

# Avoidable Preferences and Quasi Property Rights

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## ABSTRACT

*Competition among creditors for the assets of an insolvent debtor results in social waste. Bankruptcy law seeks to minimize this waste by imposing specific distributional rules that discourage competition. When creditors attempt to enrich themselves at others' expense by petitioning the debtor for special treatment they engage in strategic loss-shifting, a form of rent-seeking, which imposes costs with no accompanying social benefit. Clear assignment of property rights among creditors removes their ability to entreat the debtor for preferred treatment. We propose that a sound ipso facto principle operating in bankruptcy law functions to assign creditors a type of quasi property right to distribution of an aliquot portion of the insolvent debtor's assets. Elsewhere, we have demonstrated how the ipso facto principle would nullify ex ante strategic loss-shifting among creditors. Here, we show how voidable preference law functions to nullify ex post loss shifting using the same ipso facto principle.*