What is security law land property essay

Law

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[Writer Name][Institute Name][Class]

What is Security?

It is important for the purposes of this assignment to be cleared about the definition of security, it means:" security is created where a person (the creditor) to whom on obligation is owed by another (the debtor) by statute or contract, in addition to the personal promise of the debtor to discharge the obligation, obtains rights exercisable against some property in which the debtor has an interest in order to enforce the discharge of the debtor's obligation to the creditor"[1]. There are view says this is not comprehensive definition , because of the security has been given to persons other than the grantee , subsequently the security is " a right given to one party in the asset of another party to secure payment or performance by that other party or by a third party " consequently there are any elements in the security contract : The term loan agreement, the parties of agreement (creditor , debtors, third party) , the creation of the proprietary interest by the debtor to the creditor to secure the application of a agreement , it created by a grant or declaration, if fixed or specific implies a restriction on the debtor's dominion over the asset and cannot be taken by the creditor over his obligation to the debtor but what is the reason to the purpose of security or why the creditor take these securities?

Functions of security

There are many causes for taking the security, the main reason to secure the repayment of the term loan agreement by the debtor . the second reason for taking the security focus on control over that asset, due to the debtor waives control over that asset, third reason the lenders can taking possession and

selling off secured assets and taking security over assets might be reduced the expenses and Facilitates Executive[2]. Types of Security•Debenture•Legal Mortgage over real estate•Mortgage over plant and machinery•Charge on Intellectual Property•Charge over Book Debts•Charge over Shares•Guarantees

Debenture

Debenture is an instrument which is issued by the public sector or private sector as large corporate and governments to obtain the funds, but it is unsecured because there are no lines or pledges on specific assets. The holder of this instrument is even with all the holder of the debenture and no any particularity for the holder of debenture[3]. The debenture phrase includes a lot of meaning, but in generally means:•"… a debenture means a document which either creates a debt or acknowledges it, and any document which fulfils either of these conditions is a ‘ debenture’. I cannot find any precise legal definition of the term, it is not either in law or commerce a strictly technical term, or what is called a term of art"[4]

Mortgages

The Mortgage as a SecurityA mortgage is a contract of loan. The mortgagee lends money to the mortgagor which that mortgagor is required to repay over the contractually specified period together with periodical amounts of interest. As a contract, the mortgage is governed primarily by questions of contract law as to its formation, its terms, and its termination. The mortgage differs from an ordinary contract of loan in that the mortgagee acquires the rights of a charge over assets of the mortgagor. The mortgage is also a proprietary interest in the mortgaged property because the mortgagee

acquires rights to take possession of that property in the event of some breach of the loan contract and/or to sell that property[5].•Mortgage of personality•Security is created by the transfer of legal title in the asset to mortgagee (i. e. the bank) as security for the repayment of a debt•Upon repayment of the debt legal title is re-conveyed to the mortgagor – known as the Equity of Redemption•The mortgagee does not need to be in possession of the asset " Neither a mortgage nor a charge depends on the delivery of possession" Mortgages•Mortgage of land•Security is created by:•A charge by deed expressed to be by way of legal mortgage•A demise for a term of years absolute subject to a provision for cesser on redemptionSs. 85-86 Law of Property Act 1925•Distinct from a standard mortgage – no transfer of title•Equitable Mortgage•Formalities not complied with•Mortgagor only has an equitable interestCharges•A security interest created without any transfer of title or possession." Lord Hoffman in Re BCCI no 8 [1998]•By charging assets, the charger appropriates property in favour of the charge as security for the payment of a debt•Charge over personality can only be equitable•Can be either Fixed or Floating – need to look at the substance not the label to determine whichDistinction between Fixed and Floating Charges•Important to establish whether a fixed charge is fixed or floating:•Priority over other creditors•Interests of Preferential Creditors (i. e. employees)•Prescribed part for unsecured creditors (s. 176A Insolvency Act 1986) in respect of Floating Charges created on or after 15 September 200350% of first £10, 000 of floating charge realisations and 20% of the residue up to a maximum aggregate of £600, 000 set aside for unsecured creditorsFixed Charges•Can be created over ascertainable assets, including land and plant and machinery•Can be created over future acquired

assetsPer Romer LJ in Re Yorkshire Wool combers Association Ltd (1903)•Company is unable to deal with the asset without the consent of the charge•Creates priority over other creditors automatic right of enforcement

Floating Charges

" A floating security is ... not a specific security; the holder cannot affirm that the assets are specifically mortgaged to him. The assets are mortgaged in such a way that the mortgagor can deal with them without the concurrence of the mortgagee. A floating security is not a specific mortgage of the assets, plus a licence to the mortgagor to dispose of them in the course of his business, but is a floating mortgage applying to every item comprised in the security, but not specifically affecting any item until some event occurs or some act on the part of the mortgagee is done which causes it to crystallize into a fixed security. [Counsel for the debenture holders] argued that it was competent to the mortgagee to intervene at any moment and to say that he withdrew the licence as regards any particular item. That is not in my opinion the nature of the security"[6]A floating charge has three characteristics:•it is a charge on a class of assets of a company present and future;•that class of assets is, in the ordinary course of business of the company, changing from time to time; and•the charge contemplates that the company may carry on its business in the ordinary way regarding that class of assets until some step is taken by or on behalf of the charge

Legal Charges vs. Equitable Charges

•A subsequent legal charge over land ranks before an earlier equitable charge, provided the charge holder is bona fide without notice of a restrictive

covenant in the equitable charge preventing further charges ranking in priority[7].

Equitable charges

The first in time prevails, where the equities are equal (Rule in Dearle v Hall - see Re Benjamin Cope [1914] 1 Ch 800)

Floating Charges

A fixed charge will take priority over an earlier floating charge that has not crystallised. A floating charge over a specified asset will take priority over an earlier floating charge over ‘ all assets’ Re Automatic Bottle Makers [1926] Ch 412

Guarantees

•Lenders will often take Guarantee security•This is a form of quasi-security•Does not create a right in loan, but enhances the prospect of repayment of the borrower’s debt•A guarantee is and undertaking from a third party (obligor) to repay the borrower’s debt in specified circumstances•Guarantee supports a primary obligation•Obligor will only be liable to make payment in the event of default by the borrower•Distinction between a guarantee and an indemnity•This can usually be assumed for upstream and downstream guarantees• Particular importance where obligor and borrower do not form part of the same corporate group•Guarantees – Points to note•Lender will often require guarantee is payable " on demand" as " principle debt"•can demand payment from the guarantor immediately on borrower default•no need to seek recovery from borrower or prove liability or default e. g. McGuiness v Norwich and Peterborough Building

Society (2010)•If underlying loan is negated, so is guarantee•Lenders include provision that obligor indemnifies the lender against any loss if the underlying loan is voidTriodes Bank v Ashley Charles Dobbs (2005)When you are acting as a borrower or lender: When credit cards are used or buy on instalment, you are a borrower. In each case, someone a bank or business owner lends you the money by directly paying for the goods up front on your behalf. A bill is sent to you by a lender, at that instant you are liable to pay the amount. In economic expressions, the time you exploit your credit card, you sell a bond your assurance to repay the credit card company in the future. When money is deposited by you in a bank, you become a lender. According to fiscal language, you pay money for the bank's bond its pledge to repay you when you decide to use the money. You are paired with a borrower by a bank when you are a lender. Some of the interest is paid by the bank. You start earning by lending out your money[8].

Secured or unsecured

It depends on the borrower's credibility’s; a lender may require a complete security package from the borrower (and in gaining financing, the target itself) as well as any material subsidiaries. Security might fix to certain or all of the possessions of the security providers. At the time of surrendering security, for each security provider, terms should be checked properly by borrower in order to diminish unsurprising danger (Gwartney et al., 2009).

Secured loan

A secured loan is a loan in which some asset (e. g. a car or property) are pledged by the borrower as collateral for the loan, which then becomes a secured debt owed to the creditor who issues the loan. Against the collateral

the debt is thus secure in the event that the borrower defaults, the creditor takes possession of the asset used as collateral and has the right to sell it to recover the amount of loan, for example, foreclosure of a home[9].

Types of secured loan:

•A mortgage loan is a secured loan in which property is the collateral like home.•A nonrecourse loan is a secured loan where the collateral is the only security or claim the creditor has against the borrower, and the creditor has no further recourse against the borrower for any deficiency remaining after foreclosure against the property.•A foreclosure is a legal process in which the mortgaged property of defaulting borrower is sold to pay the debt.•A repossession is a process in which creditor takes back the property, such as a car when the borrower is unable to repay the loan. It depends on the circumstances that whether the creditor requires a court order or not.

What is borrowing?

Borrowing is a major type of financial support provides both advantages and disadvantages.

Advantages of borrowing

The advantages of borrowing are: Control: Here borrower is allowed to have independent influence and can invest money wherever wants to unlike equity financing which suggest the borrower business and do not allow the borrower to have its own decision on investment. In debt financing, the third party creditor has no financial interest in the business, except for the principal and interest income[10]. Preserve Profit: Here borrower is the only one who takes the pleasure of profit after investing money through loan.

Only borrower has the right to owns profit and no none else. The lender does not have any share or stake in the profit and only gets the loan payments in the set time, and only for the agreed upon period. This is in contrast to equity financing which requires sharing the profits and losses for eternity. Less compulsion: In debt financing, the borrower's obligation ends with the repayment of the principal and the interest to the lender. The obligations that come with taking up a partner in equity financing remains permanent and irrevocable, unless the partner willingly sells his or her stake and the entrepreneur can buy it back at the price offered. Tax Deduction: One of the most attractive aspects of debt financing is tax advantages. The interest on borrowed money, paid to the lender is tax-deductible. This means exemption from paying tax for the part of business income used to pay interest, lowering the tax liability of the business[11]. Timely Payments: Timely repayment of debt enhances and improves the credit rating of the business, making it easier to obtain other types of financing in the future. Easy management: Debt financing is easy to manage and administer, and require no extensive or complex reporting requirements. In contrast, issuing shares to source equity financing require compliance with complex regulations under the Federal and State Security laws and regulations. Future Planning: In borrowing, the primary repayments and interest are calculated before hand, and does not depend on market circumstances. This is considered to be an incentive for better planning without ant dictator. Less expensive: Loans are divided into numerous instalment that enhances the borrower relieve in returning money and becomes less expensive and more convenient. If business responses dramatically well, so borrower can return

heavy amount of instalment in a fewer instalments that enable the repayment to be done more swiftly.

Disadvantages of borrowing

In the process of borrowing disadvantages are also intermingled along with advantages. Some of them are given below. Settlement: Bank has no concern what borrower do with borrowing money or how it utilizes the money. The time the loan is granted borrower is obliged to repay it on the deadline no matter if the money being exploited or ruinedHigh Cost: The interest would not be varied and it will be fixed and the borrower has to pay it consistently without break. Restricted Cash Flow: This raises the risk of bankruptcy for the business when the business is already not generating revenue productively. Restrictions: The decision making powers of an entrepreneur is restricted by equity financing. Similarly, borrowers are also oppressed by such restrictions in borrowing. Borrowers are not allowed to have alternative financing option when they are already in liability of other[12]. Collateral Security: Bank requires all the assurance of assets to be taken off by borrower if the loan is not repaid within the given time. This however, the worst disadvantage in this field. Risk Outlook: Debt financing increases the company's risk outlook, for higher the business’s debt-equity ratio, the more risky the company becomes for other lenders and investors. It is more appropriate to borrow money when the borrower is intended to put the cash to high growth ventures with having other sources of generating money.

What is Lending?

Lending is a process where money or property is handed to a bank by a lender. A lender does in a hope of that the bank will return more than the actual value of property or money lent. Lender gives money or property to the bank for the short term on a condition that the borrowed amount will be returned on a agreed time with an interest fee (Rouse, 2002).

Main Features/Characteristics

• The target people are approached individually; no group is shaped.• 3Cs: Character, Capacity and Collateral Loans certify the loan.• Loan is approved based on viability analysis of the economic activities.• Flexibility in loan range, repayment structure and other terms and condition is available and may vary depending on economic activities and the size of business.• Individual system has more tasks to process in lending to micro-entrepreneurs.

Advantages

• The flexibility of the method• It is simple and it can take six weeks to get the money and accelerate the delivery of services• Range to meet the specific needs of customers• Setting of pay portfolio of large size with a limited number of debtors• Lower cost of credit and can enhance higher of the portfolio.

Disadvantages

• require close contact with individual customers• Thorough process is essential and procedures for the service to be delivered.• Customer /

employee are less than the proper organization.• Take more risk than a loan group