# TYPES OF CHARGES

## CCP CHAPTER 24 MODULE E

**CHARGE**

- A "**charge" is a lender's legal right over a borrower's assets**, allowing the lender to seize and sell these assets to recover the loan in case of default or insolvency.
- Banks often require **security (primary, collateral, or both) against loans to mitigate risks.**

**Charge Creation Methods:**

**By Act of Parties**

- This occurs when the **borrower and lender mutually agree** to create a charge on an asset as security for a loan.
- It is formalized through **agreements, contracts, or deeds** (e.g., mortgage deed, hypothecation agreement).
- Examples: Mortgage on property, hypothecation of stock, pledge of gold.

**By Operation of Law**

- This charge is **automatically created by law**, without any agreement between the parties.
- It usually arises due to legal provisions or judicial decisions.

**Examples:**

- **Unpaid seller's lien** (a seller has a charge over goods if payment is not received).
- **Government dues** (tax authorities may have a charge on assets for unpaid taxes).

## Features of a Charge 📑

- A charge can be created for **current or future debts**.
- Provides security for repayment
- No ownership transferred to charge-holder
- The charge remains in force **until the debt is fully repaid**

**Attributes of Good Security**

**Easily Marketable –** The asset should be quickly sellable in the market without significant loss.

**Clearly Ascertainable Value** – The value of the security should be easily measurable and verifiable.

**Stability in Value** – The asset should maintain a consistent value over time without drastic fluctuations.

**Storability –** The security should be easy to store and protect without high maintenance costs.

**Transportability** – The asset should be easily movable if needed for sale or safekeeping.

**Durability –** The security should have a long lifespan and not deteriorate quickly over time.

## 📌 24.3 Security Types 🔐

- **Primary:** Directly linked to the loan
- **Collateral:** Additional assurance

## 📌 24.4 Modes of Charge 🌐

### 24.4.1 Lien 🔗

A lien is the banker's right to retain **customer securities against the customer's general debt balance** (Section 171, Indian Contract Act, 1872).

| Type | Definition | Characteristics |
|---|---|---|
| **Particular Lien (Sec.170)** | Right to retain goods for specific debts | - Possession acquired through ordinary business \| - Lawful debt obligation |

| Type | Definition | Characteristics |
|---|---|---|
| **General Lien (Sec.171)** | Right to retain goods for general account balance | - Covers general balance and prior transactions \| - Right of defense, not action \| - Excludes special-purpose securities |

## 24.4.2 Negative Lien 🚫

Borrower provides a declaration of asset non-encumbrance, committing not to **create future charges without bank consent**. Typically documented through formal agreement or company resolutions.

## 24.4.3 Set-off 🔄

Enables banks to **adjust debit balances against credit balances of customers** unless otherwise agreed.

**Essentials of Set-off:**

**Known Amount Claims** – Both the lender and borrower must have **specific and quantifiable** claims against each other.

**Same Rights** – The claims must be between **the same parties** in the same legal capacity (e.g., a bank and its customer).

**Immediate Debt Dues** – The debts should be **legally due and payable** at the time of set-off.

**No Contrary Agreements** – Set-off cannot be applied if there is a **contractual restriction** preventing it.

**Appropriation of Payments (Indian Contract Act):**

| Section | Scenario | Appropriation Rules |
|---|---|---|
| **59** | Borrower specifies debt | Must apply payment as specified |
| **60** | No borrower specification | Bank applies at its discretion |
| **61** | Neither party specifies | Apply payments in chronological order |

Usually, banks inform customers before exercising the right of set-off unless a prior agreement exists.

### 📚 24.4.4 Assignment 📑

- Assignment means **transferring rights, properties, or debts from one person (assignor) to another (assignee).**
- In banking, **assignment usually involves actionable claims**—things that can be legally claimed but are not physical assets.

**Types of Assignments:**

| Type | Description | Requirements |
|---|---|---|
| **Legal Assignment** | Absolute transfer of actionable claim | Written, signed by assignor, debtor notified, assignee confirms balance |
| **Equitable Assignment** | Incomplete assignment, less secure | Occurs if any condition of legal assignment is unmet |

### Safeguards for Assignment:

- Obtain irrevocable instructions directing payments to the bank.
- Forward the assignment promptly to debtor for acknowledgment.
- Assignment should be for the full debt, not partial.

## 📚 24.4.5 Pledge 📦

**Definition (Sec. 172, Indian Contract Act, 1872):** Pledge **involves the bailment of goods as security for debt repayment** or performance of a promise. Ownership remains with the pledgor, while possession transfers to the pledgee (bank).

### Key Aspects of Pledge:

- **Bailment:** Physical or constructive delivery (keys or endorsed documents).
- Objective: Security for debt repayment or obligation performance.

- Eligible items: Goods, stocks, shares, title documents, movable property.

## Who Can Pledge:

- Owner of goods
- Mercantile agent (authorized)
- Joint owners (with mutual consent)

## Rights and Obligations:

| Pledgor (Borrower) | Banker (Pledgee) |
|---|---|
| Right to redeem securities | Right to retain goods against specific debt |
| Entitlement to surplus upon sale | Can sell goods after due notice if default occurs |
| Must disclose faults or risks | Right to sue for the outstanding amount |
| Responsible for title defects | Remedies against third-party claims |
| Covers shortfall in sale proceeds | Right to recover extraordinary preservation expenses |

## Duties of Banker as Pledgee:

- Return goods upon debt repayment.
- Account for any profits from pledged goods.
- Ensure care equal to ordinary prudence.
- Follow pledgor's instructions on handling pledged goods.

### 📚 24.4.6 Hypothecation 🚚

**Definition:** Hypothecation refers to creating a **charge on movable property** without transferring possession or ownership. Under the Securitisation Act (SARFAESI Act, 2002), hypothecation is defined as:

"A charge upon movable property, existing or future, created without possession transfer, serving as security for financial assistance."

**Characteristics:**

- Goods remain with the borrower.
- Creates floating charge that can convert to a fixed charge upon default.
- Voluntary possession handover converts hypothecation to pledge.

**Precautions:**

- Offer facilities only to reputable individuals/firms.
- Periodic stock statements submission.

- Regular inspection of secured assets.
- Adequate insurance coverage.
- Display bank's hypothecation board prominently.
- Charge registration with relevant authorities.

**Risk of Double Financing:** To avoid double financing:

- Verify borrower's credit history and relationships.
- Obtain borrower's declaration of no prior encumbrances.
- Conduct thorough pre and post-sanction inspections.
- Regular verification of financial and inventory records.

## 📚 24.4.9 Mortgage 🏠

**Definition (Sec. 58, Transfer of Property Act, 1882):** Mortgage involves the transfer of an interest in specific immovable property as security for loan repayment or financial obligation.

**Key Features:**

- Interest (not ownership) transferred.
- Specific identification of property.
- Loan repayment through property sale if needed.

## Mortgage Types:

| Type | Description |
|---|---|
| Simple Mortgage | Personal obligation & property security; court intervention required for sale. |
| Equitable Mortgage | Deposit of title deeds at notified locations; legal title not transferred initially; SARFAESI Act allows enforcement without court intervention. |

## Simple Mortgage Characteristics:

- Personal obligation to repay.
- Property sale upon default via court permission.
- Registered and adequately stamped mortgage deed required.

## Equitable Mortgage Characteristics:

- Title deeds deposited for creating equitable charge.
- Oral consent documented by the bank.
- Can convert to legal mortgage through court.

## Enforcement under SARFAESI Act, 2002:

- No court intervention required (Section 13).

- Bank can possess property with 60-day notice post default (excluding agricultural lands).

🎯 **Summary Table:**

| Topic | Key Points |
|---|---|
| **Hypothecation** | Charge without possession transfer; converts to pledge upon voluntary transfer. |
| **Double Financing Risk** | Verify borrower's financial status and records thoroughly. |
| **Mortgage** | Transfer of property interest (simple/equitable); enforceable via SARFAESI Act. |

✅ **Understanding and correctly managing hypothecation and mortgages significantly enhance security and recovery capabilities of banks.**

### 📚 24.4.10 Mode of Charge for Equitable Mortgage (EM) 🏠

**Essentials:**

- Existing or future debt.
- Delivery of original Title Deed.

- Clear intention (Memorandum of Deposit of Title Deeds) to create security.
- Registration/stamping requirements may vary by state (e.g., mandatory in Tamil Nadu).

**Property must be:**

- Clearly identifiable
- Possessing a clean and marketable title
- Free from any encumbrances

### 📚 24.4.11 Advantages of Equitable Mortgage 🌟

- Simpler procedures compared to other mortgage types.
- Lower registration charges or exemption in certain states.
- Easy to release and redeposit title deeds after repayment.
- Equal rights to mortgagee as in simple mortgage.

### 📚 24.4.12 Precautions for Equitable Mortgage ⚠️

- Only original title deeds should be accepted to avoid earlier claims.
- Copies (revenue receipts, sale deeds, tax receipts) are insufficient unless original documents are certified lost or destroyed.
- Documents must remain strictly under bank custody until full loan repayment.

**Legal Effects:**

- Equally enforceable as legal mortgages.
- Priority over subsequent registered mortgages.
- Immune from claims of subsequent purchasers without notice.

# TYPES OF CHARGES

## 📚 Sub-Mortgage 🔄

- A **Sub-Mortgage** refers to a situation where a lender (such as a bank or financial institution) that has already received a property as **mortgage security** further pledges it to another lender as **collateral** for a loan.
- Banks may accept sub-mortgages under certain conditions when primary security is insufficient.

**Precautions for Sub-mortgage:**

**Notify the Original Mortgagor & Confirm Dues** – The primary lender (who holds the mortgage) must inform the original borrower and check if any dues are pending.

**Direct Payments to the Sub-Mortgagee** – The original borrower may be asked to make payments directly to the new lender (sub-mortgagee).

**Hold Original Mortgage & Title Deeds** – The sub-mortgagee must ensure that the original mortgage documents and property title deeds remain securely held.

**Follow Original Mortgage Terms** – The **sub-mortgage agreement must comply with the conditions of the first mortgage** to avoid legal issues.

## 📚 Liabilities of Mortgagor ⚖️

**1. Implied Liabilities:**

**Valid Title Transfer Assurance** – The mortgagor (borrower) must ensure that the property has a clear and legal title before mortgaging it.

**Defence of the Title** – The mortgagor must protect the property's ownership against any legal disputes.

**Payment of Public Charges** – The borrower must pay government dues (property tax, etc.) unless the lender (mortgagee) takes possession.

**Adherence to Lease Conditions** – If the property was leased before the mortgage, the borrower must follow the lease terms.

**Interest on Prior Mortgages** – If there are previous mortgages on the property, the borrower must continue paying interest on them.

**2. Active Waste Liability:**

- Mortgagor must not perform **destructive acts reducing property value** significantly (below one-third or half, depending on property type).

## 📚 Rights of Mortgagor 🎯

**Right to Redemption** – The mortgagor (borrower) can reclaim the property after fully repaying the mortgage loan.

**Right to Transfer** – The mortgagor can transfer their rights to a third party instead of the lender.

**Right to Inspect Documents** – The borrower can check and make copies of property documents held by the mortgagee (lender).

**Right to Recover Possession & Title Deeds** – After repayment, the borrower can regain property possession and original documents.

**Right to Property Improvements** – Any improvements or additions to the property belong to the borrower.

**Right to Lease Renewals** – If the property is leased, the borrower benefits from any lease renewals.

**Right to Lease Property** – If still in possession, the borrower can lease out the property despite the mortgage.

.

## 📚 Rights of Mortgagee 🔑

**Right to Foreclosure** – The lender (mortgagee) can stop the borrower (mortgagor) from reclaiming the property if the loan is unpaid.

**Right to Sell** – The lender has the legal right to sell the mortgaged property to recover the loan amount.

**Right to Sue** – The lender can file a lawsuit against the borrower for unpaid mortgage dues.

**Right to Sell Without Court Intervention (SARFAESI Act)** – Under the **SARFAESI Act**, banks/NBFCs can directly auction the property without court approval.

**Right to Reimbursement** – The lender can recover any expenses incurred on maintaining or securing the property.

**Right to Insure** – The lender can insure the property to protect their financial interest.

**Right to Sale Proceeds** – If the property is sold, the lender gets first claim on the sale amount.

### 📚 Difference between Simple (Legal) and Equitable Mortgage 📊

| Aspect | Simple Mortgage | Equitable Mortgage |
|---|---|---|
| **Method** | Mortgagor personally binds for repayment | Deposit of original title deeds |
| **Documentation** | Requires registered deed | No written agreement mandatory (varies by state) |
| **Title Requirement** | Clearly established interest in property | Original title deeds showing mortgagor's interest required |

### 📑 24.5 CERSAI Registration 💻

**Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI)** is a Govt. of India company under Section 8 of the Companies Act, 2013.

It maintains a registry to re**cord security interests created over properties t**o prevent frauds like multiple lending against the same asset.

**Established:** 31 March 2011 under the SARFAESI Act, 2002.

**Key stakeholders:**

- Central Govt. (51% share)
- Select Public Sector Banks
- National Housing Bank

### Mandatory Registration with CERSAI 📌

The following security interests must be registered:

- Mortgages (deposit of title deeds)
- Mortgages (other than deposit of title deeds)
- Hypothecation (machinery, stocks, debts)
- Charges on intangible assets (patents, copyrights, trademarks)
- Charges on under-construction residential/commercial buildings

Key Changes (effective from January 24, 2020):

- The earlier 30-day mandatory period and penalties for late registration have been removed.
- The charge is effective only from the date of registration; immediate registration upon creation is crucial.

## Salient Features of Chapter IV-A, SARFAESI Act 📇:

| Section | Provision |
|---|---|
| **26B(2)** | Filing of creation/modification/satisfaction of security interest **by any creditor** |
| **26B(3)** | **Non-secured creditors** cannot enforce security interest under SARFAESI Act |
| **26(4)** | **Attachment orders by revenue authorities** must be filed with CERSAI |
| **26(5)** | **Court/Tribunal attachment orders** must be filed with CERSAI |
| **26C(1)** | **Filing constitutes Public Notice** from date/time of registration |
| **26C(2)** | Priority given based on date/time of filing with CERSAI |
| **26D** | **Enforcement of securities** allowed only if security interest is registered with CERSAI |
| **26E** | Registered secured creditors get priority over Govt. |

## CERSAI Registration for Vehicles 🚙:

- Integration with **VAHAN National Register** effective from May 3, 2009.
- Vehicles registered under VAHAN are automatically deemed registered with CERSAI.

## 24.6 Other Registrations of Charges

(a) Registration for Companies (Section 77, Companies Act):

- Companies must register all charges within 30 days of creation with the Registrar of Companies (ROC).

(b) **Charges on Aircraft and Vessels** :

| Asset | Authority | Purpose |
|---|---|---|
| **Aircraft** | Director General of Civil Aviation (DGCA) | Facilitates grounding & auction upon enforcement |
| **Vessels** | Mercantile Marine Department | Ensures anchoring/docking to enforce security |