LEGISLATIVE EXCLUSIONS OR EXEMPTIONS OF PROPERTY FROM THE INSOLVENT ESTATE

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SUMMARY

The general policy in South African insolvency law is that assets must be recovered and included in the insolvent estate, and that this action must be to the advantage of the creditors of the insolvent estate. But there are several exceptions to this rule and an asset that is the subject of such an exception may be excluded from the insolvent estate. The *Insolvency Act*, however, does not expressly distinguish between excluded and exempt assets, thereby resulting in problem areas in the field of exemption law in insolvency in South Africa. It may be argued that the fundamental difference between excluded and exempt assets is that excluded assets should never form part of an insolvent estate and should be beyond the reach of the creditors of the insolvent estate, while exempt assets initially form part of the insolvent estate, but in certain circumstances may be exempted from the estate for the benefit of the insolvent debtor, thereby allowing the debtor to use such excluded or exempt assets to start afresh before or after rehabilitation. Modern society, socio-political developments and human rights requirements have necessitated a broadening of the classes of assets that should be excluded or exempted from insolvent estates. This article considers assets excluded from the insolvent estates of individual debtors by legislation other than the Insolvency Act. It must, however, be understood that these legislative provisions relate to insolvent estates and thus generally overlap in one way or another with some provisions of the Insolvency Act.

KEYWORDS: Accrual; assets; bank; exclusion; exemption; human rights; insolvent; insolvency; insurance; legislation; rehabilitation; social security; trustee; trusts

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