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'THE GOLDEN THREAD': UNIVERSALISM AND ASSISTANCE IN INTERNATIONAL INSOLVENCY[1]

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There has been for a considerable time a golden thread running through the English Courts' approach to cross-border insolvencies. The underlying premise is that the assets of a debtor should be collected and distributed on a world-wide basis in a single insolvency proceeding. This is universalism. However, the application of universalism is modified to permit the English Courts to evaluate foreign law and foreign courts before deferring to a foreign main insolvency proceeding. This is modified universalism. Modified universalism carries with it a further principle, that the English Courts will actively assist the foreign insolvency proceeding. The Royal Court in Jersey has regard to this approach in the case of international insolvencies with a Jersey connection.

Introduction

1 Since at least the eighteenth century, the implications of financial crises have often reached across national boundaries. The eighteenth and nineteenth century law reports are full of cases of commercial and financial collapses, in which the English Courts first developed principles for managing insolvencies reaching across the world. For example, there is a series of English cases from the 1890s concerning collapses of Australian banks, with branches in London, dealing with how the rights of depositors were to be treated. As far back as the eighteenth century, there is the famous case of *Solomons v. Ross*,[2] in which the English Court ordered that assets located in England be remitted to the Netherlands where the trader was already in bankruptcy.

2 What is new is the complexity and ubiquity of the cross-border issues that arise when a company is unable to pay its debts. It is now difficult to think of substantial forms of commercial activity, financing or investment that do not stretch across national boundaries. A company incorporated in Germany, with assets located across Europe, may have financing raised in London from investors largely based in the United States. A hedge fund incorporated in the Cayman Islands, with assets, but nothing else, offshore is managed by an investment bank located in New York or London or Hong Kong.

3 At the same time, whether in the nineteenth century or the twenty-first, the natural inclination of both borrowers and lenders is to assume that the venture will be successful, the debts will be duly paid, and healthy profits will be made by all. Of course, there is a risk of failure, but the parties seek to allocate that risk by reference to their contractual rights and obligations. If the worst happens, the hope (and often the assumption) is that the

[1] A version of this paper was delivered at a seminar organised by Bedell Group in Jersey on 16 September 2010.
[2] (1764) 1 H Bl 131n (Henry Blackstone's reports). There is a fuller report in Wallis' Irish Chancery Reports (1839), at 59: see Nadelman (1949) 9 MLR 154, at 155.

contractual structure put in place by the parties will operate to determine who gets what. But if the venture fails, the debt is not paid and any available assets are insufficient to pay creditors, then the contractual bargain may be of less relevance than other things: the location of assets; the location of creditors; the rights to assets available under local laws; the procedures available in local courts. In particular, contractual rights will often be subject to, and less important than, the principles of insolvency law applied by the various jurisdictions to which the venture is connected. The parties' carefully laid contractual plans and expectations may well be overturned in unpredictable ways. For example, there may be a rush to court as local creditors seek to seize local assets for distribution under local laws, no matter what the contract says.

4 It follows that once a company with connections to multiple jurisdictions is insolvent, then the seeming certainties of a contractual structure must often be discarded, to be replaced by something less predictable. But the outcome of a cross-border insolvency is not entirely uncertain. It is true that the substance of insolvency laws differs significantly across jurisdictions. Some are notoriously creditor-friendly, others less so. Nonetheless, courts have sought to devise frameworks and guiding principles which can provide some degree of consistency and control over what occurs in a cross-border insolvency.

5 In this paper, I propose to examine two of the most important of the principles that have been devised at common law and applied by the English Courts. These are the principles of universalism and assistance.

Universalism

6 Whenever there is a cross-border insolvency, basic questions may arise. Should the company's affairs be dealt with under a single worldwide regime, or should they be dealt with piecemeal, jurisdiction by jurisdiction? If there is to be a single worldwide regime, from which jurisdiction, and under which law, will it be implemented? Which law will apply to the distribution of assets, the law of the country in which those assets are located or some other law, such as that where the company was incorporated?

The theoretical debate

7 Much of the academic debate over the approach to be adopted to international insolvencies revolves around the discussion of two competing theories: territorialism and universalism.[3] The essence of territorialism is that local assets are used to satisfy local creditors in local proceedings with little regard for proceedings or parties elsewhere. By contrast, the aim of universalism is to provide a single forum applying a single legal regime to all aspects of a debtor's affairs on a worldwide basis.

8 Professor Westbrook, the distinguished American scholar, and others argue that universalism (*i.e.* the administration of multinational insolvencies by a single court applying

[3] See Fletcher, *Insolvency in Private International Law*, para 1.12.

a single bankruptcy law) is necessarily the best long-term solution to cross-border insolvency.[4] The essence of the argument is that, since bankruptcy is a collective process, designed to realise asset value and then distribute that value amongst creditors according to a scheme of priority based on legal rights, it is necessary for there to be a single proceeding operating under a single set of overall rules.[5] A key aspect of the argument is that, although in any given case local creditors may be prejudiced by a universal process since they may gain less from the universal proceedings than they would in a local proceeding, this is outweighed by the broader interest in facilitating single, universal proceedings in all cases with consequent advantages in terms of predictability and efficiency. Many commentators accept that universalism is the most desirable approach to dealing with cross-border insolvencies. Much of the debate is over the extent to which universalism is actually achievable in practice in the modern world and what is the best transitional rule to have in place in the meantime.

9 In this context, Professor Westbrook argues for the application of what he has called modified universalism. Essentially, under this approach the underlying premise is that the assets of a debtor should be collected and distributed on a worldwide basis in a single proceeding. However, the application of universalism is not automatic but, rather, is dependent on the local court being satisfied that the main proceedings are fair. Modified universalism is "modified" because it permits local courts to evaluate foreign law and foreign courts before deferring to a main proceeding. Professor Westbrook describes the difference between this and territorialism as follows—

> "The key difference between the two approaches is that modified universalism takes a worldwide perspective, seeking solutions that come as close as possible to the ideal of a single-court, single-law resolution, while territorialism of any sort seems to me to be defined by a conviction that local creditors have vested rights in whatever assets can be seized by their courts when insolvency looms."

The approach of English law

10 The recent response of English law to the challenges posed by the demands of modern cross-border insolvencies has been to re-emphasise and develop the fundamental principles which underpinned the earliest decisions of the English Courts in insolvencies with a foreign element. Two are of particular importance. First, the principle of universalism, which is that insolvency proceedings instituted in one jurisdiction should be regarded as having a universal effect across other jurisdictions. Secondly, the principle of assistance, namely that courts in one country should actively assist insolvency proceedings commenced in another country.

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[4] "*A Global Solution to Multinational Default*" (2000) 98 Mich. L. Rev. 2276.

[5] Indeed, as Professor Westbrook points out, this is one reason why in countries with a federal structure bankruptcy is usually the one aspect of commercial law which is legislated for at a federal rather than state level.

11 There is a strong and long-standing tradition in the common law of recognising and assisting foreign insolvency proceedings and, in many ways, the common law principles are potentially further reaching (and perhaps therefore more useful) than the modern attempts to deal with the problems raised by cross-border insolvencies by way of international agreement (for example, through the UNCITRAL Model Law). In principle, common law courts will recognise a foreign insolvency in the debtor company's place of incorporation and will actively assist such a proceeding. The obligation to assist is a powerful one and subject, principally, only to the caveat that the foreign insolvency proceeding must treat creditors equally and must not, for example, discriminate between domestic and foreign creditors.

The golden thread

12 In the eighteenth century case of *Solomons v Ross*,[6] the English Court was faced with a situation where a firm based in Amsterdam was declared bankrupt and assignees were appointed by the Dutch Court. An English creditor brought garnishee proceedings in London to attach £1,200 owing to the Dutch firm but the English Court held that the bankruptcy had vested all the firm's moveable assets, including debts owed by English debtors, in the Dutch assignees. The English creditor had to surrender the fruits of the garnishee proceedings and prove in the Dutch bankruptcy.

13 Accordingly, as long ago as 1764, the English Court was prepared to recognise the extra-territorial effects of a foreign bankruptcy in England, so as to require creditors based in England to prove in the foreign bankruptcy. Since the evidence before the English Court showed that English creditors would be treated equally in the Dutch bankruptcy, there was no reason why the English Court should not recognise, and give effect to, the Dutch insolvency proceeding. The decision in *Solomons v Ross* was perhaps the earliest recognition of the principle of universalism—that insolvency proceedings commenced in the place of the debtor's incorporation should be regarded as taking effect over all of the debtor's assets no matter where situated.

14 The decision in *Solomons v Ross* was also remarkably far sighted. It recognised that where an entity is insolvent, the relevant interest is that of the body of creditors of the debtor as a whole and that, in order to protect that interest, the rights and remedies of individual creditors may need to be restricted. It also recognised that this continues to be the case where the debtor is based abroad, but some or all of his creditors are based in England. In these circumstances, the interest of the general body of creditors will continue to be served by subjecting the assets and liabilities of the debtor to a single insolvency proceeding—and for these purposes domestic creditors may be enjoined from pursuing their rights and remedies under domestic law and required to participate in the foreign insolvency.

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[6] (1764) 1 H Bl 131n.

15 In a recent judgment, Lord Hoffmann pointed out that the early recognition of the principle of universality in English law was not entirely altruistic and probably owed something to the international nature of English trade and commerce in the eighteenth and nineteenth centuries, since the principle of universality which requires foreign creditors to be able to participate in an insolvency proceeding on the same basis as domestic creditors, effectively protected the interests of British creditors.[7] Lord Hoffmann observed[8]—

> "This doctrine may owe something to the fact that 18th and 19th century Britain was an imperial power, trading and financing development all over the world. It was often the case that the principal creditors were in Britain but many of the debtor's assets were in foreign jurisdictions. Universality of bankruptcy protected the position of British creditors. Not all countries took the same view. Countries less engaged in international commerce and finance did not always see it as being in their interest to allow foreign creditors to share equally with domestic creditors. But universality of bankruptcy has long been an aspiration, if not always fully achieved, of United Kingdom law. And with increasing world trade and globalisation, many other countries have come round to the same view."

16 The origins of the principle of universality which are to be found in the global nature of eighteenth and nineteenth century imperial trade and commerce, in fact make it ideally suited to deal with some of the problems which arise in relation to cross-border insolvency in today's global economy.

17 It would, however, be wrong to regard the principle of universality as an immutable rule of English insolvency law which has applied with unremitting rigour over the past 250 years. As Lord Hoffmann said, it has been an aspiration, rather than a rule, and it has been an aspiration that has not always been fully achieved. Nevertheless, on examination, it can be seen that the foundations of the aspiration of universality in English law are deep rooted.

18 English law has long ascribed a universal effect to its own insolvency proceedings. English law assumes that such proceedings will take effect in relation to all of the insolvent's assets no matter where they are located in the world. The making of a winding up order under English law is regarded as having worldwide effect.[9] Although the powers of the English court in relation to assets situated abroad may in practice be limited, in theory such assets fall to be dealt with under the English statutory scheme. Thus, the

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[7] *Cambridge Gas Transp Corp v Official Cttee of Unsecured Creditors of Navigator Holdings plc* [2007] 1 AC 508.
[8] *Cambridge Gas, ibid* at 517.
[9] *Mitchell v Carter* [1997] 1 BCLC 673, 686–867 (Millett, LJ).

English Court may seek to restrain creditors from bringing or continuing a foreign execution process.[10]

19 However, by the same token that it seeks universal effect for its own insolvency proceedings, English law has also long recognised the universalist aspirations of foreign courts conducting insolvency proceedings in respect of a company incorporated within their jurisdiction. English law has always recognised that the authority of a company's agents is under the law of the company's incorporation and has therefore recognised the authority of a liquidator appointed under the law of the place of incorporation to get in and distribute the company's world-wide assets.[11] As *Dicey, Morris & Collins* states—

> "the law of the place of incorporation determines who is entitled to act on behalf of a corporation. If under that law a liquidator is appointed to act, then his authority should be recognised here."[12]

20 Since the English Courts have long regarded themselves as having jurisdiction to wind up a foreign company (for example, if it has assets in England or some other sufficient connection with the English jurisdiction), there was an obvious potential conflict between the effect of an English winding up order in relation to a foreign company, which under English doctrine would have worldwide effect, and a winding up in the company's place of incorporation, any worldwide effects of which would be respected by English law. This potential conflict was dealt with by the creation, by the courts, of the concept of an ancillary winding up. Under this concept, the winding up of a foreign company in England would be treated as being ancillary to the principal winding up in the place of incorporation. In practice, this meant that the role of the English liquidator would be limited to collecting the English assets and settling a list of the creditors who sent in proofs with the assets then being remitted for distribution in the principal winding up.

21 Millett J summarised the concept in *Re International Tin Council*[13] as follows—

> "Although a winding up in the country of incorporation will normally be given extra-territorial effect, a winding up elsewhere has only local operation. In the case of a foreign company, therefore, the fact that other countries, in accordance with their own rules of private international law, may not recognise our winding-up order or the title of a liquidator appointed by our courts, necessarily imposes practical limitations on the consequences of the order. But in theory the effect of the order is world-wide. The statutory trusts which it brings into operation are imposed on all the company's assets wherever situate, within and beyond the jurisdiction. Where the company is simultaneously being wound up in the country of its incorporation, the English court

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[10] *Re Oriental Inland Steam Co, ex p Scinde Rly Co* (1874) 9 Ch App 557; *Re North Carolina Estate Co* (1889) 5 TLR 328.
[11] Dicey, Morris & Collins, *The Conflict of Laws*, 14th ed. (2006), Rule 166.
[12] Para 30-099.
[13] [1987] Ch 419, 446–447.

will naturally seek to avoid unnecessary conflict and, so far as possible, to ensure that the English winding up is conducted as ancillary to the principal liquidation."

22 Accordingly, the principle of universality is at the heart of the concept of the ancillary liquidation by which English law has sought to reconcile the universalist effect of its own insolvency proceedings with such effects of foreign proceedings. As Sir Richard Scott, V-C pointed out in *Re BCCI (No 10)*[14] the concept of ancillary winding up now has, by accretion of a substantial number of judicial decisions, a firm place in English law, although the precise inter-relationship between the English ancillary winding up and the foreign principal insolvency proceeding has tended to be worked out on a case-by-case basis with a greater or lesser emphasis on protecting the "rights" of domestic creditors. For example, in *Re BCCI (No 10)* the English Court was concerned to ensure that any remission of the English assets of BCCI to the principal winding up in Luxembourg would not prejudice creditors' rights of set off under English law.

23 The common law principle of universality is therefore a long-established feature of English law. It has, however, recently enjoyed a renewed prominence as a result of two decisions: the decision of the Privy Council in *Cambridge Gas Transportation Corp v Official Committee of Unsecured Creditors of Navigator Holdings plc*[15] and the decision of the House of Lords in *McGrath v Riddell, Re HIH Casualty & General Insurance Ltd*.[16]

24 In the *Cambridge Gas* case, the Privy Council was faced with an insolvent Isle of Man company which was in proceedings under Chapter 11 of the US Bankruptcy Code in the United States. A request was made by the United States court to the Isle of Man court to give assistance to the US proceedings by giving effect at common law to a reorganisation plan which had been promulgated in the Chapter 11 proceedings. The Privy Council held that the principle of universality, and the principle of assistance, conferred on the Isle of Man court jurisdiction at common law to assist the US Chapter 11 proceedings by recognising and giving effect to the reorganisation plan. In giving the opinion of the Privy Council, Lord Hoffmann re-emphasised the principle of universality—

"The English common law has traditionally taken the view that fairness between creditors requires that, ideally, bankruptcy proceedings should have universal application. There should be a single bankruptcy in which all creditors are entitled and required to prove. No one should have an advantage because he happens to live in a jurisdiction where more of the assets or fewer of the creditors are situated ... But universality of bankruptcy has long been an aspiration, if not always achieved, of United Kingdom law."[17]

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[14] [1997] Ch 213.
[15] [2007] 1 AC 508.
[16] [2008] 1 WLR 852.
[17] *Cambridge Gas*, *ibid* at 517.

25 In *HIH* the situation was of four Australian insurance companies which were being wound up in Australia and had provisional liquidators appointed in England. The question was whether the English court should direct remission of assets collected in England to Australia, notwithstanding that there were differences between the English and Australian statutory regimes for distribution which meant that some creditors would benefit from remission whilst some creditors would be worse off. The House of Lords overturned the decisions of the judge at first instance and of the Court of Appeal and unanimously directed that remission should take place. The decisions of two of their Lordships (Lords Scott and Neuberger) were based exclusively on the statutory power to assist foreign insolvency proceedings contained in s 426 of the Insolvency Act 1986, but Lord Hoffmann (with whom Lord Walker agreed) also considered that such a power existed at common law—

> "The primary rule of private international law which seems to me applicable to this case is the principle of (modified) universalism, which has been the golden thread running through English cross-border insolvency law since the 18th century. That principle requires that English courts should, so far as is consistent with justice and UK public policy, co-operate with the courts in the country of the principal liquidation to ensure that all the company's assets are distributed to its creditors under a single system of distribution. That is the purpose of the power to direct remittal."[18]

26 As David Richards, J summarized the position in *In re Swissair*,[19] in the light of the judgments in *HIH,* the English Courts at common law have power to order remittal of assets to a foreign liquidation and will exercise that power where the local law provides for a *pari passu* distribution and it is appropriate to do so.

Assistance

27 The principle of universalism, which requires domestic courts to acknowledge the effects and status of foreign insolvency proceedings in the place of a company's incorporation, carries with it a further principle: that the courts will actively assist the foreign insolvency proceeding.

28 In *Re African Farms*,[20] Innes, CJ of the Transvaal Court, held that that "recognition ... carries with it the assistance of the Court". This case concerned the Transvaal assets of an English company being voluntarily wound up in England, and the assistance granted by the South African court was—

> "... 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,

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[18] *HIH*, *ibid* at 861–862.
[19] [2009] EWHC 2099, 6 Aug 2009.
[20] (1906) TS 373, 377.

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."

29 This statement has been followed in New Zealand[21] and was also cited with approval by the Privy Council in the *Cambridge Gas* case. Lord Hoffmann said[22]—

"At common law, their Lordships think it is doubtful whether assistance could take the form of applying provisions of the foreign insolvency law which form no part of the domestic system. But the domestic court must at least be able to provide assistance by doing whatever it could have done in the case of a domestic insolvency. The purpose of recognition is to enable the foreign office holder or the creditors to avoid having to start parallel insolvency proceedings and to give them the remedies to which they would have been entitled if the equivalent proceedings had taken place in the domestic forum."

30 Similarly, English courts have also lent assistance to foreign insolvency proceedings, by exercising their powers so as not to interfere with the process in the court where the principal insolvency is taking place. In *Galbraith v Grimshaw*[23] Lord Dunedin noted that there should be only one universal process of the distribution of a bankrupt's property and that where such a process was pending elsewhere the English courts should not allow steps to be taken in its jurisdiction which would interfere with that process—

"Now so far as the general principle is concerned it is quite consistent with the comity of nations that it should be a rule of international law that if the Court finds that there is already pending a process of universal distribution of a bankrupt's effects it should not allow steps to be taken in its territory which would interfere with that process of universal distribution."

31 Greater recognition of the value of this approach has come with the increasing incidence of complex international insolvencies in recent years. In *Barclays Bank plc v Homan*[24] Hoffmann, J was explicit on the need for comity in insolvency matters[25]—

"In other words, the normal assumption is that the foreign judge is the best person to decide whether an action in his own court should proceed. Comity requires a policy of non-intervention not only for the same reason that appellate courts are reluctant to interfere with the exercise of a discretion, namely that in the weighing of various factors, different judges may legitimately arrive at different answers. It is also required because the foreign court is entitled, without thereby necessarily occasioning a breach of international law or manifest injustice, to give effect to the policies of its own

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[21] *Turners & Growers Exporters Ltd v The Ship* "*Cornelius Verolme*" [1997] 2 NZLR 110, 120 (also [2000] BPIR 896, 906).
[22] *Cambridge Gas*, *ibid* at 518.
[23] [1910] AC 508, 518.
[24] [1993] BCLC 680. Approved by the Court of Appeal at 694ff.
[25] At 691g–692a. See also *Banque Indosuez SA v Ferromet Resources Inc* [1993] BCLC 112, 117.

legislation. Such legislation may have a broader reach than English legislation without necessarily attracting the international opprobrium which the United States anti-trust jurisdiction has done. As the Vice-Chancellor said in *Paramount Airways*, the only satisfactory solution to the possibility of jurisdiction conflicts in cross-border insolvencies would be an international convention. In the absence of such a convention, the only way forward is by the discretionary exercise of jurisdictional self-restraint. But one cannot expect every jurisdiction to exercise that discretion in the same way."

And in *Credit Suisse Fides Trust v Cuoghi*[26] Millett LJ said—

> "In other areas, such as cross-border insolvency, commercial necessity has encouraged national courts to provide assistance to each other without waiting for such co-operation to be sanctioned by international convention … It is becoming widely accepted that comity between the courts of different countries requires mutual respect for the territorial integrity of each other's jurisdiction, but that this should not inhibit a court in one jurisdiction from rendering whatever assistance it properly can to a court in another in respect of assets located or persons resident within the territory of the former."

32 Applying these principles, the Courts have exercised their powers in order to give effect to insolvency proceedings under the law of the insolvent's incorporation. For example, by appointment of the foreign office-holder as receiver of the foreign debtor's English assets[27] or by ordering the examination of officers or the production of documents.[28] Moreover, the common law courts have refused to allow execution to issue on a debtor's local assets when the debtor was subject to insolvency proceedings in another jurisdiction in which the creditors could participate. These are perhaps the most important examples of the extent of judicial assistance to foreign insolvency proceedings since they involve declining to give effect to rights recognised as a matter of domestic law.

33 *Felixstowe Dock & Railway Co v United States Lines Inc*[29] is a decision which has been said by some to contradict the principles of comity and assistance.[30] In that case, the English Court allowed the English creditors of a US company to maintain a freezing order over the company's English assets even though the company had applied for Chapter 11 protection in the United States. However, it is suggested that the decision was correct on its facts since the Chapter 11 plan approved by the New York Court excluded non-US creditors. The Chapter 11 proceedings therefore did not treat all creditors, domestic and

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[26] [1998] QB 818, 827 (CA).
[27] *Bergerem v Marsh* [1921] B&CR 195, *Re Kooperman* [1928] B&CR 189.
[28] *Re Impex Services Worldwide Ltd* [2004] BPIR 564 (an Isle of Man case).
[29] [1989] 1 QB 360.
[30] The decision was criticised by Sir Peter Millett in his lecture 'Cross-Border Insolvency: The Judicial Approach', (1997) 6 Int. Insolv. Rev. 99.

foreign, alike and this was a proper basis to decline to assist the Chapter 11 proceeding by discharging the English freezing order[31].

Jersey

34 As a major centre of financial activity, Jersey has had to deal with cross-border insolvencies on a number of occasions. There are many instances of foreign office-holders being permitted by the Royal Court to exercise authority over Jersey-based assets[32] and the Royal Court has been prepared to provide administrative and evidential assistance in appropriate cases.[33] It is clear that the Royal Court has regard to the principles of modified universalism and assistance in international insolvencies described above. Where an application is made to the Royal Court having regard to the position at common or customary law,[34] the Royal Court will exercise its inherent jurisdiction to assist foreign office-holders in accordance with the principles of comity and reciprocity.[35] In this way, Jersey follows the essence of "the golden thread".

The future

35 Turnover of assets and administrative and evidential assistance at common law in international insolvencies is now common place. But how much further can the common law go? A major clue to its future direction can be found in Lord Hoffmann's analysis of bankruptcy judgments in the *Cambridge Gas*[36] case, and the recent decision of the Court of Appeal in *Rubin v Eurofinance S.A.*[37] A discussion of these topics is outside the ambit of this paper. But the next few years will see further development of the common law by the Courts in England and elsewhere in jurisdictions wishing to follow "the golden thread".

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[31] See Lord Hoffmann's Denning lecture on "Cross-Border Insolvency" given in Middle Temple Hall on 18 April 1996 at 14-17 and Crystal "Judicial Attitudes to Insolvency Law", *The Company Lawyer* (1998) Vol. 19, 49, 52–53.

[32] A detailed discussion of the judgments and practice of the Royal Court is contained in *Jersey Insolvency and Asset Tracking*, Dessain and Wilkins (3rd ed. 2006, 2009 supplement) Ch. 6 "Cross-border insolvency".

[33] Dessain and Wilkins, *ibid* Ch. 6.

[34] Both England (see *e.g.* s 426 Insolvency Act 1986: Cross-Border Insolvency Regulations 2006) and Jersey (see art 49 Bankruptcy (Désastre) (Jersey) Law, 1990) also have cross-border insolvency assistance legislation in suitable cases. A discussion of this legislation is outside the scope of this paper.

[35] See *e.g. Re First International Bank of Grenada Limited* (23 January, 2002) JU 21; 2002 JLR *N* [7]; *Re LeisureNet Ltd* (26 February 2002) JU 2002/46.

[36] *Cambridge Gas*, *ibid* at 515H–516H.

[37] [2010] EWCA Civ 895 CA, 30 July 2010.