

Principle of Marshalling Securities

The principle of marshalling securities is an equitable doctrine designed to ensure fairness among creditors of a common debtor when multiple securities are involved. This principle primarily arises in the context of secured transactions where a debtor has provided multiple assets as collateral for debts to different creditors. The doctrine is codified in Section 56 of the Transfer of Property Act, 1882, and its core objective is to balance the rights of creditors to prevent unjust enrichment and to promote equitable treatment.

Definition and Concept

The principle of marshalling securities allows a creditor who holds multiple securities (collateral) for a debt to be required to satisfy their claim from the securities that do not affect the rights of other creditors who hold a claim against the same debtor but with fewer securities. Essentially, it mandates that a creditor with multiple sources of security should not deplete or exhaust securities that are also pledged to other creditors until all available securities are exhausted. This principle is designed to protect creditors who have only one or limited securities from losing their claim due to the actions of a creditor with more extensive collateral.

Historical Origins

The doctrine of marshalling originates from English common law and has been incorporated into the Indian legal system through the Transfer of Property Act. The principle is rooted in equity, aiming to prevent unjust enrichment and ensure a fair distribution of the debtor's assets among creditors.

Application of the Principle

1. Multiple Securities and Creditors:

- When a debtor mortgages multiple properties to secure a debt to one creditor (Creditor A) and a single property to another creditor (Creditor B), Creditor A should first satisfy their debt from the properties not mortgaged to Creditor B. This ensures Creditor B's security is preserved.

2. Conditions for Marshalling:

- **Availability of Securities:** The securities must be available simultaneously for marshalling to apply. If one security has already been realized or sold, marshalling cannot be invoked.
- **No Prejudice to Senior Creditor:** The senior creditor's rights must not be prejudiced. If the senior creditor's security is insufficient to cover their debt, they may realize their debt from any or all securities.

3. Examples and Judicial Interpretation:

Marshalling Of Securities

Arthur English



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Subrogation and Marshalling Rory Gregson, 2024-10-31 This innovative and thought provoking book studies how subrogation and marshalling should be understood in the context of private law Subrogation and marshalling are legal rules which give a person new rights with prima facie the same content as someone else's extinguished rights There is little examination of why the law does this This book argues that the key to understanding subrogation is the distinctive form of the rights that it creates The form of rights created reflects a particular role in ensuring interpersonal justice subrogation's role is to properly distribute the burden of debts Taking this model the book goes on to resolve persistent controversies in the case law including when subrogation should occur what rights it should create the relationship between subrogation and marshalling and whether subrogation is a remedy for unjust enrichment The Law of Mortgage and Other Securities Upon Property William Richard Fisher, 2024-06-24 Reprint of the original first published in 1876 **The Law of Security and Title-Based Financing** Michael Bridge, Louise Gullifer, Eva Lomnicka, 2024-10-23 Personal property security is an important subject in commercial practice as it is the key to much of the law of banking and sale This book examines traditional methods of securing debts such as mortgages charges and pledges as well as so called quasi security on property other than land describing how these are created how they must be registered or otherwise perfected if they are to be valid the rights and duties of the parties and how the security is enforced if the debt is not paid This fourth edition has been updated to incorporate recent political and legal developments including Brexit The Edinburgh Reforms which have followed the United Kingdom's exit from the European Union promise a thorough overhaul of the consumer credit regime The Retained EU Law Revocation and Reform Act 2023 potentially affects the interpretation of EU assimilated law including the Financial Collateral Arrangements No2 Regulations FCARs This edition further assesses the implications of the Business Contract Terms Assignment of Receivables Regulations 2018 taking pledges over electronic documents of title in the light of the Electronic Trade Documents Act 2023 the outlawing of ipso facto clauses by the Corporate Insolvency and Governance Act 2020 and the reduced scope of the EU Insolvency Regulation The treatment of insolvency matters within the framework of the Cape Town Convention is also considered as are recent cases on pledges of bills of lading when the carrier no longer has possession of the goods the distinction between fixed and floating charges equitable liens and the right of appropriation of financial collateral There is a full discussion of the taking of security over digital assets and the relevance of the FCARs The only full length treatment covering both traditional security over personal property and also devices that fulfil a similar economic function such as retention of title and sales of receivables *The Law of Security and Title Based Financing* is a frequently cited and indispensable reference work both for practitioners and academics *Defences in Equity* Paul S Davies, Simon Douglas, James Goudkamp, 2018-05-03 This book is the fourth in a series of essay collections on defences in private law It addresses defences to liability arising in equity The essays range from those adopting a mainly doctrinal

perspective to others that explore the law from a more philosophical perspective Some essays concentrate on specific defences while others are concerned with the links between defences or with how defences relate to the structure of the law of equity generally One aim of the book is to shed light on equitable doctrines by analysing them through the lens of defences The essays offer original contributions to this complex important but neglected field of scholarly investigation The contributors judges practitioners and academics are all distinguished jurists The essays are addressed to all of the major common law jurisdictions

A Manual of the Principles of Equity John Indermaur,1906 **Rights and Private Law** Donal Nolan,Andrew Robertson,2011-12-02 In recent years a strand of thinking has developed in private law scholarship which has come to be known as rights or rights based analysis Rights analysis seeks to develop an understanding of private law obligations that is driven primarily or exclusively by the recognition of the rights we have against each other rather than by other influences on private law such as the pursuit of community welfare goals Notions of rights are also assuming greater importance in private law in other respects Human rights instruments are having an increasing influence on private law doctrines And in the law of unjust enrichment an important debate has recently begun on the relationship between restitution of rights and restitution of value This collection is a significant contribution to debate about the role of rights in private law It includes essays by leading private law scholars addressing fundamental questions about the role of rights in private law as a whole and within particular areas of private law The collection includes contributions by advocates and critics of rights based approaches and provides a thorough and balanced analysis of the relationship between rights and private law

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