Hypothecation, pledge assignment

Law

Hypothecation: Under this mode of security, loans are provided against the security of movable property, usually inventory of goods. The goods hypothecated, however, continue to be in the possession of the owner of these goods (i. e. , the borrower). The rights of the lending institution (hypothecatee) depend upon the terms of contract between the borrower and the lender. Although the lender does not have physical possessions of the goods, it has legal right to sell the goods to realize the outstanding loan. Hypothecation facility is normally not available to new borrowers. Hypothecation differs from mortgage in two respects: . Mortgage relates to immoveable property whereas hypothecation relates to movables. 2. In mortgage there is transfer of interest in the property of the creditor but in hypothecation there is only obligation to repay money and no transfer of interest. Assignment: It is a mode of security to a banker for an advance. It is transfer of a right, property or a debt. The transferor is called assignor and the transferee assignee. Borrower assigns actionable claims to the banker as a security for an advance. Debt is secured by mortgage of immovable property or by hypothecation or pledge of movable property.

All the rights and remedies of the transferor vest in the transferee. The transferee of an actionable claim takes it, subject to all the liabilities and equities to which the transferor was subject on the date of the transfer. Book debt, money due from govt. dept and life insurance policies can be kept as security. Lien: The term lien refers to the right of a party to retain possession of goods and securities belonging to another party until a debt due from him is paid. Banker acquirers the right to sell the goods which came into its possession in case debt is not paid.

The lien can be of two types: particular lien, and general lien. Particular lien is a right to retain goods (only a specific asset or property) until a claim pertaining to those goods is fully paid. On the other hand, general lien is the right of a creditor to have all of a debtors property-both real and personal-sold till all dues of the claimant are paid. Pledge: Pledge as a mode of security, is different from hypothecation, in this mode of security the goods which are offered as security are transferred to the physical possession of the lender.

An essential prerequisite of pledge is that the goods are in the custody of the lender but it may or may not be actual delivered to the lender. The borrower who offers security is called a " pawnor" (pledgor), while the lender is called the " pawnee" (pledgee). The lodging of the goods by the pledgor to the pledgee is a kind of bailment. Therefore, the pledge creates some liabilities for the lender. It must take reasonable care of goods pledged with it. He would be responsible for any loss or damage if he uses the pledged goods for his own purposes.

In case of non-repayment of the loans, the lender enjoys the right to sell the goods. Mortgage: It is the transfer of a legal/ equitable interest in specific immovable property for securing the payment of debt. The person who parts with the interest in the property is called ' mortgagor' and the person in whose favor the transfer takes place is called ' mortgagee'. The instrument of transfer is called the ' mortgage deed'. The mortgage interest in the property is terminated as soon as the debt is paid.

Mortgages are taken as an additional security for working capital credit by banks. Set-off: Right of set off means to adjust the credit balance with the debit balance and to arrive at the net sum due by creditor or banker. It is a statutory right and is available to any creditor even in the absence of any express agreement. Right of set-off means, where a customer has credit balance in one of his accounts and debit balance in another, the banker has a right to adjust credit balance with the debit balance and to arrive at the net sum due. Such right is known as right of set-off.