

# Uniform Fraudulent Transfer Act (UFTA)

Recovering Fraud Losses  
from Family Members  
and Associates

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- Fraud Examination
- Financial Investigations
- Forensic Accounting

# Overview



- UFTA is a robust and effective legal mechanism.
- Most often used in creditors' rights and commercial litigation.
- May be used to enable the seizure of personal property and real estate of various family members, assistants, and associates of the perpetrator.
- Not useful in all fraud situations.
- Most often useful against novice and "lifestyle" fraudsters.
- Often involves close associates or family members who often do not understand their own involvement.

# A Brief History of the Act

- Statute of 13 Elizabeth
- Twyne's Case (3 Coke 80b)
- Adopted by 26 states (1918)
- Current UFTA updated in 1979, and adopted by 43 states and the District of Columbia



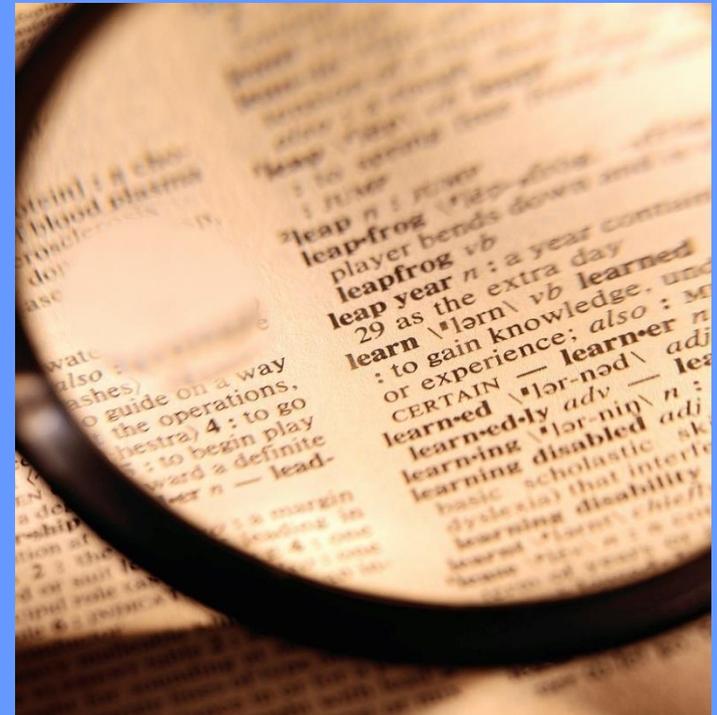
# Intent & Purpose



The purpose of the act is to prevent defendants from divesting themselves of assets while claims are pending, or in anticipation of future claims.

# Definitions

- A *creditor* is a person holding a claim, matured or unmatured, liquidated or unliquidated. The victim of a fraud scheme or embezzlement is a creditor within the meaning of the UFTA. A person who is obligated to return money or property to its rightful owner is considered a *debtor*.
- These designations are not often used in fraud-related litigation, and accordingly those involved in the process are not indoctrinated in the application of typical creditors' remedies in fraud-related litigation.



# The Rules Established in the UFTA

## SECTION 4(a)(1):

A transfer is fraudulent (whether the creditor's claim arose before or after the transfer was made) if the debtor made the transfer with actual intent to hinder, delay, or defraud any creditor.



# Badges of Fraud



- (1) transfer to an insider;
- (2) debtor retained possession or control of the property transferred;
- (3) the transfer concealed;
- (4) debtor sued or threatened with suit before the transfer was made;
- (5) transfer of substantially all the debtor's assets;
- (6) debtor absconded;
- (7) debtor removed or concealed assets;

# Badges of Fraud (cont.)



- (8) value of consideration received by the debtor was not reasonably equivalent to the value of the asset transferred;
- (9) debtor insolvent or rendered insolvent;
- (10) the transfer occurred shortly before or shortly after a substantial debt was incurred;
- (11) debtor transferred essential assets to creditor who transferred assets to an insider.

# TRANSFERS FRAUDULENT AS TO PRESENT AND FUTURE CREDITORS



## SECTION 4(a)(2)(i) :

A transfer is fraudulent (whether the creditor's claim arose before or after the transfer was made) if the debtor made the transfer without receiving a reasonably equivalent value in exchange for the transfer, and the debtor was engaged in a business or a transaction for which the remaining assets of the debtor were unreasonably small.



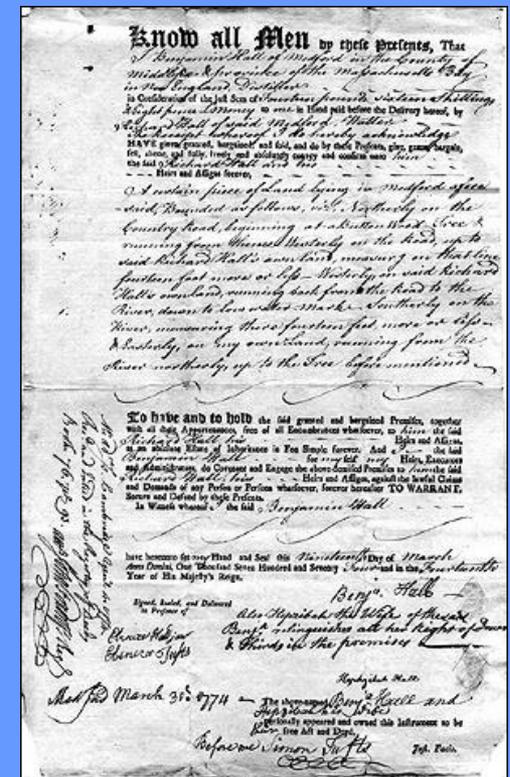
# TRANSFERS FRAUDULENT AS TO PRESENT AND FUTURE CREDITORS

SECTION 4(a)(2)(ii): A transfer is fraudulent (whether the creditor's claim arose before or after the transfer was made) if the debtor made the transfer without receiving a reasonably equivalent value in exchange for the transfer, and the debtor believed (or should have believed) that he would incur debts beyond his ability to pay as they became due.



# TRANSFERS FRAUDULENT AS TO PRESENT CREDITORS

SECTION 5(a): A transfer made is fraudulent (as to a creditor whose claim arose before the transfer) if the debtor made the transfer without receiving reasonably equivalent value in exchange and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.



# TRANSFERS FRAUDULENT AS TO PRESENT CREDITORS



- SECTION 5(b): A transfer made is fraudulent (as to a creditor whose claim arose before the transfer) if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

# CALIFORNIA PENAL CODE SEC 531



Every person who is a party to any fraudulent conveyance of any lands ... or ... goods or chattels ... made ... with intent to deceive and defraud others, or to defeat, hinder, or delay creditors or others of their just debts, damages, or demands ... is guilty of a misdemeanor.

# Remedies



A plaintiff may obtain:

- an injunction against further disposition of the asset transferred or of other property;
- avoidance of the transfer;
- execution of the asset transferred or its proceeds.

# Liability of Transferee

## SECTION 8

- To the extent a transfer is voidable, the creditor may recover judgment for the value of the asset transferred or the amount necessary to satisfy the creditor's claim, whichever is less.
- The judgment may be entered against:
  - (1) the first transferee of the asset; or
  - (2) any subsequent transferee.



# STATUTE OF LIMITATIONS



A claim for relief with respect to a fraudulent transfer is extinguished unless action is brought:

- (a) under Section 4(a)(1), within 4 years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;
- (b) under Section 4(a)(2) or 5(a), within 4 years after the transfer was made or the obligation was incurred; or
- (c) under Section 5(b), within one year after the transfer was made or the obligation was incurred.

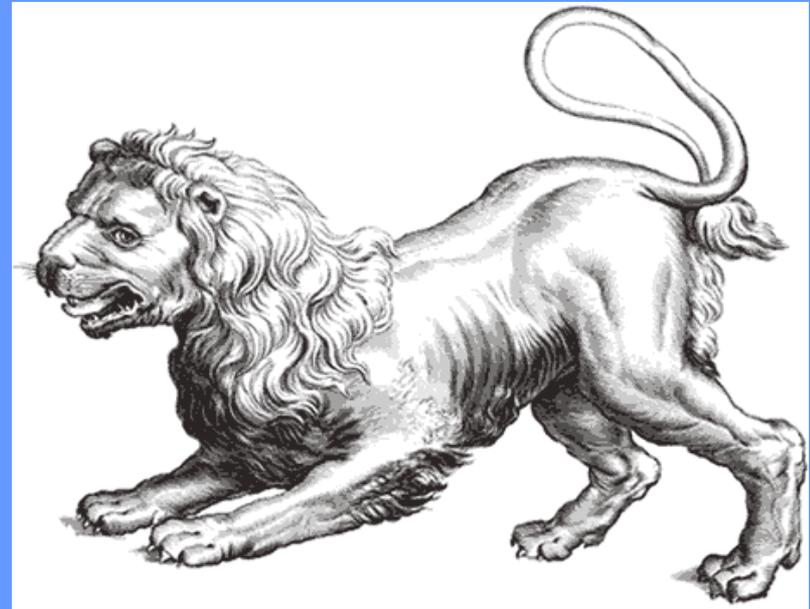
# Popular Myths of Fraudulent Transfer Theory



- Myth #1: The plaintiff has to prove up all of the elements of fraud. FALSE.
- Although the name is misleading, to prove a claim of fraudulent transfer, the plaintiff needs only to prove the elements contained in the explicit language of the UFTA.

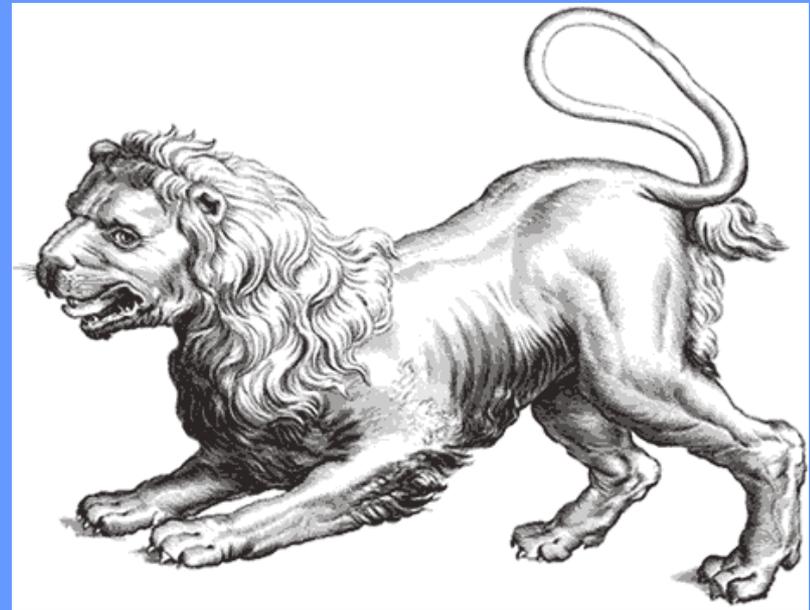
## Myth #2: The plaintiff has to prove intent

- Transfers deemed fraudulent regardless of the intent:
- Sec 4(a)(2)(i) transfer made without receiving a reasonably equivalent value in exchange at a time when the debtor was engaged in a business or a transaction for which the debtor's remaining assets were unreasonably small.
- Sec 4(a)(2)(ii) transfer made without receiving a reasonably equivalent value in exchange, and debtor believed (or should have believed) that he would incur debts beyond his ability to pay as they became due.

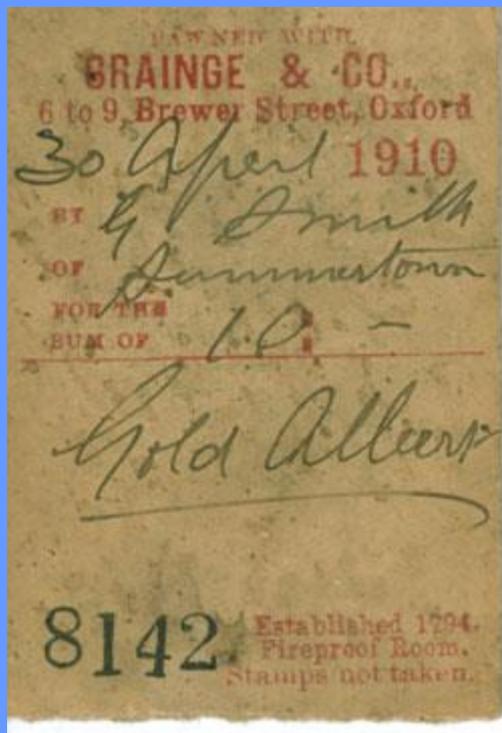


## Myth #2: The plaintiff has to prove intent (cont.)

- Sec 5(a) transfer made without receiving a reasonably equivalent value in exchange and the debtor was insolvent at that time or became insolvent as a result of the transfer.
- Sec 5(b) transfer made to an insider for an antecedent debt while insolvent, and the insider had reasonable cause to believe that the debtor was insolvent.



# Myth #3: The only remedy under the UFTA is the return of the specific transferred property



- Section 8(b) provides that a creditor may recover judgment for the value of the asset transferred or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against the first transferee of the asset or any subsequent transferee.
- Once the creditor has obtained a money judgment against the transferee, the creditor has the power to levy execution on any non-exempt assets of the transferee. This aspect renders the UFTA a powerful and persuasive tool in the plaintiff's arsenal.
- The initial recipients of these transfers are often family members, romantic associates, business associates, and employees of the defendant.

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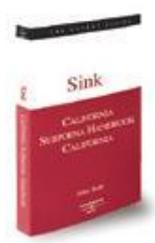
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By John M. Sink

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Description

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Features

- Discusses when private financial records may be subpoenaed
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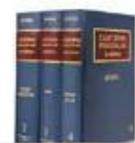
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# Case History



Sample John Doe Allegation  
LASC Case No. YC040292

# Case History



Sample Subpoena Duces Tecum  
SCSC 040306

# Case History



John Doe vs. Film Center  
LASC BC127406

# Case Histories



John Doe vs. Pogroszewski  
LASC SC019233

# The Takeaways



- Detailed knowledge of subpoena practice is useful to litigation consultants, and TURNS CASES!
- Differentiate yourself.
- Fraudulent transfer law is applicable to recovery of fraud losses (internal or external).
- Used to apply pressure to family members and close associates.
- Gets attention.
- And settles cases.