

# The rights of debenture holders law commercial essay

[Law](#)



The rights possessed by an unsecured debenture holder are those of an ordinary unsecured creditors. Thus, where the company defaults on its obligations, the creditor can sue for the sums owing and levy execution against the company. In appropriate cases, a creditors may be able to present a petition to wind up the company or seek an administration order.

The rights possessed by a secured debenture holder (a chargee) are those of the unsecured debenture holder and such other rights as are provided in the contract for security and under the general law. Where the chargee is exercising his normal contractual rights, the limitation period is six years. However, where the security contract is created by deed (as is usually the case) and the debt is created under and by virtue of the contract, the limitation period is 12 years. The right to sell

Unless the contract for security so provides (which it generally does), a chargee has no right to sell the charged assets. However, where a charge is created by deed s 101 of the Law of Property Act 1925 allows the chargee to sell the assets (unless the contract excludes this right) if certain conditions, set out in s 103, have been complied with. Section 103 permits sale only if the surety has been given three months notice to repay the amount of the loan and he has not complied or two months interest is outstanding or some other term of the contract has been broken. These time limits may be shortened by the contract creating the security. A chargee who does not have the power to sell the charged assets can apply to the court for an order to sell. Where the chargee exercises a right to sell, he can take what he is owed from the sums realized and must account to the surety for the balance. A chargee can sell the secured assets whenever the power of sale becomes exercisable and need not wait

for the market in that asset to pick up if it is than depressed. However, the chargee must exercise reasonable care in selling the asset and must take care to ensure the sale price is a fair reflection of its market value. If the charge fails to exercise. If the charge fails to exercise reasonable care in selling the property, he is liable in damages to the charger to the extent that he must pay the charger the difference between the price actually obtained and the price he should have obtained had he exercise reasonable care. The right to take possessionA charge who has a legal charge has an immediate right to take possession of the asset charged, which can be exercised at any time, unless the contract provides otherwise. However, a charge who take possession incurs heavy obligations towards the surety and his procedure is little used. Instead a process developed whereby the charge could appoint a third party. a receiver, who would take possession of the charged property. Generally, the security contract provides that the receiver would be deemed to be the agent of the surety, thus ensuring the charge incurred no liability to the company. An equitable chargee has no right of immediate possession of the charged asset and can appoint a receiver only if the security contract so provides(most do do). If the equitable charge has the contractual right to appoint a receiver he should ensure such a receiver is also deemed to be the agent of the surety in order to avoid liability for the acts of the receiver. A receiver appointed under a floating charge9or a composite fixed and floating charge)over the whole (or substantially the whole of the property of a company is called an administrative receiver. Where the contract does not provide for an equitable charge to appoint a receiver, the court is empowered to do so on application of the charge. However, a court receiver

is an agent of the court and will not be acting with the interests of the charge at the front of his mind, so that such a procedure is very much second best from the point of view of the chargee. The right to receive income Where the charged property is revenue generating, for example, land which has been leased, the chargee may wish to collect the revenue and thereby satisfy his claims rather than sell the property. This might well be the case where the property was unsaleable. If the contract provides that the chargee or a receiver has the right to receive income generated by the property, there is no difficulty in enforcing such a contractual right. However, even if the contract does not create such a right, s 101 of the Law of Property Act 1925 allows the appointment of a receiver of income if the charge was created by deed. Section 101 applies to both legal and equitable chargers. This power can be exercised only if the conditions set out in s 103 of the Act which are mentioned above have been satisfied. Subsequent charge holders A transferee of a secured debenture can enforce the rights outlined above but debentures (other than bearer debentures) are not negotiable instruments. Hence, a person who acquires a secured debenture is subject to any claim which the company had against a prior holder unless the conditions of transfer exclude such a right. In practice, most debentures do allow a transferee to be paid the amount due on the debenture regardless of the company's claims on prior holders - indeed, if such is not the case, the debentures marketability is much reduced. Transfer of debentures, other than convertible debentures are generally exempt from stamp duty.