffman observed that it was doubtful whether assistance could take the form of applying provisions of the foreign insolvency law which formed no part of the domestic system. He considered though that the domestic court must at least be able to assist by doing whatever it could have done in the case of a domestic insolvency proceeding. In Lord Hoffman's view, the purpose of recognition was to enable the foreign office holder, or the creditors, to avoid having to start parallel insolvency proceedings and to give them the remedies they would have been entitled to if the equivalent proceedings had taken place in their domestic forum.

The decision, though very controversial for its sidestep of the want of jurisdiction in the enforcement of the United States Chapter 11 order, determined that the court has a common law power to assist foreign winding up proceedings so far as it properly can. Lord Hoffman called that underlying power an incident of "modified universalism". Lord Hoffman also determined that the relevant "assistance" includes doing whatever the court could properly have done in a domestic insolvency subject to its own law and public policy.

2. The establishment of modified universalism in England

In *In re HIH Casualty and General Insurance Ltd*,[5] the House of Lords, which included Lord Hoffman, had occasion to clarify the approach under the English common law in providing cross-border cooperation to a foreign office holder. HIH was an Australian insurance company in liquidation in Australia. However, a winding up petition had been presented in England and provisional liquidators were appointed to conduct an "ancillary liquidation".

The English courts have a statutory jurisdiction to wind up unregistered companies and those incorporated outside the United Kingdom pursuant to section 221 of the English Insolvency Act 1986. The exercise of the English power has generated a body of practice concerning what has come to be known as ancillary liquidations, in which the English court would order the winding up in England of a foreign company provided that, among other things, there was a sufficient connection with England.

The question in *HIH* was whether the English court should accede to a letter of request from an Australian court inviting it to direct the English provisional liquidators to remit the assets in their hands to the Australian liquidators. In those circumstances, the assets would be distributed in accordance with Australian statutory priorities, which differed from those applicable in England. Although the House of Lords agreed that the assets should be remitted to Australia, they were deeply divided regarding the juridical basis upon which that could be done in deprivation of the statutory rights of creditors proving their claims in England.

Lord Hoffmann, who gave the leading judgment, was ready to continue where he had left off in *Cambridge Gas*. Lord Hoffman, with whom Lord Walker agreed, considered that the court had an inherent power to direct the remittal of the assets at common law. The rest of the panel, however, felt that either the power was wholly derived from section 426 of the Insolvency Act 1986 (Lord Scott and Lord Neuberger), or that the statutory

[5] [2008] 1 WLR 852.

power was a sufficient jurisdictional basis for the proposed direction (Lord Phillips), and declined to decide whether jurisdiction could have been established at common law.

In grounding his speech in the principle of modified Universalism, however, Lord Hoffmann observed:

> Despite the absence of statutory provision, some degree of international cooperation in corporate insolvency has been achieved by judicial practice. This [is] based upon what English judges have for many years regarded as a general principle of private international law, namely that bankruptcy (whether personal or corporate) should be unitary and universal. There should be a unitary bankruptcy proceeding in the court of the bankrupt's domicile which receives worldwide recognition, and it should apply universally to all the bankrupt's assets.
>
> This [is] very much a principle rather than a rule. It is heavily qualified by exceptions on pragmatic grounds; elsewhere I have described it as an aspiration: see *Cambridge Gas Transportation Corporation v Official Committee of Unsecured Creditors of Navigator Holdings plc* [2007] 1 AC 508, 517, para 17. Professor Jay Westbrook, a distinguished American writer on international insolvency, has called it a principle of "modified universalism": see also Fletcher, Insolvency in Private International Law, 2nd ed (2005), pp 15–17. Full universalism can be attained only by international treaty. Nevertheless, even in its modified and pragmatic form, the principle is a potent one.[6]

In re HIH Casualty proved to be as controversial as *Cambridge Gas*, insofar as it decided that there was a common law obligation to cooperate with the foreign principal liquidation to ensure that all the company's assets were distributed to creditors under a single priority allocation system, to the prejudice of English creditors. Ultimately, *Cambridge Gas* was considered by the United Kingdom Supreme Court in *Rubin v Eurofinance SA*[7] to have been wrongly decided.

Rubin is a decision in which the facts were similar to those in *Cambridge Gas*. In *Rubin*, the Supreme Court decided, essentially, that for there to be a change in the settled law relating to the recognition and enforcement of judgments, and in particular the formulation of a rule concerning the identification of courts which should be regarded as being of competent jurisdiction, legislation was necessary, and it was not a matter for judicial innovation regardless of the expediency of the decision.

The decision in *Rubin*, though it did not explicitly criticise the principle of modified universalism, put it in doubt as it approved the decision in *Al Sabah v Grupo Torras SA*,[8] a case cited in argument in *Cambridge Gas*, which had discredited the principle.

[6] *Idem*, [6]-[7].
[7] [2013] 1 AC 236.
[8] [2005] 2 AC 333.

3. The refinement of modified universalism

In *Singularis Holdings Ltd v PricewaterhouseCoopers,*[9] an appeal to the Privy Council from Bermuda, the Board had to consider two issues. The first was whether the Bermuda court has a common law power to assist a foreign liquidation by ordering the production of information (in oral or documentary form), in circumstances where: (i) the Bermuda court had no power to wind up an overseas company; and (ii) the court's statutory power to order the production of information was limited to cases where the company had been wound up in Bermuda. The second issue was whether, if such a power existed, it was exercisable in circumstances where an equivalent order could not have been made by the court where the foreign liquidation was proceeding.

Lord Sumption gave the leading decision of the Board, with Lords Neuberger and Mance giving minority decisions. There being no legislation in Bermuda to govern cross-border insolvency issues, the Board had to specifically consider how the common law should develop following *Cambridge Gas* and *Rubin*. Lord Sumption's judgment, while not laborious, goes to great lengths to set out developments in the common law relating to the rendering of assistance to a foreign insolvency practitioner.

Although the common law of Bermuda is to a large degree the same as that of England, the common law of England concerning cross-border insolvency has developed to "fill the interstices in what is essentially a statutory framework".[10] That statutory framework is not replicated *pari materia* in Bermuda. Critically, the ancillary liquidations discussed earlier which are possible in England are not possible under Bermuda legislation.

Once again, the South Africa case *In re African Farms Ltd*, which was also cited in *Cambridge Gas*, played a prominent role. In that case, African Farms Ltd was an English company in liquidation with assets in Transvaal. There was no power to wind it up in Transvaal for reasons related to the company's corporate structure and the legislation on winding up in Transvaal. The leading judgment of Sir James Rose Innes, then Chief Justice of Transvaal, focused on the utility to cross-border insolvency proceedings of a modified universalist approach in comparison to the corresponding inefficiencies if no such principle was adopted:

> It only remains to consider whether we are justified in recognising the position of the English liquidator. And by that expression I do not mean a recognition which consists in a mere acknowledgment of the fact that the liquidator has been appointed as such in England, and that he is the representative of the company here; I mean a recognition which carries with it the active assistance of the court. A declaration, in effect, that the liquidator is entitled to deal with the Transvaal assets in the same way as if they were within the jurisdiction of the English courts, subject only to such conditions as the court may impose for the protection of local creditors, or in recognition of the requirements of our local laws.
>
> If we are able in that sense to recognise and assist the liquidator, then I thin[k] we should do so; because in that way only will the assets here be duly

[9] (2014) 87 WIR 215.
[10] *Singularis Holdings Ltd v PricewaterhouseCoopers* (2014) 87 WIR 215, [9C]-[9D].

> divided and properly applied in satisfaction of the company's debts. If we cannot do so, then this result follows, that the directors cannot deal with the property here, and that the liquidator cannot prevent creditors seizing it in execution of their judgments. Unnecessary expenses will be incurred, and the estate will be left to be scrambled for among those creditors who are in a position to enforce their claims.[11]

The English officeholder's entitlement to conduct the estate and deal with the company's assets in Transvaal *as if* they were in the jurisdiction of the company's domicile was recognised, subject to the discretion of the court to impose conditions for the protection of creditors and local laws.

In *Singularis*, in addressing the decision in *Cambridge Gas* as juxtaposed to *In re African Farms Ltd*, Lord Sumption conceded that though the principle of modified universalism is part of the common law, it is important to be cognisant that the principle is subject to local law and policy and that the court may only act within the ambit of the common law and the jurisdiction's statutory framework.

Given the facts before the Board, the question remained: what were the limits of the common law as they related to the facts in *Singularis*? That is, there being no *statutory* power in Bermuda to assist an insolvency practitioner in compelling the production of documents from third parties, is there an inherent power to do so at *common law*? Lord Sumption decided that there was, citing the relatively recent development of the Norwich Pharmacal application and noting that the courts have never been inhibited in their willingness to develop appropriate remedies to require the provision of information when a sufficiently compelling legal policy calls for it.

The Board also took strength from another South African case, *Moolman v Builders & Developers*.[12] In that case, before the South Africa Supreme Court, a Transkei liquidator sought an order for the examination of third parties in South Africa with a view to locating assets of a Transkei company there. The third parties objected on the basis that there was no jurisdiction in the South African courts to examine them arising from the fact that the insolvency proceedings were taking place in Transkei and the orders for examination were made in that country. Notwithstanding that there was no *statutory* power to wind up such a company in South Africa, the court held that a power at *common law* existed to recognise the Transkei liquidator and the order for examination as part of the ratio in *In re African Farms Ltd*.

Lord Sumption's decision, mirroring to a large extent the reasoning in *Moolman v Builders & Developers*, was based on practical reasons. The liquidators required the information for the performance of their ordinary functions and their acknowledged right to deal with the assets would be of little use without a corresponding ability to identify and locate them. The power, Lord Sumption acknowledged, is limited to, among other things, assisting the officers of a foreign court of insolvency jurisdiction or equivalent public officers – so it would be unavailable to assist a *voluntary* winding up, which the Board considered to be essentially a private arrangement (though subject to the

[11] [1906] TS 373, 377.
[12] [1990] 2 All SA 77 (A).

directions of the court). The power also had to be exercised consistent with the substantive law and public policy of the assisting court as in *In re African Farms Ltd*.

Unfortunately for the Cayman Islands joint liquidators, the second limitation to their application proved more difficult to surmount and was eventually the stumbling block to the application. It was held that assistance could only be exercised to assist the foreign office holder to do that which they could also do in their own jurisdiction. For that reason, the Board declined to order the relief that was sought by the joint liquidators.

4. Lurking doubts

While *Singularis* has, to a degree, resolved some of the questions concerning the boundaries of modified universalism, lurking doubts remain regarding whether the principle, even in more restrictive post-*Singularis* form, is still too ambitious. Lord Mance, who gave a powerful minority judgment in *Singularis*, made much of the fact that, if a domestic court had the power to assist a foreign court by doing anything which it could properly have done in that court's insolvency proceedings, there would always be a possibility that the domestic court would be asked to take steps which are without jurisdiction in a domestic context. Lord Mance had in fact decided *Rubin* on the same basis, and preferred the view that the principle of modified universalism could stand for no more than the proposition that "a domestic court should, so far as it can consistently with its own law, recognise a foreign bankruptcy order and deal with identifiable assets within its jurisdiction consistently with the way in which the foreign insolvency would deal with them".[13]

Lord Mance's proposition is much more consistent with the decision in *In re Suidair International Airways, LD*. He attacked the view, therefore, that modified universalism could confer jurisdiction on a domestic court so that it could order cross-examination and obtain disclosure from third parties for the sake of expediency. Lord Mance noted that such relief would not be available to a litigant outside of a full-blown Norwich Pharmacal application and that the common law had thus far not accepted any such jurisdiction.

More recently, the England and Wales Court of Appeal in *Kireeva v Bedzamov*[14] had to consider the boundaries of modified universalism following *Singularis*. In that case, Mr Bedzhamov was a bankrupt and his Russian trustee in bankruptcy, Ms Kireeva, sought recognition at common law of the bankruptcy proceedings. She also sought consequential orders in respect of English real property to be eventually realised for the benefit of Mr Bedzhamov's estate. The High Court held, among other things, that the court had no power at common law to entrust the English property to her, nor any similar such power to order it to be transferred to or sold by or for her.

On appeal to the Court of Appeal, the High Court's decision was upheld and the private international law rule that the immovable property of a bankrupt was not subject to the estate of a foreign trustee was applied. In deciding whether the rule ought to be revised in consideration of the principle of modified universalism, the Court of Appeal held that any development of the law in that regard would be a matter for Parliament, not the

[13] *Singularis Holdings Ltd v PricewaterhouseCoopers* (2014) 87 WIR 215, [134C]-[134E].
[14] [2022] 3 WLR 1253.

courts. The Court of Appeal latched onto Lord Sumption's dicta in *Singularis* to the effect that there was a need to be cognisant of local law and policy.

Finally, the dicta in *Kireeva v Bedzamov,* one of the more prominent cases following *Singularis,* was very much reminiscent of the statements made in *In re Suidair International Airways, LD*. It does appear that, so far as English law is concerned, there has been a turn more closely in line with territorialism than the lofty ideals of modified universalism as advocated by Lord Hoffman in *Cambridge Gas*.

It seems clear that neither the United Kingdom Supreme Court nor, probably, the Privy Council, has heard the last of issues concerning the ambit of the principle of modified universalism. Lord Mance cautioned in *Singularis* that much of the discussion pertaining to the principle of modified universalism in that case was technically obiter, it being strictly speaking irrelevant to the ultimate findings in the appeal. For that reason alone, there are bound to be further cases testing the waters, so to speak, where modified universalism is concerned.

5. The South African landscape

It is not unsurprising that significant support was drawn from South African jurisprudence in the development of the English common law in relation to the assistance to be given to foreign office holders. *In re African Farms Ltd* was not only cited in *Singularis* but also *Cambridge Gas* and *Rubin*. As the Board recognised in *Singularis*, South African jurisprudence had been tackling issues which English jurisprudence had little prior occasion to do, in part arising from the statutory intervention in England, until the mid-2000s. *In re African Farms Ltd* appears to be the first recorded common aw decision where, under private international law principles, assistance was rendered to a foreign office holder where there was no power to wind up the company in the domestic court. In *In re African Farms Ltd*, the difficulty was that the English company did not have enough members for the Transvaal court to liquidate it under local statute.

6. Movable vs immovable property

In *Ex Parte Palmer NO: In re Hahn,*[15] Berman J set out in great depth the nuances of the South African courts' common law power to render assistance to a foreign office holder. In that case, the issue was whether the court would grant recognition to a foreign office holder only where the relevant estate was sequestrated by a court within whose jurisdiction the debtor was domiciled at the time when the sequestration order was issued – or, alternatively, whether the residence of the debtor in that jurisdiction would be sufficient. The issue was an important one given the heavy Roman-Dutch law influence in South African jurisprudence, which relies upon the concept of domicile in determining jurisdiction. Ultimately, the court found that unless the insolvent was domiciled within the jurisdiction of the foreign court by whose order his estate was sequestrated, recognition of the appointed trustee, such that the trustee could act in South Africa, would not be granted by a local court.[16]

[15] 1993 (3) SA 359 (C).
[16] *Idem*, 361

While making that finding, Berman J, citing *Re Estate Morris,*[17] noted that insofar as the movable property found in South Africa belonging to an individual whose estate was sequestrated by order of a foreign court within whose jurisdiction that person is domiciled is concerned, that property automatically vested in the trustee appointed pursuant to the order.[18] The property is therefore governed by the law of the debtor's domicile regardless of where it is located.[19] The effect of that line of authority is that a foreign trustee does not need to seek court recognition to deal with movable South African property of the debtor so long as they can demonstrate the foregoing.[20] To add a gloss to the rule, however, where the debtor is a company and not an individual, its foreign representative will be required by the South African courts to seek local recognition.[21]

There is no such differentiation in relation to the *immovable* assets of the debtor, as both foreign representatives of corporate and individual debtors must seek formal recognition to deal with them. The grant of recognition is not a formality, as the discretion is absolute and only exercised in special circumstances[22] – that is, on the basis of comity and convenience as was comprehensively set out by Innes JP in *Ex Parte Stegmann.*[23]

The proper authority to appoint a curator to the goods of an insolvent debtor is the judge of the debtor's domicile; such appointment will, however, in strict law, confer no rights upon the curator to deal with immovable property of the debtor outside the jurisdiction of the judge who made the appointment. The court having jurisdiction at the place where such landed property is situated is fully entitled to deal with that property according to the *lex rei sitae*, and to refuse in any way to recognise the order of the judge of the debtor's domicile. But, on the other hand, the same court, acting from motives of comity or convenience, is equally justified in allowing the order of the judge of the domicile to operate within its jurisdiction, and in assisting the execution or enforcement of the order. The matter is entirely one for its own discretion. It seems clear, therefore, on the highest authority, that the judges of the various provinces of the Netherlands, while adhering to the rule that real property could only be dealt with by the law of the place where it was situated, had in any particular case the power, on grounds of comity, to waive the right of insisting on this strict legal rule. They were considered justified in allowing at their absolute discretion a foreign order for the appointment of a curator to operate upon immovable assets within their own jurisdiction.

As Smith and Boraine[24] note, the element of convenience may be decisive in either case. So, in *Re Estate Morris*, although the debtor owned immovable property and owed debts to creditors abroad, it was more convenient that the court in which he had acquired a domicile of choice and also movables should be able to supervise the sequestration of his estate. In counterpoint, in *Deutsche Bank AG v. Moser,*[25] "convenience" was thought to lie in the South African courts owing to the more creditor-friendly insolvency

[17] 1907 TS 657.
[18] *Ex Parte Palmer*, 362B-D
[19] Alastair Smith and Andre Boraine, "Crossing Borders into South African Insolvency Law: From the Roman-Dutch Jurists to the UNCITRAL Model Law" (2002) 10 *American Bankruptcy Institute Law Review* 178.
[20] *Ex Parte Palmer*, 362E.
[21] *Donaldson v British SA Asphalte and Mfg. Co. Ltd* 1905 TS 753.
[22] *Re Estate Morris* (see above, n 17).
[23] 1902 TS 40, 52.
[24] See above, n 19, 182.
[25] 1999 (4) SA 216 (C).

provisions there in the context of an application for a provisional order of sequestration. That is, the protection of local creditors was preferred.

The protection of local creditors is a particularly important feature of South African cross-border insolvency law.[26] Movable or immovable assets of the debtor may only be dealt with by the foreign trustee according to the *lex fori* and the procedure of the South African courts which extends to issues of priorities and the ranking of claims.[27] For example, in *Ex parte Steyn,*[28] Fleming J held that "only a creditor whose whole cause of action arose within the Republic of South Africa or who is an incola of the Republic ... shall by virtue of this order acquire any right to prove a secured or preferent claim."[29] The ruling meant that creditors whose whole causes of action did not take place in South Africa could not qualify as a secured / preferential creditor.

7. Conclusion – applying the South African common law to the facts in *Singularis*

How, therefore, would the South African courts have dealt with the facts of *Singularis*?

Moolman v Builders & Developers demonstrates that redress against third parties (in the form of an oral examination) is available to a foreign representative upon the order of South African courts. As noted, in that case, the Transkei liquidator sought an order for examination of third parties in South Africa with a view to locating assets of a Transkei company there. Although the third parties objected on the basis that there was no jurisdiction to examine them, they could not *also* object that the Transkei foreign representative was purporting to exercise a power in South Africa which he did not have in Transkei, because he did. The Transkei Companies legislation (which governed the relevant proceedings), itself being a copy of the South African legislation, provides for the examination of "any director or officer of the company or person known or suspected to have in his possession any property of the company."[30]

But could the South African courts have ordered such examination or disclosure by a third party where the foreign representative *would not* have been able to exercise such a power in their home jurisdiction? It would seem that the South African courts can. As the *lex fori* is the law which governs insolvency proceedings in South Africa,[31] that is likely to be as determinative of the issue as it was in the recognition of the foreign representative in *In Re African Farms Ltd*. There, the representative was recognised "*as if*" he had been appointed a trustee in similar proceedings in South Africa, notwithstanding that there would have been no power to wind up such a company in South Africa at all.

The underlying principle derived from comity, so that South African courts recognise all proceedings "*as if*" they are taking place in South Africa, provided that the debtor was domiciled in the foreign jurisdiction. Under sections 417(1) and 417(3) of the South African Companies Act,[32] an application may be made by a trustee to examine and later seek disclosure from third parties. A foreign representative, having been recognised by

[26] See above, n 19, 182.
[27] *Ibid*.
[28] 1979 (2) SA 309 (0) 312C.
[29] *Ibid*.
[30] South African Companies Act 61 of 1973, s 417(1).
[31] See above, n 19, 182.
[32] South African Companies Act 61 of 1973.3

the South African courts, would seem to be entitled to the benefit of the same sections regardless of whether similar remedies would be available to them in their home jurisdiction.

It appears clear that the common law in South Africa, as well as being more settled than its English counterpart, also tends to be more "universal" in its approach. *Ex Parte Palmer NO: In re Hahn,*[33] for example, was decided as long ago as 1993. Conversely, the principle of modified universalism is still some way from being considered "settled law", and the decisions in *Singularis* and *Kireeva v Bedzamov* suggest that its development may not necessarily be heading in a direction that universalists would appreciate.

[33] 1993 (3) SA 359 (C).

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INSOL INTERNATIONAL

INSOL International

6-7 Queen Street

London

EC4N 1SP

Tel: +44 (0) 20 7248 3333

Fax: +44 (0) 20 7248 3384