

Doctrine of Marshalling

The Doctrine of Marshalling under the Transfer of Property Act serves as a vital legal principle in situations where a property owner has mortgaged multiple properties to different lenders. It aims to ensure equitable treatment among mortgagees, particularly benefiting subsequent mortgagees by providing them a mechanism to satisfy their debts from properties not initially mortgaged to them, as long as other properties are sufficient to cover the debts.

Marshalling protects subsequent mortgagees from being unduly prejudiced when earlier mortgagees could seek satisfaction from other available properties. This doctrine is primarily governed by Sections 56 and 81 of the Transfer of Property Act, which articulate the rights and procedures involved when multiple properties and multiple mortgagees are concerned.

Section 56 addresses the rights of a property buyer who acquires a mortgaged property. It ensures that the buyer can demand the mortgagee (the lender) to first exhaust other properties that were mortgaged by the seller before claiming the property that has been sold. This protection is crucial as it prevents the new owner from facing immediate financial liabilities due to pre-existing mortgages on their newly acquired property.

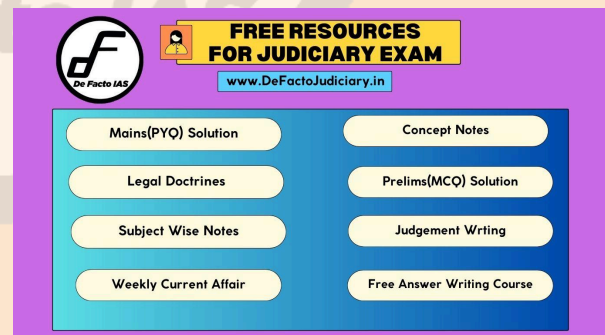
Section 81 extends significant protection to subsequent mortgagees by granting them the right to have the prior mortgage debts satisfied from other properties mortgaged to the primary mortgagee. This means that if a property owner mortgages several properties to one lender and then takes another mortgage on one of these

properties with a different lender, the second lender can insist that the first lender satisfy their debt from the other properties first. This provision prioritises the claim of the subsequent mortgagee on the property directly mortgaged to them, thereby safeguarding their financial interests.

Application of the Doctrine

Suppose a property owner, A, mortgages three properties, X, Y, and Z, to a lender B. Later, A sells property X to another party, C. Under the doctrine as outlined in Section 56, C can legally require B to first seek satisfaction of the mortgage from properties Y and Z before claiming X.

In another case, if A mortgages properties A, B, and C to a lender X and then takes a subsequent mortgage on property C with a different lender Y, lender Y can invoke Section 81 to ensure that lender X satisfies their earlier mortgage debts using properties A and B before touching property C.



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Bohra Thakur Das v. Collector of Aligarh

In this case, the mortgagor mortgaged the village of Kachaura to one Nand Kishore and later included both Kachaura and another village, Agrana, in a subsequent mortgage to the same lender. The plaintiffs purchased the equity of redemption from Agrana. After the first mortgagees purchased Kachaura through a decree, the plaintiffs contended

that the first mortgagees were liable to pay the proportionate share of the debt for the redemption of the second mortgage. The initial court decision placed the entire burden of the second mortgage on Agrana since Kachaura was entirely claimed under the first mortgage. However, this decision was overruled by the Privy Council.

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