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Bankruptcy - Dealing with an Unhealthy Debtor: At What Point Does a Check Have Value in Bankruptcy

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**BANKRUPTCY—DEALING WITH AN UNHEALTHY
DEBTOR: AT WHAT POINT DOES A CHECK HAVE
VALUE IN BANKRUPTCY?**

Barnhill v. Johnson, 112 S. Ct. 1386 (1992)

I. FACTS

On November 18, 1985, the debtor¹ delivered a check in payment of a bona fide debt to William Barnhill.² The check was honored by the debtor's bank on November 20, the ninetieth day prior to the debtor's voluntary filing of a Chapter 11 bankruptcy petition.³ Johnson, the trustee of the debtor's estate, filed an adversary action against Barnhill claiming that the payment was recoverable as a preference under 11 U.S.C. § 547(b) because the transfer was made during the ninety-day preference period.⁴ The trustee asserted that the transfer occurred on the date that the

1. The debtor in this case was actually a collection of debtors whose related bankruptcy filings had been consolidated into a single proceeding. *Barnhill v. Johnson*, 112 S. Ct. 1386, 1388 n.1 (1992). The debtors included: Alan J. and Mary Frances Antweil, husband and wife; Morris Antweil (deceased); and Hobbs Pipe & Supply, a general partnership. *Id.* The consolidation is insignificant to the Supreme Court holding, so reference is made in this discussion to them collectively as "debtor."

2. *Barnhill v. Johnson*, 112 S. Ct. 1386, 1388 (1992). The debtor had postdated the check to November 19, 1985. *Id.* After filing suit to recover the alleged preferential transfer, the trustee attempted to amend the complaint, claiming that the "date of delivery" rule does not apply to postdated checks. *Johnson v. Barnhill (In re Antweil)*, 111 B.R. 337, 338-39 (D.N.M. 1990). The bankruptcy court denied the motion, asserting that even as amended, the complaint would not survive a motion to dismiss, because November 19, 1985 was still outside the ninety-day preference period. *Johnson v. Barnhill (In re Antweil)*, 97 B.R. 69, 70 (Bankr. D.N.M. 1989). Further, the court opined that the "date of delivery" rule applied to postdated checks. *Id.* It noted that the "date of delivery" rule had been adopted earlier by the Tenth Circuit Court of Appeals in *In re White River*, 799 F.2d 631, 633 (10th Cir. 1986). *Johnson v. Barnhill (In re Antweil)*, 97 B.R. 69, 70 (Bankr. D.N.M. 1989), *aff'd*, 111 B.R. 337 (D.N.M. 1990), *rev'd*, 931 F.2d 689 (10th Cir.), *aff'd*, 112 S. Ct. 1386 (1992). The bankruptcy court and the Tenth Circuit accepted as fact, however, that the delivery occurred on November 18, 1985. *Johnson v. Barnhill (In re Antweil)*, 931 F.2d 689, 691 (10th Cir. 1992). The bankruptcy court followed the decision in *In re White River*, in which the Tenth Circuit determined that for purposes of § 547(c), the "date of delivery" rule should apply to postdated checks. *Antweil*, 97 B.R. at 70 (citing *In re White River*, 799 F.2d 631 (10th Cir. 1986)). The Tenth Circuit, however, distinguished its earlier holding in *White River* and held that, for purposes of § 547(b), the "date of honor" rule should apply. *Antweil*, 931 F.2d 689. The Supreme Court did not address the issue of at what point a postdated check is "delivered" for purposes of § 547(c).

3. *Barnhill*, 112 S. Ct. at 1388.

4. *Antweil*, 111 B.R. at 338-39. Section 547 is the preference provision of the Bankruptcy Code, and subsection (b) is the provision which authorizes a trustee to avoid certain pre-bankruptcy transactions that have the effect of frustrating the distribution scheme set forth in the Bankruptcy Code. H.R. REP. NO. 595, 95th Cong., 1st Sess. 177-79 (1977).

Section 547(b) sets forth the elements of a preference:

(b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property—

bank honored the check.⁵ Barnhill, however, claimed that the transfer occurred on the date that he received the check.⁶ The bankruptcy court agreed with Barnhill and held that the transfer occurred on the date the check was delivered, rather than when it was honored by the drawee bank.⁷ Therefore, because the date the check was delivered was outside the ninety-day preference period, the bankruptcy court refused to void the transfer as a preference, thereby denying recovery to the trustee.⁸ The district

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- (1) to or for the benefit of a creditor;
 - (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
 - (3) made while the debtor was insolvent;
 - (4) made—
 - (A) on or within 90 days before the date of the filing of the petition; or
 - (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
 - (5) that enables such creditor to receive more than such creditor would receive if—
 - (A) the case were a case under chapter 7 of this title;
 - (B) the transfer had not been made; and
 - (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

11 U.S.C. § 547(b) (1988). As § 547(b)(4)(B) indicates, *supra*, the ninety-day preference period is extended to one year for a creditor who is an "insider." 11 U.S.C. § 547(b) (1988). Therefore, a trustee may void preferential transfers by insiders up to one year prior to the bankruptcy filing. See 11 U.S.C. § 101(31) (1988) (defining "insider").

5. *Antweil*, 97 B.R. at 70. If a transfer is voided as a preference, the result is that the property transferred is recoverable for the benefit of the estate, and available for an eventual distribution to the creditors. "Transfer" is defined as:

every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor's equity of redemption

11 U.S.C. § 101(54) (1988 & Supp. III 1991).

Section 547(e) provides further guidance on the meaning and dating of a transfer:

(e)(1) For the purposes of this section—

...

(B) a transfer of a fixture or property other than real property is perfected when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee.

(2) For purposes of this section, except as provided in paragraph (3) of this subsection, a transfer is made—

(A) at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 10 days after, such time;

(B) at the time such transfer is perfected, if such transfer is perfected after such 10 days

11 U.S.C. § 547(e) (1988).

6. *Antweil*, 97 B.R. at 70.

7. *Id.* The bankruptcy court indicated that the "date of delivery" rule had been adopted by the Tenth Circuit Court of Appeals earlier in *In re White River Corp.*, 799 F.2d 631 (10th Cir. 1986). *Id.* It noted that one purpose stated by the *White River* court in adopting the "date of delivery" rule was to allow the debtor, rather than the bank, to determine the "precise date of transfer." *Id.*

8. *Id.*

court affirmed.⁹

The Court of Appeals for the Tenth Circuit reversed, holding that a "date of honor" rule should govern § 547(b) actions.¹⁰ The issue on appeal to the United States Supreme Court was whether, for the purposes of determining if a transfer occurred within the ninety-day preference period of § 547, a transfer made by check should be deemed to occur (1) on the date the check is presented to the recipient, or (2) on the date the drawee bank honors the check.¹¹ The Supreme Court affirmed the decision of the Tenth Circuit, *holding* that for purposes of § 547(b), a transfer made by check is deemed to occur on the date the check is honored by the drawee bank.¹²

II. LEGAL HISTORY

Until 1978, the Bankruptcy Act of 1898 and the developing case law provided the foundation for bankruptcy law in this country.¹³ The Act contained a preference provision which allowed a trustee to void any preferential transfers of a debtor that occurred within four months preceeding the bankruptcy filing.¹⁴ In 1978, Congress repealed the Bankruptcy Act of 1898 and reformed certain sections of the Bankruptcy Code, including the preference provision.¹⁵ Congress modernized the substantive law of bankruptcy,¹⁶ and changed the period for preferential payment recov-

9. *Johnson v. Barnhill (In re Antweil)*, 111 B.R. 337 (D.N.M. 1990). The court asserted that most federal courts which have considered a "§ 547 transfer by check" issue have applied a "date of delivery" rule. *Id.* at 339. It also noted that the Ninth Circuit was the only circuit to have decided when a § 547(b) transfer occurred, and the Ninth Circuit had held that a "date of delivery" rule applied. *Id.* at 340. The court determined that the "date of delivery" rule was also in accord with the policy objectives and the legislative history of § 547(c). *Id.*

10. *Barnhill v. Johnson (In re Antweil)*, 931 F.2d 689, 695 (1991). For an explanation of why the Tenth Circuit held that a "date of honor" rule should apply, see the text accompanying notes 52-63, *infra*.

11. *Barnhill v. Johnson*, 112 S. Ct. 1386 (1992).

12. *Id.* at 1392.

13. See H.R. REP. NO. 595, 95th Cong., 1st Sess. 3-4 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 5965. For a discussion of the probable result in the instant case under the Bankruptcy Act of 1898, see the text accompanying notes 47-51, *infra*.

14. Bankruptcy Act of 1898, ch. 541, § 60(b), 30 Stat. 544, 562 (repealed 1978).

15. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (codified as amended at 11 U.S.C. §§ 101-1330 (1988)).

16. H.R. REP. NO. 595, 95th Cong., 1st Sess. 3-4 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 5965. To avoid confusion, Congress modernized bankruptcy law. *Id.* The last significant change prior to the 1978 Bankruptcy Reform Act occurred in 1938. *Id.* Since that time, the Uniform Commercial Code (UCC) has been adopted, changes have taken place in laws dealing with debtor-creditor relations, and there has been an increased reliance on consumer credit. *Id.* Congress amended the Bankruptcy Code again in 1984, but these amendments did not alter the ninety-day preference period of § 547(b), and therefore need not be included in this discussion.

ery from four months to ninety days.¹⁷ The legislative history clarifies that one purpose of these reforms was to make bankruptcy law more congruent with modern commercial practices and, more particularly, to achieve conformity with the Uniform Commercial Code (UCC).¹⁸

The UCC article governing commercial paper provides in relevant part: "A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it."¹⁹ Under this provision, no transfer of funds takes place until a check is honored.²⁰ Courts have used the language contained in the UCC to assert that until a check is actually accepted and paid by the drawee bank, the transfer can be prevented by others through such means as garnishment of the bank account.²¹

This UCC analysis which concludes that a transfer by check is not complete until it is paid by the drawee bank, raises confusion when reviewed against the legislative history of subsections 547(c)(1) and (2) of the Bankruptcy Code.²² The confusion arises because while the legislative committees indicated that for the purposes of subsections 547(c)(1) and (2), payment is made when the check is delivered, the UCC analysis has been used to conclude that payment by check is not complete until paid by the drawee

17. *Id.*

18. H.R. REP. NO. 595, 95th Cong., 1st Sess. 372, reprinted in 1978 U.S.C.C.A.N. 5963, 6328. The legislative history provides: "This section [547] is a substantial modification of the present law. It modernizes the preference provisions and brings them more into conformity with commercial practice and the Uniform Commercial Code." *Id.*

19. UCC § 3-409(1), 2A U.L.A. 189 (1991).

20. *Id.* See, e.g., *Klein v. Tabatchnick*, 610 F.2d 1043, 1049 (2d Cir. 1979) (finding that under the UCC, checks are merely requests to drawee banks to pay funds to payees, not an assignment of funds).

21. See, e.g., *Nicholson v. First Inv. Co.*, 705 F.2d 410, 413 (11th Cir. 1983) (using the "date of honor" rule in voiding a corporate check that depleted bankrupt's estate). See also *Kenneth D. Ferguson, Does Payment by Check Constitute a Transfer Upon Delivery or Payment?*, 64 AM. BANKR. L.J. 93 (Jan. 1990) (examining the split among the circuits and arguing in favor of using the "date of honor" rule).

22. The legislative statements made by Senator DeConcini and Representative Edwards, who were involved in the Bankruptcy Reform Act of 1978, include the following statement:

Contrary to the language contained in the house report, payment of a debt by means of a check is equivalent to a cash payment, unless the check is dishonored. Payment is considered to be made when the check is delivered for purposes of section 547(c)(1) and (2).

Bernstein v. RJL Leasing (In re White River Corp.), 799 F.2d 631, 633 (10th Cir. 1986) (citing 124 CONG. REC. H 11097 (daily ed. Sept. 28, 1978)). Senator DeConcini was Chairman of the Subcommittee on Improvements of Judicial Machinery for the United States Senate. 124 CONG. REC. S 17406 (daily ed. Oct. 6, 1978). Representative Edwards was Chairman of the Subcommittee on Civil and Constitutional Rights for the United States House of Representatives. H.R. REP. NO. 595, 95th Cong., 1st Sess. 3-4 (1978) reprinted in 1978 U.S.C.C.A.N. 5963, 5963-65. These subcommittees supervised the drafting of the Bankruptcy Reform Act of 1978. *Id.*

bank.²³ Subsections 547(c)(1) and (2) are two exceptions to what a trustee may void as a preferential transfer under the provisions of § 547(b).²⁴ Statements made in the legislative history of the Bankruptcy Reform Act of 1978 indicate that for these subsections, a payment is considered to be made when the check is delivered.²⁵ Because the legislative history is silent with respect to payments made for § 547(b) purposes, it is unclear how these statements relate to the preference provisions contained therein.²⁶ Different interpretations of legislative intent have led courts to vary in their determinations of when a transfer occurs.²⁷

While the most important purpose of § 547(b) is to facilitate equal distribution of the debtor's nonexempt assets among the creditors,²⁸ the purpose of the § 547(c) defenses is to encourage

23. See *supra* notes 20, 22 and accompanying text.

24. Section 547(c) provides:

(c) The trustee may not avoid under this section a transfer—

(1) to the extent that such transfer was

(A) intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and

(B) in fact a substantially contemporaneous exchange;

(2) to the extent that such transfer was—

(A) in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee;

(B) made in the ordinary course of business or financial affairs of the debtor and the transferee; and

(C) made according to ordinary business terms. . . .

11 U.S.C. § 547(c) (1988).

25. See *supra* note 22.

26. For a general discussion of the inconsistent approach used by different courts, see Reid, *infra* note 48, at 715.

27. See *White River Corp.*, 799 F.2d at 633. The *White River* court indicated that a transfer occurs on the date a check is delivered for purposes of § 547(c)(2). *Id.* This holding was based in part on the "ordinary course of business" exception to the preference provision. *Id.* at 632 (citing 11 U.S.C. § 547(c)(2) (1988)). The court added: "In the commercial world receipt of a check, as distinguished from the date it clears the drawee bank, is customarily looked upon as the date of payment of an obligation." *Id.* at 634 (quoting *Young Supply Co. v. McLouth Steel Corp.*, 55 B.R. 356, 357 (E.D. Mich. 1985)). See *Global Distribution Network, Inc. v. Star Expansion Co.*, 949 F.2d 910, 914 (7th Cir. 1991) (holding that a transfer occurs on receipt of the check, provided the check is honored within the ten-day outer limit imposed by § 547(e)). Compare *id.* with *New York City Shoes, Inc. v. Bentley Int'l, Inc.* (*In re New York City Shoes, Inc.*), 880 F.2d 679, 685 (3d Cir. 1989). The *Bentley* court held that postdated checks were presumed transferred for § 547(c)(4) purposes either on the date indicated on the check or on the date that the check clears the bank, rather than the date on which the check was delivered. *New York City Shoes, Inc. v. Bentley Int'l, Inc.*, 880 F.2d 679 (3d Cir. 1989). The court noted that because the purposes of subsections 547(b) and (c) are completely different, the definition of "transfer" need not be the same for both subsections. *Id.* at 681 n.2. The court reached this conclusion by reviewing the purposes of § 547(c)(4). *Id.*

28. *Johnson v. Barnhill* (*In re Antweil*), 931 F.2d 689, 692 (10th Cir. 1991). See REPORT OF THE COMM'N ON THE BANKRUPTCY LAWS OF THE U.S., H.R. DOC. NO. 137, 93d Cong., 1st Sess., Pt. 1, at 202 (1976). The Bankruptcy Code has three goals when governing preferences. *Id.* First, it attempts to lessen the chances of "scramble among the creditors" for preferential treatment by the debtor on the eve of bankruptcy. *Id.* Second, it seeks to distribute property of the debtor's estate on a pro rata basis among the creditors. *Id.* Third,

trade creditors and other suppliers of goods and services to continue dealing with troubled businesses without fear of the trustee's avoidance powers.²⁹ The articulated purpose of the § 547 defenses led one court to note the importance of assessing the circumstances of the transaction and protecting the expectations of each party depending upon those circumstances.³⁰

There is a considerable division among the circuits with respect to when a transfer takes place for § 547(b) purposes.³¹ In *Shamrock Golf Co. v. Richcraft, Inc.*,³² the Ninth Circuit was the first to review the legislative history of § 547(c).³³ The debtor in *Richcraft* delivered the checks to the creditor three days prior to the beginning of the preference period, and the drawee bank honored the checks on the first and second days of the preference period.³⁴ Shamrock successfully argued that payment was made on the date the checks were delivered, and therefore the transfer occurred outside the time frame in which the transaction could be successfully attacked as a preference.³⁵ The court studied the legislative history of the § 547(c) exceptions, and used it in determining that a transfer by check occurs on the delivery date, as long as the creditor presents the check for payment within a reasonable time and the bank does not dishonor it.³⁶

The Sixth Circuit arrived at the same conclusion in *Official Unsecured Creditors Committee of Belknap, Inc. v. Shaler Corp. (In re Belknap, Inc.)*.³⁷ In *Belknap*, the creditor received the debtor's check prior to the beginning of the ninety-day preference period, but the drawee bank did not honor the check until after the preference period had begun.³⁸ The *Belknap* court observed

it eliminates a creditor's desire to make unwise loans to obtain a preferential payment or security. *Id.* Section 547(b) allows the trustee in bankruptcy to void as a preference a transfer previously made by a debtor to a noninsider creditor on or within ninety days of the bankruptcy filing. 11 U.S.C. § 547(b) (1988).

29. *White River Corp.*, 799 F.2d at 634.

30. *Antweil*, 931 F.2d at 693. As the Tenth Circuit articulated, "Section 547(c)(1) prohibits the trustee from avoiding a transfer 'intended by the debtor and the creditor . . . to be a contemporaneous exchange for new value given to the debtor,' and which is, in fact, substantially contemporaneous. The purchase of goods or services for cash falls within this exception." *Id.* The court further stated that "[i]n this context, it is important to consider that most people view the giving of a check as a cash transaction." *Id.*

31. For a discussion of the circuit split, see Ferguson, *supra* note 21.

32. 680 F.2d 645 (9th Cir. 1982).

33. *Shamrock Golf Co. v. Richcraft, Inc.*, 680 F.2d 645, 646 (9th Cir. 1982).

34. *Id.*

35. *Id.*

36. *Id.*

37. 909 F.2d 879 (6th Cir. 1990).

38. *Official Unsecured Creditors' Comm. of Belknap, Inc. v. Shaler Corp., (In re Belknap)*, 909 F.2d 879, 881 (6th Cir. 1990). Three checks were mailed to the creditor: The first, which the debtor had mailed and was received by the creditor prior to the preference

that although the legislative history of § 547 indicates that a transfer occurs upon delivery with regard to *only* subsections (c)(1) and (c)(2), it nonetheless held that a “date of delivery” rule should be used for subsection 547(b) as well.³⁹ The court viewed the exclusion of subsection 547(b) from legislative history as “symptomatic of ‘troublesome’ Committee Reports” rather than as indicative of Congress’ intent to create two definitions of “transfer.”⁴⁰ The court determined that “transfer” was intended to have a uniform meaning, and that to give the word two meanings within one section would be “inconsistent, unworkable and confusing.”⁴¹ Therefore, the *Belknap* court applied the “date of delivery” rule outlined in the legislative history of § 547(c) to determine the timing of a § 547(b) transfer.

In *Counts v. Wang Laboratories, Inc. (In re Virginia Information Systems Corp.)*,⁴² the Fourth Circuit came to the same conclusion using a different analysis. Rather than applying the legislative history of § 547(c) directly to § 547(b), the court concluded that the reasoning behind adopting a “date of delivery” rule for the § 547(c) exceptions applies with equal force to § 547(b) transfers.⁴³ The court asserted that in specifying that a “date of delivery” rule should be used for § 547(c), Congress sought consistency between commercial reality and trade creditors’ expectations.⁴⁴ The court indicated that adopting the “date of delivery” rule for both subsections better served the overall purpose of encouraging creditors to continue doing business with struggling debtors.⁴⁵ The rule also served bankruptcy law by “recognizing that in the commercial arena, for most purposes, payment by check is the end of a commercial transaction.”⁴⁶

period, but was honored within the preference period; the second, which the debtor had mailed prior to the start of the preference period, but the creditor had received and the bank honored within the preference period; and the third, which was mailed within the preference period. *Id.* The court held that the date of receipt constituted the date of delivery. *Id.* Therefore, only the first check was found to be outside of the preference period. *Id.*

39. *Id.* at 883.

40. *Id.* (quoting Vern Countryman, *The Concept of a Voidable Preference in Bankruptcy*, 38 VAND. L. REV. 713, 761 (1985)). See *supra* note 5 (defining “transfer”). For a review of the legislative history, see *supra* note 22.

41. *Belknap*, 909 F.2d at 883.

42. 932 F.2d 338 (4th Cir. 1991).

43. *Counts v. Wang Laboratories, Inc. (In re Virginia Info. Sys. Corp.)*, 932 F.2d 338, 341, 342 (4th Cir. 1991).

44. See *id.* at 342.

45. *Virginia Info. Sys. Corp.*, 932 F.2d at 342.

46. *Id.* The “date of delivery” rule was also adopted for § 547(b) purposes by the Seventh Circuit in *Global Distribution Network, Inc. v. Star Expansion Co.*, 949 F.2d 910 (7th Cir. 1991). The Seventh Circuit determined that under the 1978 Bankruptcy Code, a transfer occurs on receipt of the check, provided that the check is honored within ten days.

Conversely, in 1983, the Eleventh Circuit adopted the "date of honor" rule in *Nicholson v. First Investment Co.*⁴⁷ Rather than relying on legislative history, the court utilized the language of 11 U.S.C. § 96(a) of the Bankruptcy Act of 1898, which had been repealed in 1978, to determine the case under a security interest rationale.⁴⁸ Section 96(a)(2) provided that a transfer was deemed to have been made when it became "so far perfected" that no subsequent lien could become superior to the rights of the transferee.⁴⁹ The court determined that a transfer did not occur at the time the debtor delivered the check because a creditor could still prevent collection of the funds by garnishing the bank account.⁵⁰ The court asserted that for a § 547(b) transfer, the "so far perfected" language of § 96(a)(2) required that the effective date of transfer occurred on the "date of honor" of the check.⁵¹

III. CASE ANALYSIS

The Tenth Circuit concluded in *Johnson v. Barnhill (In re Antweil)*,⁵² that a transfer occurs when the drawee bank honors the check.⁵³ The court reviewed the Bankruptcy Code's preference provision and determined that because subsections 547(b) and (c) serve different purposes, the "definition of 'transfer' need not be the same for both subsections."⁵⁴ The court asserted that "the most important purpose of § 547(b) is to facilitate equal distribution of the debtor's assets among the creditors,"⁵⁵ and unlike § 547(c), the intent of the parties at the time of the transfer was not material to the general question of whether that transfer

Id. The court applied the ten-day period of § 547(e)(2)(A) as the outer limit in reaching its conclusion. *Id.* at 914. For a review of § 547(e)(2)(A), see *supra* note 5.

47. 705 F.2d 410, 413 (11th Cir. 1983).

48. *Nicholson v. First Inv. Co.*, 705 F.2d 410, 412, 413 (11th Cir. 1983). See generally Lisa R. Reid, Note, "TRANSFERS BY CHECK": *The 90-day Rule of Preference Recovery Under Section 547(b) of the Bankruptcy Code*, 1987 DUKE L.J. 712, 722-23 (indicating that courts which deal with the issue of when a transfer is "perfected," have applied different subsections of § 547(e) to transfers by check for § 547(b) purposes with inconsistent results).

49. 11 U.S.C. § 96(a)(2) (1976) (repealed 1978). In determining when a transfer had taken place, § 96(a)(2) provided that, "a transfer of property . . . shall be deemed to have been made or suffered at the time when it became *so far perfected* that no subsequent lien upon such property obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee." *Id.* (emphasis added). Section 547(e)(1)(B) replaced § 96(a)(2). 11 U.S.C. § 547(e) (1988). For a review of this section, see *supra* note 5.

50. *Nicholson*, 705 F.2d at 413.

51. *Id.* There are conflicting theories on whether or not Congress intended § 547(e) to apply to § 547(b) check transfers. For a discussion of these theories, see Reid, *supra* note 48, at 722-23.

52. 931 F.2d 689 (10th Cir. 1991).

53. *Johnson v. Barnhill (In re Antweil)*, 931 F.2d 689, 691 (10th Cir. 1991).

54. *Id.* at 692.

55. *Id.* For a review of the goals of the preference provision, see *supra* note 28.

should be considered a preference.⁵⁶ The Tenth Circuit noted that this purpose contrasted with § 547(c),⁵⁷ which was intended "to encourage trade creditors and other suppliers of goods and services to continue to deal with troubled businesses without fear of a trustee's avoidance powers."⁵⁸ To effectuate the goals of the § 547(c) defenses, the court stressed the importance of protecting the "ordinary commercial expectations of the parties."⁵⁹ Therefore, the court observed, that while the "date of delivery" rule should govern for § 547(c) purposes because it considers the parties' intent, the "date of honor" rule better serves the purpose of § 547(b) by facilitating equal distribution of the bankruptcy estate.⁶⁰ The court then reviewed the legislative history, and noted that conformity with commercial practices and the UCC was a particular goal of the revised preference provision.⁶¹ It determined that the "date of honor" rule conformed more closely to commercial practices and the UCC than the "date of delivery" rule.⁶² Finally, the court noted that a "date of honor" rule was capable of easier proof because only a bank statement would be required to show the date of transfer.⁶³

In *Barnhill v. Johnson*, the Supreme Court affirmed the decision of the Tenth Circuit, and held that for purposes of § 547(b), a transfer by check is deemed to occur on the date the check is honored.⁶⁴ The Court reviewed § 547(b) using the definition of transfer provided by 11 U.S.C § 101(54), and supplemented by § 547(e)(2)(A).⁶⁵ The Court noted that it had previously articu-

56. *Antweil*, 931 F.2d at 692-93 (citing 4 WILLIAM M. COLLIER, COLLIER ON BANKRUPTCY, § 547.01 at 547-12 (15th ed. 1991)). The court further explained that preferential payments occur when creditors do not structure the transactions to protect themselves against possible bankruptcy before extending credit. *Id.* at 693. Payment on these debts usually is not made while being aware of a bankruptcy filing which might take place ninety days in the future. *Id.* Thus, the court noted, "the intent of the parties as to when the transfer is deemed completed is irrelevant." *Id.*

57. *Antweil*, 931 F.2d at 692. To review the relevant exceptions under § 547(c), see *supra* note 24.

58. *Antweil*, 931 F.2d at 693.

59. *Id.*

60. *Id.* at 692. The court never explicitly stated why a "date of honor" rule better facilitates the purposes of § 547(b).

61. *Antweil*, 931 F.2d at 693.

62. *Id.* at 694.

63. *Id.*

64. 112 S. Ct. 1386, 1391 (1992).

65. *Barnhill v. Johnson*, 112 S. Ct. 1386, 1389 (1992). For the definition of "transfer," see *supra* note 5. After the Tenth Circuit reviewed the pertinent sections of the Bankruptcy Code, it examined the legislative history and the underlying purposes of the sections. *Antweil*, 931 F.2d at 693. The court applied the purposes set forth in the legislative history in reaching its conclusion. *Id.* The Supreme Court, in addition to noting the respective purposes of each section, conducted an analysis using definitions in the Bankruptcy Code and the UCC to reach its conclusion. *Barnhill*, 112 S. Ct. at 1389-91. In dismissing the creditor's argument relying on legislative history, the Court indicated "that

lated⁶⁶ that “[w]hat constitutes a transfer and when it is complete” is a matter of federal law.⁶⁷ It added that it is a matter of federal law because the definition of “transfer” arises under a federal statute intended to have uniform application throughout the United States.⁶⁸ However, the Court realized that the definition of “transfer” included references to “parting with property and interests in property,” and that in the absence of any controlling federal law, “property” and “interests in property” are creatures of state law.⁶⁹ Therefore, because of the reliance on state law, the Court concluded it was important to consider the rights and duties that each party had to a transaction involving a check under state law.⁷⁰

The Court then examined the statutes of the state in which the transaction occurred, and discovered that it had adopted the Uniform Commercial Code.⁷¹ Under the UCC, a check is merely a signed order to the drawee bank to pay the sum stated on demand.⁷² The Court asserted that mere receipt of a check did not give the recipient a right against the bank.⁷³ The recipient of a dishonored check which was received in payment of an underlying obligation may, however, maintain an action against the drawer of the check on either the check or the underlying obligation.⁷⁴

The Court provided this background of the state’s version of the UCC in clarifying that there could be no assertion that an unconditional transfer of the debtor’s property occurred before November 20, the date on which the check was honored.⁷⁵ It

appeals to legislative history are well-taken only to resolve ‘statutory ambiguity,’” and the Court perceived no ambiguity here. *Id.* at 1391.

66. *Barnhill*, 112 S. Ct. at 1389 (citing *McKenzie v. Irving Trust Co.*, 323 U.S. 365 (1945)).

67. *Id.*

68. *Id.*

69. *Id.* (citing *McKenzie v. Irving Trust Co.*, 323 U.S. 365, 370 (1945)). The Court then reviewed *Butner v. United States*, in which it had noted that “‘Congress has generally left the determination of property rights in the assets of a bankrupt’s estate to state law.’” *Id.* (quoting *Butner v. United States*, 440 U.S. 48, 54 (1979)).

70. *Id.*

71. See N.M. STAT. ANN. § 55-3-101 (Michie 1978 and Supp. 1992). The Court did not observe any material difference between the version adopted by New Mexico and those adopted by the other states. *Barnhill*, 112 S. Ct. at 1389 n.5.

72. UCC § 3-104(1), (2)(b), 2 U.L.A. 224 (1991).

73. *Barnhill*, 112 S. Ct. at 1389 (citing UCC § 3-409(1), 2A U.L.A. 189 (1991)). “A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.” *Id.* at 1389 n.6.

74. *Id.* at 1390 (citing UCC § 3-802(1)(b), 2A U.L.A. 514 (1991)). The Court acknowledged that should the drawee bank refuse to honor a check, a cause of action against the drawer of the check accrues to the recipient of a check “upon demand following dishonor of the instrument.” *Id.* UCC § 3-122(3), 2 U.L.A. 407 (1991)).

75. *Barnhill*, 112 S. Ct. at 1390.

asserted that a transfer had not occurred because receipt of a check gives the recipient no right to the funds held by the bank on the drawer's account.⁷⁶ The Court indicated that the drawer could close the account, or a third party could obtain a lien against the account by garnishment, or the bank might mistakenly refuse to honor the check.⁷⁷ It proceeded to explain that no transfer of any part of the debtor's claim against the bank occurred until the drawee bank honored the check on November 20,⁷⁸ and it was not until that time that the bank had a right to "charge" the account.⁷⁹ Therefore, the Court stated that "when the debtor has directed the drawee bank to honor the check *and* the bank has done so, the debtor has implemented a 'mode, direct or *indirect* . . . of disposing of property or an interest in property.'"⁸⁰

The Court dismissed the analyses forwarded by Justice Stevens' dissent, as well as by the Sixth, Seventh, and Ninth Circuits, in which each indicated that the definition of "transfer" in § 101(54) encompassed "conditional" transfers, and that delivery of a check should be included as a "conditional transfer."⁸¹ The Court did not interpret what the creditor received as a conditional right to property or an interest in property, but rather that the creditor received no interest in the debtor's property when it

76. *Id.* This portion of the analysis parallels the Eleventh Circuit's reasoning in *Nicholson*, which was decided under a security interest rationale. *Nicholson v. First Inv. Co.*, 705 F.2d 410, 413 (11th Cir. 1983).

The *Nicholson* court relied upon 11 U.S.C. § 96(a) of the Bankruptcy Act of 1898, which was repealed in 1978. *Id.* See 11 U.S.C. § 96(a) (1976) (repealed 1978). The Eleventh Circuit had determined that a transfer does not occur at the time the debtor delivers the check, because a creditor could still prevent collection of the funds by garnishing the bank account. *Nicholson*, 705 F.2d at 413. The Supreme Court utilized essentially the same logic as the Eleventh Circuit but rather than using the now repealed § 96(a)(2), the Court applied provisions of the UCC to reach its conclusion. *Barnhill*, 112 S. Ct. at 1390.

77. *Barnhill*, 112 S. Ct. at 1390.

78. *Id.* (citing UCC § 1-201(21) (defining that "[t]o 'honor' is to pay or to accept and pay or when a credit so engages to purchase or discount a draft complying with the terms of the credit"), 1 U.L.A. 65 (1989)).

79. *Id.* (citing UCC § 4-401, 2B U.L.A. 307 (1991)).

80. *Id.* (citing 11 U.S.C. § 101(54)) (emphasis in original).

81. *Id.* at 1391. The Court acknowledged that there was some credence to the creditor's claim that the creditor did gain something when he received the check. *Id.* at 1390. It asserted, however, that what the creditor gained was no more than a chose in action against the debtor. *Id.* The Court did not interpret what the creditor received as a conditional right to property or an interest in property, but rather that the creditor received no interest in the debtor's property when it received the check. *Id.* at 1390-91.

The Sixth, Seventh, and Ninth Circuits suggested that the delivery of a check was a conditional transfer, as did Justice Stevens in his dissent. *Barnhill*, 112 S. Ct. at 1392 (Stevens, J., dissenting). It is unclear under the majority's reasoning what, if anything, would qualify as a "conditional transfer" as defined in 11 U.S.C. § 101(54). An argument could be made that the majority inappropriately narrowed an expansive definition of the term "transfer." The definition of "transfer" includes "every mode, direct or indirect, absolute or conditional . . . of disposing of or parting with property . . ." 11 U.S.C. § 101(54) (1988).

received the check.⁸² It asserted that adopting those arguments would "accomplish a near-limitless expansion of the term 'conditional.'" ⁸³ The Court concluded that for purposes of payment by ordinary check, a "transfer," as defined by § 101(54), occurs on the date of honor.⁸⁴

The Court noted that its conclusion was consistent with § 547(e)(2)(A), which provides that a transfer occurs at the time the transfer "takes effect between the transferor and the transferee" ⁸⁵ It reasoned that because the debtor retained the ability to stop payment on the check, the transfer did not take place until the moment of honor.⁸⁶ The Court then addressed the legislative history, and began by noting that appeals to statutory history should be considered only to resolve "statutory ambiguity."⁸⁷ It did not perceive that "statutory ambiguity" was present,⁸⁸ but even if it did exist, the Court noted that legislative history only applied to § 547(c), and not § 547(b).⁸⁹ There was no legislative history with respect to § 547(b), and unlike the circuit courts that had adopted a "date of delivery" rule for § 547(b) purposes, the Court found no reason to conclude that "legislative history explicitly confined by its own terms to § 547(c)," should apply also to § 547(b).⁹⁰

Justice Stevens followed the consistent definitional approach used by the Fourth,⁹¹ Sixth,⁹² Seventh,⁹³ and Ninth Circuits,⁹⁴ and

82. *Barnhill*, 112 S. Ct. at 1390-91.

83. *Id.* at 1391.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Barnhill*, 112 S. Ct. at 1391 (citing *Toibb v. Radloff*, 111 S. Ct. 2197, 2200 (1991)).

88. *Id.*

89. *Id.* The Ninth Circuit in *Shamrock Golf Co. v. Richcraft, Inc.*, 680 F.2d 645, 646 (9th Cir. 1982), and the Sixth Circuit in *In re Belknap, Inc.*, 909 F.2d 879, 883 (6th Cir. 1990), each concluded that the legislative history of subsections 547(c)(1) and (2), should also apply to subsection 547(b). For a discussion of these decisions, see text accompanying notes 32-41, *supra*.

90. *Barnhill*, 112 S. Ct. at 1391. The Court observed that subsections 547(c)(1) and (2) are "designed to encourage creditors to continue to deal with troubled debtors on normal business terms by obviating any worry that a subsequent bankruptcy filing might require the creditor to disgorge as a preference an earlier received payment." *Id.* at 1391. The Court concluded that these subsections were intended for a specialized purpose and need not be applicable beyond these purposes. *Id.*

91. *Counts v. Wang Laboratories, Inc. (In re Virginia Info. Sys. Corp.)*, 932 F.2d 338 (4th Cir. 1991) (holding that the rationale for adopting the "date of delivery" rule for § 547(c) applies with equal force to § 547(b) transfers).

92. *Official Unsecured Creditors' Comm. of Belknap, Inc. v. Shaler Corp. (In re Belknap, Inc.)*, 909 F.2d 879, 883 (6th Cir. 1990) (holding that to give "transfer" two meanings within one section would be confusing, inconsistent, and unworkable).

93. *Global Distribution Network, Inc. v. Star Expansion*, 949 F.2d 910, 913 (7th Cir. 1991) (noting that nothing in the structure or functions of the Bankruptcy Code supports a different meaning of "transfer" within the same section).

determined that this approach better served the business community.⁹⁵ In Justice Stevens' view, a "transfer" of property occurs on the date the check is delivered, provided that the check is honored within ten days.⁹⁶ In contrast to the majority, he indicated that this view was consistent with the traditional commercial practice of treating the date of delivery as the date of payment when payment is made by check.⁹⁷ Justice Stevens also noted that this view was in accord with the treatment of checks in tax law.⁹⁸ Observing that it is wise to interpret statutes which regulate commercial behavior in a manner consistent with established business practices, he indicated that absent a congressional mandate commanding a contrary result, the delivery of a check should be considered payment.⁹⁹ Justice Stevens asserted that "transfer," as defined in 11 U.S.C. § 101(54), encompassed the conditional transfer of the delivery of a check to a creditor.¹⁰⁰ Further, despite the possible intervening events between delivery and the presentation of a check, a check is "a conditional transfer because upon delivery, the transferee receives a conditional right to funds in the bank account of the maker—the condition being acceptance by the drawee bank."¹⁰¹

Justice Stevens then reviewed § 547(e)(2) to determine when a transfer occurs for the preference avoidance section.¹⁰² The language of § 547(e)(2) itself, combined with the definition in § 101(54), led him to conclude that even a conditional transfer was a "transfer" for purposes of the Bankruptcy Code.¹⁰³ According to Stevens, "[b]ecause delivery of a check effects a conditional transfer from the transferor to the transferee, the 'transfer' is made, for purposes of § 547, on the date of delivery, provided that the trans-

94. *Shamrock Golf Co. v. Richcraft, Inc.*, 680 F.2d 645, 646 (9th Cir. 1982) (arriving at a similar conclusion for § 547(b) purposes after reviewing the legislative history of § 547(c)).

95. *Barnhill*, 112 S. Ct. at 1392 (Stevens, J., dissenting). Justice Blackmun joined in the dissent. *Id.* Justice Stevens observed that a "date of delivery" rule was better for business because it was consistent with commercial practices, and therefore provided uniformity. *Id.*

96. *Id.* at 1393 (citing § 547(e)(2)(A)).

97. *Id.*

98. *Id.* at 1392. Justice Stevens asserted that a taxpayer who delivers a check for expenses on or before December 31, may deduct those expenses against that year's income, even though the drawee bank does not honor the checks until the next calendar year. *Id.*

99. *Id.*

100. *Barnhill*, 112 S. Ct. at 1392. Justice Stevens set forth the definition of transfer under § 101(54) and concluded that "[a] check is obviously a 'mode' through which the debtor may 'par[t] with property.'" *Id.*

101. *Id.* at 1392 n.4. The majority offered no insight as to what it would consider a conditional transfer.

102. *Id.* at 1393. To reexamine § 547(e), see *supra* note 5.

103. *Barnhill*, 112 S. Ct. at 1393.

fer is 'perfected' within ten days as required by § 547(e)(2)."¹⁰⁴ Additionally, he noted that the courts of appeals were unanimous in using the "date of delivery" for § 547(c) purposes, that this interpretation was consistent with the legislative history, and that normally the Court assumes that the same terms have the same meanings in different sections of the same statute.¹⁰⁵ He closed by asserting that nothing in the structure or purpose of subsections 547(b) or (c) suggests a reason for interpreting the adjacent subsections differently.¹⁰⁶

The definitional approach espoused by Justice Stevens contrasted with the majority opinion in a fundamental way. The majority views the receipt of a check as merely a cause of an action contingent upon a subsequent dishonoring of the check.¹⁰⁷ The Court indicates that Justice Stevens's definition of transfer is too broad and, if adopted, would "accomplish a near-limitless expansion of the term 'conditional.'"¹⁰⁸ Justice Stevens, on the other hand, regards the receipt of a check as a conditional transfer of property.¹⁰⁹ The analysis he sets forth is more persuasive for two reasons. First, Congress provided a broad definition of the term "transfer" in 11 U.S.C. § 101(54),¹¹⁰ and Justice Stevens applies it correctly in his analysis.¹¹¹ The legislative history of the term "transfer" indicates that:

A transfer is a disposition of an interest in property. The definition of transfer is as broad as possible. Many of the potentially limiting words in current law are deleted, and the language is simplified. Under the definition, any

104. *Id.* Justice Stevens acknowledged that the meaning of the word "perfected" was not immediately apparent in the context of a check, because "perfected" has a broader meaning in § 547(e) than it does in the UCC. *Id.* at 1393-94.

105. *Id.* (citing *Sullivan v. Stroop*, 496 U.S. 478 (1990)). The majority agreed that for purposes of § 547(c), "transfer" is defined as the "date of delivery." *Id.* at 1391. The Court did not comment, however, on the dissent's assertion that "[n]ormally, we assume that the same terms have the same meaning in different sections of the same statute." *Id.* (Stevens, J., dissenting).

106. *Id.* at 1393-94. Justice Stevens found the explanation set forth in *Belknap* persuasive: "The policy of § 547(b) is to set aside transfers that potentially prefer selected creditors; section 547(c), in turn, defines groups of creditors who are excepted. To give the word 'transfer' a different meaning in these complimentary subparts seems inconsistent, unworkable, and confusing." *Id.* at 1394 n.7 (citing *In re Belknap, Inc.*, 909 F.2d 879, 883 (1990)). Although the majority discussed the respective purposes of subsections 547(b) and (c), and why the "date of delivery" rule better accommodates § 547(c), it never indicated a reason why a "date of honor" rule better suits the purposes of § 547(b).

107. *Id.* at 1390 n.8. The Court noted that it was not necessary to resolve the question of whether the creditor held a cause of action upon the delivery of the check because the creditor's claim would still fail in the present case. *Id.*

108. *Barnhill*, 112 S. Ct. at 1391.

109. *Id.* at 1392.

110. To review the definition of "transfer," see *supra* note 5.

111. *Barnhill*, 112 S. Ct. at 1391.

transfer of an interest in property is a transfer, including a transfer of possession, custody, or control even if there is no transfer of title, because possession, custody, and control are interests in property. A deposit in a bank account or similar account is a transfer.¹¹²

Based on this legislative history, it can be argued that the Court improperly narrowed an expansive definition of the term "transfer."

Second, there is no overriding purpose served in giving the term "transfer" two different meanings in adjacent subsections of the Bankruptcy Code. The "date of delivery" is the transfer date for § 547(c) purposes, but for § 547(b), a transfer does not occur until the "date of honor." It can be argued that in order to attain the goal of consistency and uniformity, the "date of delivery" rule should apply to both subsections.

In conclusion, while it is apparent how the "date of delivery" rule effectuates the goals of the § 547(c) exceptions, it is unclear how the "date of honor" rule helps to effectuate the goals of the § 547(b) provisions.¹¹³ Section 547(b) is apparently no better served by using a "date of honor" rule, than it would be by using a "date of delivery" rule. It may be an inconsistency without reason.

IV. IMPLICATIONS OF THE DECISION

The decision of the United States Supreme Court in *Barnhill* will undoubtedly have an impact on the way debtors and creditors deal with each other. The Uniform Commercial Code, which served as a basis for the Court's analysis, has been adopted in all states, including North Dakota.¹¹⁴ While the Eighth Circuit indicated in dicta prior to *Barnhill* that it adhered to a "date of honor" rule for § 547(b) purposes,¹¹⁵ the ramifications of the Supreme

112. S. REP. NO. 989, 95th Cong., 2d Sess. 26-27 (1978), reprinted in 1978 U.S.C.A.N. 5787, 5813.

113. The Seventh Circuit addressed the statutory purpose of § 547 in *Global Distribution Network, Inc. v. Star Expansion*, 949 F.2d 910 (7th Cir. 1991). It stated that "[t]he statutory purposes would be served roughly as well by periods of 80, 90, or 100 days—and by rules defining 'transfer' as negotiation or honor of checks. Far more important than the choice between 85 and 95 days is that the rule be simple and frustrate me-first strategies by creditors." *Global Distribution Network*, 949 F.2d at 912. The court further indicated that "considerations of text, simplicity, and legislative goals point toward use of a delivery rule under § 547(b) as well as § 547(c)." *Id.* at 913.

114. *Barnhill*, 112 S. Ct. at 1389 n.5. See N.D. CENT. CODE § 41-03 (1983 and Supp. 1991). The version of the UCC adopted by North Dakota is substantially similar to the version adopted by other states.

115. *In re Kroh Bros. Dev. Co.*, 930 F.2d 648, 651 (8th Cir. 1991). The case was decided on the "new value" provision of § 547(c)(4), but the court distinguished the purposes of subsections 547(b) and (c) in reaching its conclusion. *Id.* The court observed

Court decision are still noteworthy.

Manufacturers, wholesalers, retailers, and any other entities or persons who extend credit, or who have in the past relied upon checks should take notice of this decision. A check received from a debtor is valid at the time of receipt only if it is a "contemporaneous exchange for new value given to the debtor,"¹¹⁶ or is "in payment of a debt incurred by the debtor in the ordinary course of business"¹¹⁷ Therefore, creditors must insist upon a timely repayment schedule which has been structured to ensure inclusion in the "ordinary course of business" exception to the trustee's avoidance powers. The creditor who is informed and extends credit subject to the § 547(c) parameters is able to keep payments by check received outside of the ninety-day preference provision even if not cashed until after the preference period has begun. However, to ensure protection, creditors should promptly deposit checks received from their debtors.

The *Barnhill* decision also has implications for tax law. As Justice Stevens pointed out in his dissent, the date of delivery of a check is the date of payment for tax purposes, but the date of honor is the determinative date for bankruptcy purposes.¹¹⁸ The inconsistency is highlighted by the example of the debtor having financial difficulties who, at year's end, makes payments to reduce his or her tax liability. The debtor is allowed to make payments to creditors by check at year's end to take advantage of the expense deduction on that year's tax return. The date of payment is the date of delivery for tax purposes. However, if the debtor files for bankruptcy ninety days after delivering the checks on December 31, the consistency sought by Congress in the Bankruptcy Reform Act of 1978 has not been achieved.¹¹⁹ The "date of delivery" is determinative for tax purposes, but the "date of honor" controls for bankruptcy purposes.

The *Barnhill* holding may influence the way in which credi-

that "while the majority of courts hold that transfer occurs on payment for purposes of determining when a preference occurs under section 547(b), . . . the different policy served by section 547(c)(4) justifies a different conclusion about when a transfer occurs for purposes of section 547(c)(4)." *Id.* (citations omitted).

116. 11 U.S.C. § 547(c)(1)(A) (1988). If the creditor accepts a check which is a "contemporaneous exchange for new value given to the debtor," the check may not be voided as a preference by the trustee in a subsequent bankruptcy filing. *Id.*

117. *Id.* § 547(c)(2)(A). If the check received by the creditor is "in payment of a debt in the ordinary course of business," the check may not be voided as a preference by the trustee in a subsequent bankruptcy filing. *Id.*

118. *Barnhill*, 112 S. Ct. at 1392 (Stevens, J., dissenting).

119. See H.R. REP. NO. 595, 95th Cong., 1st Sess. 372, reprinted in 1978 U.S.C.C.A.N. 5963, 6328.

tors extend credit by increasing the amount of information required of debtors, and making a structured repayment plan essential in today's business environment. The decision arguably causes confusion for creditors, because the § 547(c) exceptions are governed by a "date of delivery" rule, while the § 547(b) provision is governed by a "date of honor" rule. An argument can be made that the goal of consistency has not been attained. At the least, the holding puts businesses on notice that the delivery of a check is not necessarily a transfer of money.

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