

CHAPTER 4: SECURED TRANSACTIONS

4.1 INTRODUCTION

- There are 3 types of secured transaction recognized by NLC. They are Charge, Statutory Lien and Jual Janji (which is developed by courts).
- Charge is a transaction entered between a registered proprietor of land (**Section 43** be it an individual or corporation) and financier where the registered proprietor provides his interest in the land as security for the loan, where the interest in land could be freehold title or lessee.
- Difference between charge and mortgage:

Charge	Mortgage
1. Created by NLC <ul style="list-style-type: none">• Owner of the land who charged his land is the charger, and the financier is the chargee.	1. Created by contract - land is used as security to pledge against borrowings. <ul style="list-style-type: none">• Borrower is mortgagor, lender is mortgagee.
2. Chargee does not own land. Ownership still remains with the registered proprietor. Chargee only has the right to enforce the sale of the land with a court order or to take possession thereof, in the event of a default in the repayment of the loan.	2. Ownership is vested in the mortgagee. Mortgagor only has the right in equity to redeem the land from mortgagee upon repayment of loan. (Case: Malayan Union Finance v Tan Lay Soon)
Charge is created using statutory form - Form 16A	3. No prescribed form only deeds of conveyance

4.2 EFFECT OF A CHARGE

- **Section 241(1) NLC** states the type of land that can be charged:
 - The whole but not part of the alienated land (as seen in the case of **J Raju v Kwong Yik Bank**)
 - The whole but not part of an undivided share in land
 - Lease of alienated land
- **S.5 NLC** defines charge, which means registered charge.
- **S.243 NLC** stated that charge can only be enforceable if registered. So, a chargee without a registered charge would have to be enforced by way of contractual remedies, as provided in **Mahadevan Mahalingam v Manilal & Sons**.
- The case of **Yee Sin Cheong v UMBC** stated that a charge can only be created to secure a debt. There can be no charge of land where there is no loan, as it would defeat the purpose of the charge.
- Upon default of payment by the chargor, the remedy of chargee is not against the person but against the property, which is remedy of possession and sale (**Co-operative Central Bank v Y&W Development**)
- Registered charge constitutes an indefeasible interest in land as security that can be enforced by way of sale. This can be seen in the cases of **Ho Giak Chay v Nik Aishah** and **T Bariam Singh v Pegawai Pentadbir Tanah Pesaka Malaysia**
- A charge shall be subjected to the provisions of **S.241(3) & (4) NLC**

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