

## **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:**

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**VM Jensen**

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Originally published London Stevens and Haynes 1884 lxxiii 1093 pp Probably the decisive factor in our reception of English equity was Story's Equity Jurisprudence With much art he made it seem that the precepts established by the decisions of the English Courts of Chancery coincided in substance with those of the Roman law as expounded by the civilians and hence were but statements of universal principles of natural law universally accepted in civilized states If equity had been expounded to American judges and lawyers and students in the dry and technical fashion of the contemporary English treatises we might have been sorely hampered in the development of American Law by a crippled equity Story's sympathetic exposition of English equity was the one thing needed to commend equity to our American courts and to counteract the forces that were working against it Pound The Formative Era in American Law 156 157 Apart from James Kent no man has had greater influence on the development of American law than Joseph Story 1779 1845 He was Dane Professor of Law at Harvard where he played a key role in the growth of the school and the establishment of its national eminence and an associate justice of the U S Supreme Court where he was the author of several landmark decisions such as *Martin v Hunter's Lessee* His many books most notably the monumental work *Commentaries on the Constitution* 1833 have been cited extensively and he remains an authority today *A Handbook on the Law of Mortgages* Edward St. Clair Harnett,1909 **A Manual of the Principles of Equity** John Indermaur,Charles Thwaites,1913 *The Law of Mortgage, and Other Securities Upon Property* William Richard Fisher,1897 *A Treatise on the Law of Mortgages and Deeds of Trust* Henry Campbell Black,1903 *Commentaries on Equity Jurisprudence as Administered in England and America* Joseph Story,1918

**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 *Western Law Reporter (Canada) and Index-digest* L. S. Le Vernois,Esten Kenneth Williams,1916 **Dominion Law Reports** ,1916 **Bouvier's Law Dictionary** John Bouvier,1897 *The Honours Examination Digest* John Frederick Haynes,Thomas A. Nelham,1883 *The Revised Reports* ,1908 **The Revised**

**Reports** Frederick Pollock, Robert Campbell, Oliver Augustus Saunders, Arthur Beresford Cane, Joseph Gerald Pease, William Bowstead, 1919    **The Central Law Journal**, 1885 Vols 65-96 include Central law journal & international law list    The Michigan Digest Annotated George Foster Longsdorf, 1921    The Reporter Howard Ellis, Rowland Cox, 1878 Includes decisions in the Irish courts 1876 June 1886 and Indian appeals 1876-1877    **The Reporter**, 1878    Irish Law Reports Annotated Reprint Max Robertson, Anthony B. Babington, 1914

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