

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

JG Myers



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