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THE NONUNIFORM TEXAS "UNIFORM"
FRAUDULENT TRANSFER ACT

by

Richard F. Dole, Jr.* and Vernon Teofan**

FRAUDULENT transfer law limits a debtor's ability to frustrate creditors by transferring assets to third parties. Except to the extent that a transferee derives immunity through a bona fide purchase, an aggrieved creditor can satisfy a claim from a transferee's assets, including the property fraudulently transferred. Fraudulent transfers primarily injure unsecured creditors. But adversely affected secured creditors, for example those with insufficient collateral, also can seek redress.

American fraudulent transfer law derived from sixteenth-century English

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1. See Twyne's Case, 76 Eng. Rep. 809, 814-15 (Star Chamber 1601) (protection requires valuable consideration given in good faith); Carlson, Is Fraudulent Conveyance Law Efficient?, 9 CARDOZO L. REV. 643, 651 (1987) ("The normative command of fraudulent conveyance law is that insolvent debtors should not make gifts, nor should they launder gifts or other corrupt deals through co-conspiring third parties (bulk sales).").

2. E.g., Mannocke's Case, 73 Eng. Rep. 661-63 (K.B. 1571) (transferred property subject to levy by creditor of transferor); see Alan Drey Co. v. Generation, Inc., 317 N.E.2d 673, 675, 680-81 (Ill. App. 1974) ($39,376 personal judgment against unprotected transferee). Transferees who are natural persons, however, are entitled to claim state law property exemptions from creditor judicial collection remedies in property that was not acquired through a fraudulent transfer. See, e.g. TEX. PROP. CODE ANN. §§ 42.002, 42.004 (Vernon 1984) (personal property exemptions for families and single adults allowed unless property acquired with nonexempt assets with intent to defraud, delay, or hinder an interested person). As an accommodation to fraudulent transfer policy, personal property acquired by an unprotected transferee in a constructively fraudulent transfer also arguably should be ineligible for exemption.

common law. Both the early English proscription of fraudulent transfers and the American derivatives were statute-based. The sixteenth-century English cases created a creditor's remedy from a statute making a fraudulent transfer a criminal offense. In the United States, uniform state laws provided express creditor remedies. Twenty-five states and the Virgin Island enacted the Uniform Fraudulent Conveyance Act (UFCA), which the Uniform Law Conference adopted in 1918. Twenty states have at present enacted the Uniform Fraudulent Transfer Act (UFTA), which in 1984 replaced the UFCA as the recommended uniform act. At the federal level, the 1979 federal Bankruptcy Code authorized a bankruptcy trustee to void fraudulent transfers and to recover the property involved or its value from unprotected transferees. A bankruptcy trustee can, alternatively, bring a voiding action under state fraudulent transfer law.

Texas never enacted the UFCA. In 1987 the legislature replaced the Texas Fraudulent Transfer Act, which was derived from an 1840 Act of the Republic of Texas, with a modified version of the UFTA. This Article examines the eleven Texas nonuniform amendments to the UFTA and generally finds them flawed. These amendments were not the subject of committee deliberations. Most were drafted immediately following a Senate Committee hearing. A few were adopted without debate upon the Senate floor during final consideration. The Texas nonuniform amendments typically reflect the haste with which they were prepared and conflict with either the approach or the language of the UFTA.

5. E.g., Twyne's Case, 76 Eng. Rep. 809, 810-11, 823 (Star Chamber 1601) (fraudulent transferee convicted of crime of fraud; his minions, who had interfered with sheriff, convicted of riot); Kennedy, supra note 4, at 536-37 (English statutes condemned fraudulent transfers for several centuries before courts recognized creditor voiding actions).
9. Id. §§ 544(b), 550. In order to invoke state law, a trustee must identify an unsecured creditor of the debtor with both standing under state law and a claim that is "allowable" (cognizable) in the bankruptcy proceeding. Id. § 544(b). Federal bankruptcy law empowers a trustee to utilize an identifiable unsecured creditor's power of avoidance for the benefit of a debtor's bankruptcy estate. Id.; In re McDowell, 87 Bankr. 554, 558-61 (Bankr. S.D. Ill. 1988) (trustee's ability to proceed depends upon the existence of at least one creditor with a right of avoidance).
10. See TFTA, supra note 1, §§ 24.01-05.
13. See infra notes 110-73 and accompanying text.
I. THE TEXAS FRAUDULENT TRANSFER ACT

The Texas Act dealt with voluntary transfers of a debtor’s property.\(^\text{14}\) The Act covered involuntary transfers, like those caused by legal process, only to the extent that a debtor used a collusive proceeding to disguise a voluntary transfer.\(^\text{15}\) Transfers made with actual intent to delay, hinder, or defraud creditors, purchasers, or other interested persons were voidable.\(^\text{16}\) Three additional categories of constructively fraudulent transfers were voidable without proof of actual intent to defraud: (1) transfers for unfair consideration by insolvent debtors;\(^\text{17}\) (2) fraudulent gifts of tangible personal property;\(^\text{18}\) and (3) pretended loans of tangible personal property.\(^\text{19}\)

The invalidation of fraudulent gifts and pretended loans did not involve fraudulent transfer policy. Unless evidenced by either (1) an acknowledged or a proved and recorded deed, or (2) a probated will, or (3) possession by a donee or a person claiming under a donee, a gift of tangible personal property was voidable.\(^\text{20}\) As the exceptions indicated, the primary function of the fraudulent gift statute was to identify the formalities for an effective gift of tangible personal property. \textit{Rowe v. Palmer,}\(^\text{21}\) for example, was an action by two brothers against their sister for failure to convey property. The court granted the sister judgment notwithstanding the verdict for several reasons, including noncompliance with the formalities of the fraudulent gift statute.\(^\text{22}\)

With respect to creditors of and purchasers from a person who had been in unchallenged possession of another’s tangible personal property for two years, the pretended loan statute voided reservations and limitations upon the possessor’s rights, including reservations of title.\(^\text{23}\) The pretended loan statute also had a primarily evidentiary function. Reservations and limitations that appeared either in a probated will or in an acknowledged or a proved and recorded writing were enforceable.\(^\text{24}\)

If a debtor made a transfer with actual intent to defraud them, creditors, purchasers, and other interested persons with interests that arose either before or after the transfer could maintain a voiding action.\(^\text{25}\) In \textit{Biccochi v. Casey-Swasey Co.}\(^\text{26}\) the Texas Supreme Court indicated in dictum that a wife

\begin{enumerate}
\item \textit{TFTA, supra} note 1, § 24.01 (transfers include conveyances, gifts, assignments, and charges).
\item See \textit{id.} § 24.02(a) (suit, decree, judgment, or execution involving actual fraudulent intent voidable).
\item \textit{Id.}
\item \textit{Id.} § 24.03.
\item \textit{Id.} § 24.04.
\item \textit{Id.} § 24.05.
\item \textit{Id.} § 24.04.
\item 277 S.W.2d 781 (Tex. Civ. App.—Texarkana 1955, no writ).
\item \textit{Id.} at 782-83, 785 (no exceptions to fraudulent gift statute applicable).
\item \textit{TFTA, supra} note 1, § 24.05.
\item \textit{Id.} § 24.05(c); \textit{Grumbles v. Sneed}, 22 Tex. 565, 579 (1858) ("We think it intended to compel persons who make loans of goods . . . to have the loan declared in such manner, that all the world may know what title the possessor has.").
\item See \textit{TFTA, supra} note 1, § 24.02(a); see also \textit{United States v. Chapman}, 756 F.2d 1237, 1240-43 (5th Cir. 1985) (United States could void transfer of real estate made with actual intent to hinder collection of federal taxes prior to accrual of tax claim).
\item 91 Tex. 259, 42 S.W. 963 (1897).
\end{enumerate}
whose husband secretly had purchased land with community funds could void the record title of her husband’s brother-in-law. The court suggested that the wife would have standing under what ultimately became the interested person category and perhaps also as a creditor.

Transfers for unfair consideration by insolvent debtors, on the other hand, were voidable only by creditors holding claims against a debtor that arose before or at the time of the transfer. An archaic definition of insolvency enhanced voidability. The Texas Fraudulent Transfer Act deemed insolvent any debtor who lacked “enough property in this state subject to execution to pay all of his existing debts.” This 1840 definition of insolvency counted all of a transferor’s debts, but excluded substantial assets. Intangible assets subject to a Texas writ of garnishment rather than to a Texas writ of execution were, for example, omitted. In Taylor v. Callahan the court deemed a debtor insolvent solely because the Act excluded two Texas bank accounts from the solvency calculation. Also omitted were all assets located outside Texas. Multinational and multistate entities, as well as entities with primarily intangible assets such as accounts receivable, were exposed to a greater likelihood of artificial “insolvency” than Texas concerns with substantial tangible assets.

The Act immunized from voidability good faith acquirers for value who were without notice of a debtor’s actual intent to defraud. Fair consideration similarly protected acquirers of property from an insolvent debtor. Good faith preferences had independent immunity. A preference was a payment received from an insolvent who lacked the resources to pay all of his or her debts. A “good faith preference” could not exceed the unpaid balance of a debt. A creditor also could not benefit a debtor other than through a pro tanto discharge of the debt paid. Allowing a debtor to retain control of transferred property, for example, created a voidable bad faith

27. Id. at 263, 42 S.W. at 964 (dictum).
28. See id. (at time of decision third category of persons with standing was other persons entitled to property).
29. TFTA, supra note 1, § 24.03(a), (b).
30. Id. § 24.03(a).
31. 83 S.W.2d 1072 (Tex. Civ. App.—Austin 1935, writ dism’d).
32. Id. at 1074-75
33. See supra note 30 and accompanying text. The omission of substantial assets but no debts from the definition of insolvency favored creditors over debtors. This procreditor act of the Republic of Texas was diametrically opposed to the legislation freeing Texas citizens of debts contracted in other countries that has been attributed to the Republic, but, in fact, never existed. See Texas in 1837, at 161-62 & 217 n.24 (Muir paperback 2d ed. 1988).
34. TFTA, supra note 1, § 24.02(b).
36. E.g., Hawes v. Central Texas Prod. Credit Ass’n, 503 S.W.2d 234, 235-37 (Tex. 1973) (good faith preference exception to voidability of transfers with actual intent to defraud inapplicable due to transferee’s bad faith); Adams, 112 Tex. at 476-77, 248 S.W. at 676 (good faith preference exception to voidability of transfers for unfair consideration by insolvents).
37. See Hawes, 503 S.W.2d at 235. A debtor’s motive for making a preferential payment is usually obvious. E.g., Karr v. Cockerham, 71 S.W.2d 905, 908 (Tex. Civ. App.—Amarillo 1934, writ dism’d) (wife preferred creditor).
38. Hawes, 503 S.W.2d at 235-36.
A person with standing ostensibly had to commence a voiding action within four years after he or she should have discovered a fraudulent transfer. An aggrieved person, however, could circumvent this statute of limitations by asserting voidability through levy upon the transferred property. Depending upon whether a levy was pursuant to a provisional remedy, a prior judgment against a debtor, or a prior judgment lien in a debtor's nonexempt real estate, the levy was subject to either the statute of limitations upon a substantive claim against a debtor, or one of the ten-year statutes of limitations upon enforcement of a judgment. In order to sell the transferred property an aggrieved person who levied in disregard of a fraudulent transfer ordinarily had to purchase at his or her own execution sale and to prevail in a subsequent action to remove the fraudulent transfer as a cloud upon title. The statute of limitations upon an action to clear title consequently restricted the ability to levy in disregard of a fraudulent transfer.

An aggrieved party with reason to know of a fraudulent transfer had two years to bring an action to clear title to personal property. Principles of

39. Id. at 235-37.
40. TEX. CIV. PRAC. & REM. CODE ANN. § 16.051 (Vernon 1986) (four-year statute of limitations); Hoerster v. Wilke, 158 S.W.2d 288, 289-90 (Tex. 1942) (dictum) (statute of limitations commences when fraudulent transfer could have been discovered by exercise of reasonable diligence).
41. An aggrieved person without a judgment can couple an action upon his or her substantive claim with a prejudgment attachment proceeding. E.g., Snodgrass v. Brownfield State Bank, 251 S.W. 567, 568-69 (Tex. Civ. App.—Amarillo 1923, no writ) (attaching creditor has standing to void).
42. E.g., Lynn v. Le Gierse & Co., 48 Tex. 138, 140 (1877) (judgment creditor can cause levy of execution upon fraudulently transferred property).
43. E.g., Fikes v. Buckholts State Bank, 273 S.W. 957, 959-61 (Tex. Civ. App.—Austin 1925, writ dism’d) ( levy of execution upon and execution sale of nonexempt real estate subject to judgment lien). A judgment lien also could be enforced by an equitable foreclosure action. E.g., Texas Sand Co. v. Shield, 381 S.W.2d 48, 53-55 (Tex. 1964) (equitable action to foreclose judgment lien in nonexempt real estate maintainable notwithstanding expiration of four-year statute of limitations for voiding actions by creditors without a judgment).
44. See e.g., TEX. CIV. PRAC. & REM. CODE ANN. § 61.003 (Vernon 1986) (provisional remedy of attachment available only in connection with a pending suit).
45. With respect to enforcement of a judgment by writ of execution, the judgment creditor must obtain and issue an initial writ within 10 years after the date of rendition. Subsequent writs must follow within 10 years after issue of the previous writ. TEX. CIV. PRAC. & REM. CODE ANN. § 34.001 (Vernon 1986). With respect to enforcement of judgment liens in nonexempt real estate obtained by recording and indexing abstracts of money judgments in county land records, the statute of limitations is either 10 years from the date of recording and indexing or the date upon which a writ of execution becomes unavailable, whichever occurs earlier. TEX. PROP. CODE ANN. §§ 52.001, .003, .006 (Vernon 1984).
46. Lynn v. Le Gierse & Co., 48 Tex. 138, 140 (1877) (judgment creditor who levied in disregard of fraudulent transfer and purchased at execution sale prevailed in subsequent action to clear title).
47. See TEX. CIV. PRAC. & REM. CODE ANN. § 16.003(a) (Vernon 1986) (two-year statute of limitations upon conversion of personal property, and taking or detaining the personal property of another). See also Bonhiver v. Affiliated Cos., 447 F.2d 108, 111-12 (5th Cir. 1971) (creditor's action against transferees of debtor's personal property barred by two-year statute of limitations). Bonhiver involved assertion of a transferee's personal liability for participation in a fraudulent transfer rather than an action to quiet title to personal property that had been levied upon in disregard of a transfer. 447 F.2d at 111. The court consequently erred in
adverse possession determined whether an action to clear title to real estate was maintainable.\(^{48}\) The Texas durational requirements for adverse possession, which are phrased as statutes of limitations upon actions against an adverse possessor, include: (1) within three years after a cause of action accrues against a peaceable adverse possessor with either title or color of title,\(^{49}\) (2) within five years after a cause of action accrues against a peaceable adverse possessor using property, paying taxes, and claiming under a recorded deed that is not tainted by forgery,\(^{50}\) and (3) within ten years after a cause of action accrues against a peaceable adverse possessor using the property.\(^{51}\) As long as a transferee took possession, the three-year adverse possession statute of limitations frequently applied to transfers made with actual fraudulent intent. A person intending to defraud creditors usually took care to convey record title.\(^{52}\) Depending upon the circumstances, adverse possession, nevertheless, could require from three to ten years.\(^{53}\)

With the exception of the fraudulent gift provision, the legislature prospectively repealed the Texas Fraudulent Transfer Act as of September 1, 1987.\(^{54}\) The Texas Act in its entirety continues to apply to transfers made prior to that date.\(^{55}\) The gift provision, stripped of superfluous references to fraud, incongruously remains in the Texas Business and Commerce Code.\(^{56}\) The standards for a valid gift of tangible personal property should be in the Property Code.

II. THE UNIFORM FRAUDULENT TRANSFER ACT

A. The Approach of the UFTA

The UFTA, which the Uniform Law Conference approved in 1984, modernizes the UFCA by incorporating federal Bankruptcy Code principles.\(^{57}\) In addition to transfers made by a debtor with actual intent to defraud credi-

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\(^{48}\) See Colonial Leasing Co. v. Logistics Control Group Int’l, 762 F.2d 454, 456-58 (5th Cir. 1985) (unprotected transferee’s personal liability for participation in fraudulent transfer subject to four-year statute of limitations).

\(^{49}\) TEX. CIV. PRAC. & REM. CODE ANN. § 16.024 (Vernon 1986).

\(^{50}\) Id. § 16.026.

\(^{51}\) Id. § 16.026.

\(^{52}\) E.g., Oates v. Johnson, 96 S.W.2d 1119 (Tex. Civ. App.—El Paso 1936, writ ref’d) (gratuitous deed from husband to wife made three-year statute of limitations applicable).

\(^{53}\) The twenty-five-year adverse possession statutes of limitations, TEX. CIV. PRAC. & REM. CODE ANN. §§ 16.027,16.028 (Vernon 1986), were irrelevant. The ten-year statutes of limitations upon enforcement of a judgment, supra note 45, ordinarily ran before the twenty-five-year adverse possession statutes of limitations could come into play.


\(^{55}\) Id. § 2.

\(^{56}\) TEX. BUS. & COM. CODE ANN. § 24.013 (Vernon 1987).

\(^{57}\) See UNIF. FRAUDULENT TRANSFER ACT prefatory note, 7A U.L.A. 640, 640-42 (1985) [hereinafter UFTA] (numerous references to instances in which UFTA follows Bankruptcy Code).
there are three types of transfers for less than reasonably equivalent value that the UFTA deems constructively fraudulent without proof of a debtor's fraudulent intent. They are: (1) transfers leaving a debtor with unreasonably small assets for the transaction or business in which the debtor either is engaged or is about to engage;59 (2) transfers by a debtor who either intended to incur, believed that he or she would incur, or reasonably should have believed that he or she would incur debts that could not be repaid as they became due;60 and (3) transfers by a debtor who either was insolvent or became insolvent as a result of the transfer.61

Although preferences are not traditional fraudulent transfers, the UFTA also deems constructively fraudulent certain preferences. An insolvent's out-of-the-ordinary-course transfer for an antecedent debt to an insider who has reasonable cause to believe the debtor insolvent is voidable.62 The drafters intended this new limitation upon the former immunity of good faith preferences63 to deter strategically placed and knowledgeable insiders from stripping a debtor of assets.64 The UFTA also declares that enforcement of a valid clause authorizing termination of a lease because of a debtor's default and enforcement of an article 9 security interest in compliance with article 9, which can give rise to transfers for less than reasonably equivalent value,65 are not constructively fraudulent transfers.66

An illustrative UFTA definition, which derives from the Bankruptcy Code, identifies "insiders" as persons with a close relationship with a debtor.57 Other important UFTA definitions include "insolvency" and "value." The definition of insolvency is an adaptation of the Bankruptcy Code balance sheet test.68 If a fair valuation of a debtor's debts exceeds a fair valuation of a debtor's assets, insolvency exists.69 A rebuttable presumption of insolvency, moreover, arises from a debtor's general nonpayment of

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63. See supra notes 36-39 and accompanying text. Good faith preferences to outsiders and good faith preferences to insiders without reason to believe a debtor insolvent remain unvoidable. See UFTA §§ 5(b), 8(f), 7A U.L.A. at 657, 662-63.
64. See UFTA prefatory note, 7A U.L.A. at 641.
66. UFTA § 8(e), 7A U.L.A. at 662.
67. UFTA § 1(7) & § 1 comment, 7A U.L.A. at 644-45, 647.
68. UFTA § 2 comment, 7A U.L.A. at 648.
69. UFTA § 2(a) & § 2 comment, 7A U.L.A. at 648. All of a debtor's property ordinarily constitutes an asset with the exception of property that is (1) encumbered by a valid lien, (2) generally exempt from judicial seizure by creditors, or (3) held in tenancy by the entirety and not subject to process by a creditor holding a claim against only one tenant. UFTA § 1(2), 7A U.L.A. at 644. The UFTA also excludes from a solvency calculation property that was involved in a fraudulent transfer and debts secured by liens that precluded property from being considered an asset. UFTA § 2(d), (e), 7A U.L.A. at 648.
debts as they become due. General nonpayment does not require default upon a majority in number and amount of debts. Nonpayment of large debts can suffice. A failure to pay debts that are the subject of a bona fide dispute, however, is irrelevant.

Value includes an antecedent debt secured or satisfied by a transfer. With this traditional fraudulent transfer law exception, the UFTA requires that value have utility to a debtor's creditors. An unperformed, out-of-the-ordinary-course-of-business promise to care for either a debtor or another, which both is easily fabricated and has little utility to a debtor's creditors, for example, is not value. With respect to all constructively fraudulent transfers, reasonably equivalent value includes acquisition of a debtor's interest in an asset "pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement."

This definition of reasonably equivalent value rejects the controversial Fifth Circuit construction of federal bankruptcy law in Durrett v. Washington National Insurance Co. Durrett held constructively fraudulent a foreclosure sale realizing less than seventy percent of the fair market value of an insolvent's property. Under the UFTA, any price received at a noncollusive and regular foreclosure sale is reasonable.

The UFTA limits standing to void to creditors—persons with claims, which are rights to payment. Only creditors with claims arising before a transfer can void preferences to insiders and transfers by insolvents for less than reasonably equivalent value. A transfer, however, is not deemed made until a debtor acquires rights in the transferred property and the transfer is perfected against third parties. A delay in perfection can, therefore, increase the number of persons with standing to void. Both pre- and

70. UFTA § 2(b), 7A U.L.A. at 648.
71. UFTA § 2 comment, 7A U.L.A. at 649.
72. Id.
73. UFTA § 3(a), 7A U.L.A. at 650.
74. UFTA § 3 comment, 7A U.L.A. at 650-51. The comment explains that value is to be determined in light of the purpose of the Act to protect a debtor's estate from being depleted to the prejudice of unsecured creditors. Consideration having no utility from a creditor's standpoint does not satisfy the statute. Id.
75. UFTA § 3(a), 7A U.L.A. at 650.
76. UFTA § 3(b), 7A U.L.A. at 650.
77. 621 F.2d 201, 204 (5th Cir. 1980).
78. Id. at 203-04. Although Durrett was decided under the Bankruptcy Act, the Durrett reasoning controls in the Fifth Circuit under the Bankruptcy Code. E.g., In re Willis, 48 Bankr. 295, 300-01 (Bankr. S.D. Tex. 1985) (Circuit Judge Randall sitting by designation) (Durrett followed under § 548).
79. See UFTA § 3 comment, 7A U.L.A. at 652.
82. UFTA § 5, 7A U.L.A. at 657.
84. UFTA § 6(1), 7A U.L.A. at 658-59. A debtor must have acquired rights in an asset for perfection to be possible. UFTA § 6(4), 7A U.L.A. at 659. Additionally, transferees of real estate must perfect against subsequent bona fide purchasers from the debtor, and transfer-
post-transfer creditors, moreover, can void a transfer that a debtor made with actual fraudulent intent or that falls within the unreasonably small assets or foreseeable excessive debt categories of constructive fraud.\textsuperscript{85}

Good faith recipients of a fraudulent transfer from a debtor are protected from voidability to the extent that they increased the debtor’s assets.\textsuperscript{86} An exchange of reasonably equivalent value is necessary for complete protection.\textsuperscript{87} Subsequent acquirers of fraudulently transferred property do not deal with a debtor. Their remoteness from a fraudulent transfer rather than their augmentation of a debtor’s assets justifies protection.\textsuperscript{88} Without regard to equivalency, all subsequent acquirers who gave value to their transferors in good faith have complete protection.\textsuperscript{89} The transferees eligible for protection include persons who have acquired liens in a debtor’s property.\textsuperscript{90}

Under the UFTA, good faith means lack of information that a transfer either was engaged in by a debtor with actual fraudulent intent or was constructively fraudulent. An UFTA official comment, for example, states:

Knowledge of the facts rendering the transfer voidable would be inconsistent with the good faith that is required of a protected transferee . . . .

An insider who receives property or an obligation from an insolvent debtor as security for or in satisfaction of an antecedent debt of the transferor or obligor is not a good faith transferee or obligee if the insider has reasonable cause to believe that the debtor was insolvent at the time the transfer was made or the obligation was incurred.\textsuperscript{91}

The UFTA has three statutes of limitations. A creditor must bring an action to void a preference to an insider within one year after a transfer is deemed made.\textsuperscript{92} Actions with respect to all other types of constructive fraud are timely within four years after a transfer is deemed made.\textsuperscript{93} Finally, a claimant can bring an action to void a transfer made with actual fraudulent intent either within four years after the transfer is deemed made or within one year after the claimant reasonably could have discovered the transfer, whichever is later.\textsuperscript{94}

\begin{itemize}
\item \textsuperscript{85} UFTA § 4(a), 7A U.L.A. at 652-53.
\item \textsuperscript{86} UFTA §§ 8(b)(1), (d), 7A U.L.A. at 662.
\item \textsuperscript{87} See UFTA § 8(a), 7A U.L.A. at 662.
\item \textsuperscript{88} See Bonded Fin. Serv., Inc. v. European Am. Bank, 838 F.2d 890, 896-97 (7th Cir. 1988) (subsequent acquirer need not give value to debtor in order to qualify for protection under Bankruptcy Code).
\item \textsuperscript{89} UFTA § 8(b)(2), 7A U.L.A. at 662.
\item \textsuperscript{90} A “transfer” includes “creation of a lien or other encumbrance,” UFTA § 1(12), 7A U.L.A. at 645, so that transferees include creditors that have acquired liens in a debtor’s property.
\item \textsuperscript{91} UFTA § 8 comment, 7A U.L.A. at 663-64; see also Bonded Fin. Serv., 838 F.2d at 897-98 (transferee that lacks information required to support inference of knowledge has no duty to investigate).
\item \textsuperscript{92} UFTA § 9(c), 7A U.L.A. 665 (1985).
\item \textsuperscript{93} UFTA § 9(b), 7A U.L.A. at 665.
\item \textsuperscript{94} UFTA § 9(a), 7A U.L.A. at 665.
\end{itemize}
B. The Significance of the UFTA

The UFTA has transformed Texas fraudulent transfer law. Dramatic reversals in policy include repudiation of the antiquated 1840 definition of insolvency and the new voidability of out-of-the-ordinary-course preferences to insiders with reasonable cause to believe a debtor insolvent. Additional significant changes include the declaration that transfers for less than reasonably equivalent value by debtors either left with unreasonably small assets or contemplating excessive debts are constructively fraudulent, and the requirement that consideration ordinarily have utility to a debtor's creditors in order to constitute value. The jury charge in Owen v. Vibrosearch Exploration, Inc. that fair consideration under the Texas Fraudulent Transfer Act included "assumption of, satisfaction of or release of a pre-existing debt of another" is erroneous under the UFTA.

The immunity of noncollusive and regular foreclosure sales from attack as constructively fraudulent transfers, on the other hand, is not a reversal in policy. The Texas Fraudulent Transfer Act was limited to voluntary transfers. The coverage of involuntary as well as voluntary fraudulent transfers by the UFTA made an anti-Durrett provision necessary. The new coverage of involuntary transfers also explains the exclusion from constructive fraud of lease terminations for default under enforceable termination clauses and foreclosure proceedings in conformity with article 9. An otherwise proper lease termination or article 9 foreclosure proceeding that cloaks a debtor's actual intent to defraud creditors, however, is voidable as under prior law.

The UFTA simplifies and clarifies numerous other aspects of fraudulent transfer law. Three specific and frequently shorter statues of limitations, for example, replace the previous smorgasbord of limitations periods. Due to

95. Compare TEX. BUS. & COM. CODE ANN. § 24.003 (Vernon 1987) (debtor deemed insolvent if total debts are greater than total assets at fair valuation) with TFTA § 24.03 (debtor deemed insolvent if lacking sufficient property in the state subject to execution to pay total debts); see also supra notes 30-33 and accompanying text (discussing the TFTA version).
96. Compare TEX. BUS. & COM. CODE ANN. §§ 24.006(b), .009(f) (Vernon 1987) (transfer fraudulent and voidable if made to insider, if debtor was insolvent at time of transfer, and insider had reasonable cause to know of insolvency unless transfer falls within 1 of 3 exceptions including transfers made in the ordinary course of business) with supra notes 36-39 and accompanying text (good faith preferences not voidable).
97. TEX. BUS. & COM. CODE ANN. § 24.005(a)(2) (Vernon 1987).
98. See supra notes 73-75 and accompanying text. Although the UFTA does not have a comprehensive definition of value, an official comment states that consideration having no utility to the creditors of a debtor is not value. UFTA § 3 comment, 7A U.L.A. at 650-51.
99. 694 S.W.2d 421 (Tex. App.—Houston [14th Dist.] 1985, writ ref'd n.r.e.).
100. Id. at 424.
101. Although the record in Vibrosearch indicated that some of the consideration for the transfer benefited the debtor, the trial court's jury charge did not require this. Id.
102. TEX. BUS. & COM. CODE ANN. § 24.004(b) (Vernon 1987).
103. See supra notes 14 & 15 and accompanying text.
104. See TEX. BUS. & COM. CODE ANN. § 24.002(12) (Vernon 1987) (transfers include involuntary as well as voluntary dispositions of interests in assets).
105. See id. § 24.009(e).
106. See id.; see also supra notes 14 & 15 and accompanying text (discussing prior law).
107. Compare TEX. BUS. & COM. CODE ANN. § 24.010(a) (Vernon 1987) (providing claim-
the UFTA's congruency with federal bankruptcy law, the burgeoning case law under the Bankruptcy Code fraudulent transfer provisions, moreover, is persuasive authority concerning the meaning of Texas law.

III. THE TEXAS NONUNIFORM AMENDMENTS

There are eleven Texas nonuniform amendments to the UFTA. Most require corrective legislative action.

A. The Four Senate Posthearing Amendments Pertaining to Family Law

The basic nonuniform amendment pertaining to family law defines a claim as arising from a right to property as well as a right to payment. This nonuniform amendment retains the standing of a spouse to void a fraudulent transfer of community property that existed under the Texas Fraudulent Transfer Act. A companion nonuniform amendment states that creditors include a spouse, minor, or ward who has a claim. This expression of legislative intent indicates that only the rights to property of spouses, minors, and wards can constitute claims.

The nonuniform definition of claim has limited significance. If an aggrieved family member seeks monetary compensation for a fraudulent transfer, the spouse, minor, or ward is asserting a right to payment that constitutes a claim under the uniform text of the UFTA. If fraudulently transferred property either cannot be found or is owned by a fully protected

ant with four years or, if later, one year after transfer could be reasonably discovered if transfer made with intent to hinder or defraud; four years if transfer made without receiving reasonably equivalent value; and, one year if transfer made to insider) with supra text accompanying notes 40-53 (setting forth periods for voiding fraudulent transfers along with numerous caveats depending on the existence of a levy on the property, means of the levy, and other factors). The shorter UFTA statutes of limitations can confer greater protection upon transferees of real estate than principles of adverse possession. For a discussion of adverse possession, see supra notes 48-53 and accompanying text. But see Hoerster v. Wilke, 158 S.W.2d 288-90 (Tex. 1942) (expiration of three-year limitations period for ousting adverse possessor of real estate under color of title precluded subsequent voiding action that otherwise would have been timely).

108. See supra note 57 and accompanying text.

109. A major exception is the Texas bankruptcy courts' adherence to the Fifth Circuit Durrett decision under the Bankruptcy Code. E.g., In re Jackson, 76 Bankr. 597, 599-600 (Bankr. N.D. Tex. 1987) (voiding foreclosure sale of chapter 13 debtor's home for 47% of appraised value). The UFTA rejects the Durrett constructive fraud principle. See supra notes 76-79 and accompanying text.


111. See 87 TEX. ST. B. FAMILY LAW SECTION REPORTS 59-60 (No. 4 1987) (UFTA "jeopardized the entire statutory underpinning of the rules against fraudulent disposition of community property"); see also supra text accompanying notes 25-28 (discussing wife's standing).

112. TEX. BUS. & COM. CODE ANN. § 24.002(4) (Vernon 1987). The second nonuniform amendment does not alter the UFTA definition of claim. Compare id. § 24.002(3) (claim means right to payment or property) with UFTA § 1(3), 7A U.L.A. 644 (claim means right to payment).

113. See UFTA § 1(3), 7A U.L.A. at 644; see also In re Delta Smelting & Ref. Alaska, Inc., 53 Bankr. 877, 881-82 (Bankr. D. Alaska 1985) (owner who was unable to identify gold bars that had been delivered for processing had claim for their value under Bankruptcy Code). UFTA's definition of claim derives from the Bankruptcy Code. UFTA § 1 comment, 7A U.L.A. at 646.
transferee, the recovery of monetary compensation from an unprotected person, moreover, is the only remedy available.\textsuperscript{114} The nonuniform amendment expands standing to sue under the UFTA only if an aggrieved spouse, minor, or ward seeks recovery of identifiable fraudulently transferred property from an unprotected transferee.

A third nonuniform family law amendment imposes a special statute of limitations upon voiding actions by spouses, minors, and wards.\textsuperscript{115} The limitations period is either two years from accrual of a cause of action or within one year after a claimant could reasonably have discovered a fraudulent transfer, whichever is later.\textsuperscript{116} With respect to transfers of community property made with actual intent to defraud a spouse, the type of transfer of paramount concern to the proponents, this nonuniform amendment shortens the UFTA limitation period.\textsuperscript{117} Under the UFTA, creditors can void a transfer made with actual fraudulent intent either within four years after a cause of action accrues or, if later, within one year after a claimant could reasonably have discovered the transfer.\textsuperscript{118}

The special statute of limitations is also shorter than the comparable UFTA statute of limitations with respect to all constructively fraudulent transfers except preferences to insiders. The UFTA limitations period for most constructively fraudulent transfers is four years.\textsuperscript{119} Preferences to insiders alone have a one-year statute of limitations under the UFTA.\textsuperscript{120} Preferences to insiders, however, primarily injure unsecured creditors who are not insiders.\textsuperscript{121} Preferences to insiders are not of paramount concern to spouses, minors, and wards, who typically are insiders.\textsuperscript{122} The period within which spouses, minors, and wards can void insider preferences should not have been extended to two years by the nonuniform statute of limitations.

A fourth nonuniform amendment pertaining to family law limits the exclusion of property held in tenancy by the entirety from the definition of asset to property subject to the law of another jurisdiction.\textsuperscript{123} Tenancy by the entirety is a common law marital property interest derived from the "aged and outmoded fiction" that a husband and wife are a single legal entity.\textsuperscript{124} The nonuniform amendment reflects the fact that Texas spouses cus-

\begin{itemize}
\item\textsuperscript{114} See \textit{In re Delta Smelting}, 53 Bankr. at 881-82 (owner of unidentifiable gold bars unsecured creditor of processor of bars).
\item\textsuperscript{115} \textsc{Tex. Bus. & Com. Code Ann.} § 24.010(b) (Vernon 1987).
\item\textsuperscript{116} \textit{Id}.
\item\textsuperscript{117} Bicocchi v. Casey-Swasey Co., 91 Tex. 259, 42 S.W. 963 (1897), the paradigm case under the Texas Fraudulent Transfer Act, involved a diversion of community funds by a husband with actual fraudulent intent. For a discussion of Bicocchi, see \textit{supra} notes 26-28 and accompanying text.
\item\textsuperscript{118} \textsc{Tex. Bus. & Com. Code Ann.} § 24.010(a)(1) (Vernon 1987).
\item\textsuperscript{119} \textit{Id.} § 24.010(a)(2).
\item\textsuperscript{120} \textit{Id.} § 24.010(a)(3).
\item\textsuperscript{121} Cf \textit{In re Hartley}, 825 F.2d 1067, 1070-71 (6th Cir. 1987) (injurious Bankruptcy Code preferences diminish the assets available for distribution to unsecured creditors).
\item\textsuperscript{122} For the concept of an insider, see \textit{supra} note 67 and accompanying text.
\item\textsuperscript{123} \textsc{Tex. Bus. & Com. Code Ann.} § 24.002(2)(C) (Vernon 1987).
\item\textsuperscript{124} \textit{In re Townsend}, 72 Bankr. 960, 961-63 (Bankr. W.D. Mo. 1987).
\end{itemize}
tomarily hold property acquired during marriage as community property.\footnote{125}

B. The Four Senate Posthearing Amendments Pertaining to Transferees

A nonuniform amendment to the definition of "value" provides: "'Reasonably equivalent value' includes without limitation, a transfer or obligation that is within the range of values for which the transferor would have wilfully sold the assets in an arms length transaction.'\footnote{126}

By emphasizing that property can have a range of reasonable values, the Senate apparently sought to enhance the protection of persons who negotiate a voluntary purchase of a debtor's property. This nonuniform amendment does not displace the UFTA provisions declaring that the prices obtained at noncollusive and regular foreclosure sales are reasonably equivalent value\footnote{127} and that out-of-the-ordinary-course-of-business, executory promises to provide support to a debtor or another person do not constitute value.\footnote{128} Without a special statutory provision, case law under section 548 of the Bankruptcy Code, upon which the UFTA is modeled, recognizes that there can be more than one reasonable voluntary sale price.\footnote{129} The legislature should either repeal this unnecessary amendment or redraft it to more clearly express its limited function.

To the extent of the value given a debtor for an asset, UFTA section 8(d) protects good faith recipients of voidable transfers.\footnote{130} Protected transferees have the option of either (1) asserting a lien in or a right to retain a transferred asset; (2) enforcing an obligation incurred by a debtor; or (3) reducing the amount of their liability upon a judgment against them.\footnote{131} Three nonuniform amendments address these transferee protection provisions.

Two of the amendments make the UFTA policy explicit. The first states that the method of protection is "at the transferee's... election."\footnote{132} The second describes a protective lien as "prior to the creditor's claim."\footnote{133} The creditor referred to is a voiding creditor, and the reference is to a voiding creditor's rights under the UFTA. The legislature should revise the amendment to read: "prior to the voiding creditor's rights under this chapter." The third nonuniform amendment derives from the Bankruptcy Code improvements-lien concept.\footnote{134} The amendment follows the Bankruptcy Code slavishly, copying a reference to a bankruptcy trustee,\footnote{135} and ignoring...
differences between the UFTA and the Bankruptcy Code.

A voiding creditor's standard remedy under the UFTA is a personal judgment against an unprotected transferee. A voiding creditor can recover a judgment for the lesser of the amount necessary to satisfy his or her claim and the adjusted value of an asset at the time of transfer. A voiding creditor can enforce a judgment against the nonexempt assets of an unprotected transferee, including the fraudulently transferred property.

A voiding creditor who is willing to risk tort liability has the option of proceeding immediately against fraudulently transferred property. The UFTA permits use of a provisional remedy to seize fraudulently transferred property prior to voiding. With court permission, a judgment creditor of a debtor also can summarily levy execution upon a transferred asset or its proceeds. A cautious voiding creditor, however, proves standing, voidability, and a transferee's lack of protection prior to seizure of any property. After a personal judgment against a transferee memorializes this proof, the creditor can enforce the judgment against any property of the transferee that is subject to execution. The fraudulently transferred property need not be seized. If that property is worth a great deal more than a voiding creditor's judgment, the property, indeed, should not be seized. Under these circumstances, levy of execution upon the fraudulently transferred property could constitute an excessive levy.

A bankruptcy trustee is far more likely than a voiding creditor to seize fraudulently transferred property. Court permission is required to obtain any other remedy. A trustee is entitled to recover the full value of fraudulently transferred property from any unprotected transferee. A turnover order also simplifies litigation by making valuation of a fraudulently transferred asset unnecessary.

In order to prevent an unjustified windfall, the Bankruptcy Code gives a good faith transferee a lien securing the amount by which his or her expenditures for improvements have increased the value of an asset recovered by a bankruptcy trustee. When a bankruptcy trustee sells recovered property (Vernon 1987) (improvements include payment of debt secured by lien superior or equal to rights of trustee).

136. UFTA § 8(b) preamble, 7A U.L.A. at 662.
137. UFTA § 8(b) preamble, (c), 7A U.L.A. at 662.
139. See Kimbrough v. Bevering, 182 S.W. 403, 405-06 (Tex. Civ. App.—Fort Worth 1915, no writ) (constable and sureties upon constable's bond liable in tort for wrongful levy under judgment against tenant upon cotton subject to landlord's prior lien).
141. UFTA § 7(b), 7A U.L.A. at 660.
142. Even though a fraudulently transferred asset is worth more, a judgment cannot exceed the dollar amount of a voiding creditor's claim. UFTA § 8(b), 7A U.L.A. at 662.
143. See Cornelius v. Burford, 28 Tex. 202, 209-10 (1866) (dictum) (sheriff or constable could be liable in damages to judgment debtor for levy of execution upon excessive property).
145. See id. ("trustee may recover, for the benefit of the estate, the property transferred").
146. See, e.g., In re Vedaa, 49 Bankr. 409, 411 (Bankr. D.N.D. 1985) (courts favor return of property itself to avoid speculation over value).
that is subject to an improvements lien, the trustee must satisfy the secured obligation in order to convey good title. The Bankruptcy Code broadly defines improvements to include taxes paid and payments upon unavoidable senior liens.\textsuperscript{148} Substantial expenditures by a good faith transferee that do not affect the value of a recovered asset, however, are not improvements.\textsuperscript{149} Payment of the purchase price for unencumbered property to a debtor, for example, does not give rise to an improvements line.\textsuperscript{150}

In view of the relative frequency with which bankruptcy trustees recover and sell fraudulently transferred property, the Bankruptcy Code improvements lien is a reasonable method of protecting good faith transferees. Although the Bankruptcy Code does not expressly provide for a comparable reduction in the amount of a trustee's judgment for the value of an asset, the policy of the improvements-lien provision requires a reduction.\textsuperscript{151}

A voiding creditor under the UFTA typically obtains a judgment against an unprotected transferee,\textsuperscript{152} but this is not invariably the case. A court can authorize seizure of a fraudulently transferred asset.\textsuperscript{153} Where the remedy is a money judgment for the value of the property, the UFTA protects a transferee/improver by limiting the judgment to the value of the asset "at the time of the transfer, subject to adjustment as the equities may require."\textsuperscript{154} Time-of-transfer valuation necessarily excludes the value of subsequent improvements by a good faith transferee. Where the remedy is recovery of the property, the UFTA, however, does not provide for comparable protection of a bona fide transferee/improver.\textsuperscript{155} In order to rectify this omission, a Texas nonuniform amendment added the Bankruptcy Code improvements lien provisions to the UFTA.\textsuperscript{156}

The drafters, however, made two serious errors. The UFTA provision entitling a transferee to a reduction in the amount of the judgment seems to have been expanded to include the value of improvements by a transferee.\textsuperscript{157} Because an UFTA judgment excludes the value of improvements \textit{ab initio},\textsuperscript{158} this additional reduction creates an unwarranted double credit for improvements. More importantly, the wording of the nonuniform amendment obscures good faith transferees' rights to protection for the value they have exchanged for an otherwise voidable transfer.\textsuperscript{159} Because good faith trans-

\begin{itemize}
\item \textsuperscript{148} Id. § 550(d)(2).
\item \textsuperscript{149} See id.
\item \textsuperscript{150} See \textit{In re Brown Family Farms, Inc.}, 80 Bankr. 404, 406, 413-14 (Bankr. N.D. Ohio 1987) (transferee's payment of debt secured by other property of debtor as part of purchase price not an improvement).
\item \textsuperscript{151} See supra text accompanying notes 147-48.
\item \textsuperscript{152} See supra notes 136-43 and accompanying text.
\item \textsuperscript{153} UFTA § 7(a)(2), (b), 7A U.L.A. at 660.
\item \textsuperscript{154} UFTA § 8(c), 7A U.L.A. at 662.
\item \textsuperscript{155} Although an official comment endorses the concept of the Bankruptcy Code improvements lien, the UFTA does not create a comparable lien. See UFTA § 8 comment, 7A U.L.A. at 662-63.
\item \textsuperscript{156} See TEX. BUS. & COM. CODE ANN. § 24.009(d)(1), (2) (Vernon 1987).
\item \textsuperscript{157} See id. § 24.009(d)(1)(C).
\item \textsuperscript{158} See id. § 24.009(c).
\item \textsuperscript{159} See id. § 24.009(d)(1).
\end{itemize}
ferees are more likely to give value for property than to improve it, this is a major omission. The amendment should be revised to assure good faith transferees protection for the value that they have exchanged for a debtor’s property and to preclude double credit for the value of improvements.

C. The Three Senate Floor Amendments

A Senate floor amendment alters the circumstances under which a rebuttable presumption of insolvency arises. The UFTA requires proof that a debtor “is generally not paying his or her debts as they become due.” The Texas nonuniform amendment, however, requires proof that a debtor “is generally not able to pay the debtor’s debts as they become due.”

The proponents of this nonuniform amendment argued that debtors could have legitimate reasons for nonpayment of debts. An UFTA official comment makes the same point: “A presumption of insolvency does not arise from nonpayment of a debt as to which there is a genuine bona fide dispute, even though the debt is a substantial part of the debtor’s indebtedness.”

 Restoration of the uniform text in accordance with this official comment would effectuate the goal of the nonuniform amendment. Restoration of the uniform text would also obviate the unnecessary evidentiary burdens the amendment creates. Comparing the value and liquidity of all of a debtor’s assets with the maturity of all of a debtor’s debts is a cumbersome method of determining insolvency. A debtor’s payment record with respect to debts that are not in dispute is a more direct and objective measure of the capacity to pay debts.

A second Senate floor amendment limits standing to void transfers made with actual fraudulent intent and two types of core constructively fraudulent transfers to creditors who acquired a claim “within a reasonable time before or after the transfer.” The proponents of this nonuniform amendment expressed concern that the UFTA would extend the period of jeopardy for

160. A cash purchase price that is paid to a debtor, for example, is not an improvement. See supra notes 149-50 and accompanying text.
161. These amendments were first proposed when the UFTA came up for a final Senate vote at the end of the legislative session. Due to the extremely crowded Senate calendar, there was no time for discussion. Any controversy would have prevented passage of the bill. The sponsors decided to accept the floor amendments and to propose necessary corrections in the next legislative session. H.B. 154, 71st Tex. Legislature (1989), the bill containing the corrective amendments, however, was not reported by the Calendars Committee of the Texas House of Representatives.
162. UFTA § 2(b), 7A U.L.A. at 648.
163. TEX. BUS. & COM. CODE ANN. § 24.003(b) (Vernon 1987).
165. The UFTA presumption eases the burden of proving balance sheet insolvency. The nonuniform amendment, on the other hand, reinstates the onerous UFCA concept of insolvency. Compare id. (lesser burden for balance sheet insolvency) with Furniture Mfrs. Sales, Inc. v. Deamer, 680 P.2d 398, 400 (Utah 1984) (UFCA insolvency requires valuation of all debtor’s nonexempt property and showing that it is insufficient to pay debts as they become due).
166. TEX. BUS. & COM. CODE ANN. § 24.005(a) preamble (Vernon 1987).
voidable preferences under the federal Bankruptcy Code.\textsuperscript{167} The nonuniform amendment, however, has no effect upon constructively fraudulent preferences to insiders. The amendment applies only to transfers made with actual fraudulent intent and to transfers for less than reasonably equivalent value by debtors with either unreasonably small capital or foreseeable excessive debts.\textsuperscript{168}

The Senate proponents also asserted that this nonuniform amendment would prevent creditors with stale claims from harassing a debtor’s transferees. The UFTA, however, achieves this goal directly by displacing the former ten-year statutes of limitations for levy of execution upon and foreclosure of judgment liens in fraudulently transferred property. The running of both the shorter UFTA statutes of limitations and the shorter nonuniform statute of limitations for voiding by spouses, minors, and wards extinguishes a cause of action\textsuperscript{169} and preclude a subsequent seizure of fraudulently transferred property pursuant to a judgment against a debtor.\textsuperscript{170} From 1840 to 1987 Texas law allowed creditors who acted within the statute of limitations to void transfers.\textsuperscript{171} The legislature should repeal the additional “reasonable time” limitation upon standing to void.

A third Senate floor amendment limits constructively fraudulent transfers to transfers by debtors who either intended to incur or believed that they would incur debts beyond their ability to make payment as the debts came due.\textsuperscript{172} The amendment deletes the UFTA’s reference to transfers by debtors who reasonably should have believed that they would incur debts beyond their capacity to repay.\textsuperscript{173}

Proponents of this Senate floor amendment contended that the UFTA language was vague. The nonuniform amendment, however, obscures the continuing relevance of the objective facts of excessive debt and whether or not a debtor foresaw it. The legislature should restore the uniform text in order to provide clear notice that objective facts are relevant to a debtor’s state-of-mind concerning excessive debt.

IV. CONCLUSION

The legislature should repeal four of the Texas nonuniform amendments and amend an additional three. Only the nonuniform amendments includ-

\begin{itemize}
\item \textsuperscript{167} See 11 U.S.C. § 547(b)(4) (1982 & Supp. IV 1986) (ninety-day period of jeopardy for preferences to outsiders; one-year period of jeopardy for preferences to insiders).
\item \textsuperscript{168} TEX. BUS. & COM. CODE ANN. § 24.005(a) (Vernon 1987).
\item \textsuperscript{169} Id. § 24.010.
\item \textsuperscript{170} See id. § 24.008(b); Lynn v. Le Gierse & Co., 48 Tex. 138, 140 (1877) (levy and sale alternative method of voiding). Extinguishment of a cause of action against an unprotected transferee, of course, does not preclude enforcement of a judgment against nonexempt property retained by a debtor. The 10-year statutes of limitations continue to apply to enforcement of a judgment against property retained by a judgment debtor. For discussion of the 10-year statutes of limitations, see supra note 45.
\item \textsuperscript{171} See TFTA § 24.02(a); Tex. Rev. Civ. Stat. Ann. art 3996 (Vernon 1966), repealed by TFTA.
\item \textsuperscript{172} TEX. BUS. & COM. CODE ANN. § 24.005(a)(2)(B) (Vernon 1987).
\item \textsuperscript{173} UFTA § 4(a)(2)(ii), 7A U.L.A. at 653.
\end{itemize}
ing spouses, minors, and wards in the definitions of claim and creditor, \^{174} referring to tenancy-by-the-entirety property created under the law of another jurisdiction, \^{175} and giving good faith transferees an express choice concerning the method of protection that they prefer \^{176} should retain their present form.

The modernization and rationalization of fraudulent transfer law resulting from enactment of the UFTA overshadows the difficulties posed by the Texas nonuniform amendments. A majority of the nonuniform amendments, nevertheless, should be either revised or repealed. Until the legislature acts, the courts should endeavor to harmonize the nonuniform amendments with the policy of the UFTA.

\^{174} See supra notes 110-14 and accompanying text.
\^{175} See supra notes 123-25 and accompanying text.
\^{176} See supra notes 132 and accompanying text.