

SUPREME COURT OF THE UNITED STATES

No. 91-159

WILLIAM BARNHILL, PETITIONER v. ELLIOT JOHNSON,
TRUSTEE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT
[March 25, 1992]

JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins,
dissenting.

In my opinion, a "transfer" of property occurs on the date the check is delivered to the transferee, provided that the check is honored within 10 days. This conclusion is consistent with the traditional commercial practice of treating the date of delivery as the date of payment when a payment is made by a check that is subsequently honored by the drawee bank.¹ It is also consistent with the treatment of checks in tax law. A taxpayer may deduct expenses paid by a check delivered on or before December 31 against that year's income even though the drawee bank does not honor the check until the next calendar year.² Insofar as possible, it is wise to interpret

¹See, e. g., *Regents of University of New Mexico v. Lacey*, 107 N. M. 742, 744, 764 P. 2d 873, 875 (1988) ("[I]f, when the check is delivered, the drawer has funds in the drawee bank to meet it, and the check is honored and paid upon presentment, the conditional nature of the payment becomes absolute and the date of payment will be deemed to have been made as of the date of the original delivery of the check"); 6 R. Anderson, *Uniform Commercial Code* §3-802:19, pp. 594-595 (3d ed. 1984) ("When a check is paid, the payment of the underlying debt becomes absolute and it is deemed paid as of the date of the giving of the check").

²See, e. g., *Clark v. Commissioner*, 253 F. 2d 745, 748 (CA3 1958); see also *Don E. Williams Co. v. Commissioner*, 429 U. S. 569, 572, n. 2,

statutes regulating commercial behavior consistently with established practices in the business community. The custom that treats the delivery of a check as payment should not be rejected unless Congress has unequivocally commanded a contrary result. In the Bankruptcy Code, Congress has done no such thing. On the contrary, the Code is entirely consistent with the normal practice.

582-583 (1977). Treasury regulations similarly provide that a charitable contribution is made upon delivery of a check which subsequently clears in due course. Treas. Reg. §1.170A-1(b), 26 CFR §1.170A-1(b) (1991).

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The definition of the term "transfer" in §101(54) is plainly broad enough to encompass the conditional transfer of the right to funds in the debtor's bank account that occurs when the debtor delivers a check to a creditor. Section 101(54) defines a "transfer" 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" 11 U. S. C. §101(54) (1988 ed., Supp. II). A check³ is obviously a "mode" through which the debtor may "par[t] with property."⁴

Of course, the fact that delivery of a check effects a "transfer" within the meaning of the Code does not answer the question whether the trustee may avoid the transfer by check in this case because §547(b) only authorizes the trustee to avoid transfers made "on or within 90 days before the date of the filing of the [bankruptcy] petition." 11 U. S. C. §547(b)(4)(A). That raises the question: when did the "transfer" occur? Section 547(e)(2) provides the answer. It states that for purposes of the preference avoidance section, 11 U. S. C. §547, a transfer is made

"(A) at the time such transfer takes effect

³A check is an order, signed by the maker, to the drawee bank to pay the sum stated upon demand. See Uniform Commercial Code §3-104, 2 U. L. A. 224 (1991).

⁴The fact that "[m]yriad events can intervene between delivery and presentment of the check that would result in the check being dishonored," *ante*, at 6, does not alter this conclusion because §101(54) expansively defines the term "transfer" to include even conditional modes of parting with property. In my opinion, the delivery of a check effects such 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.

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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” §547(e)(2).

The Court interprets this section as supporting its conclusion that the transfer does not occur until the check is honored by the drawee bank because, it reasons, a transfer cannot take effect between the transferor and transferee as long as the transferor retains the ability to stop payment on the check. *Ante*, at 8. But that reasoning is foreclosed by §101(54), which states that even a conditional transfer is a “transfer” for purposes of the Code. Because 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 transfer is “perfected” within 10 days as required by §547(e)(2).

As the Court of Appeals for the Seventh Circuit recognized, the use of the term “perfected” is “jarring” because the meaning of the word “perfected” is not immediately apparent in this context. *Global Distribution Network, Inc. v. Star Expansion Co.*, 949 F.2d 910, 913 (1991). “Debtors transfer assets; creditors perfect security interests.” *Ibid.* The answer lies in the fact that the term “perfected” has a broader meaning in §547(e) than it does in the Uniform Commercial Code. Section 547(e)(1)(B) states that “a transfer of . . . 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.” Under this definition, a transfer by check is “perfected” when the check is honored because after that time no one can acquire a judicial lien superior to the interest of the transferee.

Thus §§101(54) and 547, when read together,

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plainly indicate that a ``transfer'' by check occurs on the date the check is delivered to the transferee, provided that the drawee bank honors the check within 10 days. If, however, the check is not honored within 10 days, the ``transfer'' occurs on the date of honor.

An additional consideration reinforces this interpretation of the statutory text. The Courts of Appeals are unanimous in concluding that the date of delivery of a check is controlling for purposes of §547(c), and the Court does not dispute that conclusion for the purposes of its decision today. *Ante*, at 9, n. 9. These Courts of Appeals decisions are consistent with the legislative history,⁵ which, though admittedly not conclusive, identifies the date of delivery of a check as the date of transfer for purposes of §547(c).⁶ Normally, we assume that the same terms have the same meaning in different sections of the same statute. See, e.g., *Sullivan v. Strop*, 496 U. S. 478, 484 (1990). That rule is not inexorable, but nothing in the structure or purpose of §547(b) and §547(c) suggests a reason for interpreting these adjacent subsections differently.⁷

⁵Indeed, many of these decisions rely on the legislative history. See, e. g., *In re Continental Commodities, Inc.*, 841 F. 2d 527, 530 (CA4 1988); *In re White River Corp.*, 799 F. 2d 631, 633 (CA10 1986); *O'Neill v. Nestle Libbys P.R., Inc.*, 729 F. 2d 35, 37 (CA1 1984).

⁶As the Court recognizes, *ante*, at 8, sponsors of the legislation in the House and Senate made identical statements to this effect.

⁷As the Court of Appeals for the Sixth Circuit cogently explained: ``The policy of section 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

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I would therefore reverse the judgment of the Court of Appeals.

complementary subparts seems inconsistent, unworkable, and confusing." *In re Belknap, Inc.*, 909 F.2d 879, 883 (1990).