

Evaluating Avoidance Actions - the Numerical Approach to Legal Analysis

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What is a Preference a/k/a an “Avoidance Action”

Preferences are an asset of the bankruptcy estate, established under section 547 of the Bankruptcy Code, that enables a Debtor or Trustee to avoid or “pull back” transfers made in the 90 days prior to the petition date back into the bankruptcy estate.

What Qualifies as a Preference?

A trustee or debtor can avoid a transfer under section 547(b) of the bankruptcy code if:

- the transfer was to or for the benefit of a creditor;
- was for or on account of an antecedent debt owed by the debtor;
- was made while the debtor was insolvent;
- was made
 - on or within 90 days before the petition date [generally referred to as the “preference period”]; or
 - if the creditor was an insider, between 90 days and one year before the petition date;
- And enables such creditor to receive more it would have if—
 - the case were a chapter 7 liquidation; and
 - the transfer had not been made.

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