

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BARNHILL v. JOHNSON, TRUSTEE

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
TENTH CIRCUIT

No. 91-159. Argued January 14, 1992—Decided March 25, 1992

The debtor's check in payment of a bona fide debt was delivered to petitioner Barnhill in New Mexico on November 18 and honored by the drawee bank on November 20, the 90th day before the debtor filed a Chapter 11 bankruptcy petition. Respondent Johnson, the trustee of the debtor's estate, filed an adversary action against Barnhill, claiming that the payment was recoverable under 11 U.S.C. §547(b) as a transfer of the debtor's property made on or within 90 days of the bankruptcy filing. Johnson asserted that the transfer occurred on the date that the bank honored the check, but Barnhill claimed that it occurred on the date that he received the check. The Bankruptcy Court agreed with Barnhill and denied recovery, and the District Court affirmed. The Court of Appeals reversed, holding that a date of honor rule should govern §547(b) actions.

Held: For the purposes of §547(b), a transfer made by check is deemed to occur on the date the check is honored. Pp.3-9.

(a) "What constitutes a transfer and when it is complete" is a matter of federal law. *McKenzie v. Irving Trust Co.*, 323 U.S. 365, 369-370. The Bankruptcy Code defines "transfer" as "every mode, . . . absolute or conditional, . . . of disposing of . . . property or . . . an interest in property." 11 U.S.C. §101(54). In the absence of any controlling federal law, "property" and "interests in property" are creatures of state law. *McKenzie, supra*, at 370. Under the Uniform Commercial Code, which has been adopted by New Mexico, a check is simply an order to the drawee bank to pay the sum stated on demand. If the check is honored, the debtor's obligation is discharged, but if it is not honored, a cause of action against the debtor accrues to the check recipient "upon demand following dishonor." Pp.3-5.

BARNHILL v. JOHNSON

Syllabus

(b) An unconditional transfer of the debtor's interest in property did not occur before November 20, since receipt of the check gave Barnhill no right in the funds the bank held on the debtor's account. No transfer of any part of the debtor's claim against the bank occurred until the bank honored the check, at which time the bank had the right to "charge" the debtor's account and Barnhill's claim against the debtor ceased. Honoring the check left the debtor in the position that it would have occupied had it withdrawn cash from its account and handed it over to Barnhill. Thus, it was not until the debtor directed the bank to honor the check *and* the bank did so, that the debtor implemented a "mode . . . of disposing . . . of property or . . . an interest in property" under §101(54) and a "transfer" took place. Pp.5-7.

(c) Barnhill's argument that delivery of a check should be viewed as a "conditional" transfer is rejected. Any chose in action against the debtor that he gained when he received the check cannot be fairly characterized as a conditional right to "property or . . . an interest in property," since, until the moment of honor, the debtor remained in full control over the account's disposition and the account remained subject to a variety of actions by third parties. In addition, the rule of honor is consistent with §547(e)(2)(A), which provides that a transfer occurs at the time it "takes effect between the transferor and the transferee," particularly since the debtor here retained the ability to stop payment on the check until the very last. Barnhill's appeal to legislative history is also unavailing. Pp.7-9.

931 F.2d 689, affirmed.

REHNQUIST, C. J., delivered the opinion of the Court, in which WHITE, O'CONNOR, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion, in which BLACKMUN, J., joined.