



FACULTY OF JURIDICAL SCIENCES

COURSE: BALLB/BBALLB VI Semester

SUBJECT: Law of Property

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Lecture-25



Duties/liabilities of a mortgagor

Along with the rights given to a mortgagor, the Transfer of Property Act has also conferred some duties on him. Following are the duties of a mortgagor:

1. Duty to avoid waste
2. Duty to indemnify for defective title
3. Duty to compensate mortgagee
4. Duty to direct rent of a lease to mortgagee

Duty to avoid waste (section-66):

This section imposes a duty on the mortgagor to not to commit any act which leads to the waste of property or any act which reduces the value of the mortgaged property. Waste is divided into two categories:

- **Permissive waste**– A mortgagor who is in possession of the mortgaged property is not liable to the mortgagee for any minor waste.
- **Active waste**– When an act is done which causes major waste of the property or leads to the reduction in the value of mortgaged property, then the mortgagor will be liable to the mortgagee.

Duty to indemnify for defective title:

It is the duty of a mortgagor to compensate the mortgagee for a defective title in the mortgaged property. A defective title refers to a situation when a third party starts claiming or interferes with mortgaged property. It is a liability for the mortgagor to compensate for the expenses incurred by mortgagee for protecting the title of that property.

Duty to compensate mortgagee:

If the mortgaged property is in possession of mortgagee who is paying all the taxes and other public charges, then it is the duty of mortgagor to compensate mortgagee for incurring such

expenses. Similarly, when there is no delivery of possession i.e. the mortgaged property is still in possession of mortgagor, then it is his duty to pay all public charges and taxes levied on it.

Duty to direct rent of a lease to mortgagee:

Where the mortgaged property is leased by mortgagor then it is his duty to direct lessee to pay the rent, etc. to the mortgagee.

Conclusion:

A mortgage-deed comes up with many rights and liabilities for both the parties involved i.e. mortgagor and mortgagee. These rights and liabilities were created and included in the Transfer of Property Act in 1882 which is quite old and therefore is outdated. Though amendments were made in the Amendment Act of 1929, but no recent amendments have been made in the chapter of rights and liabilities of mortgagor. This has lead to various fraudulent transactions as both the mortgagor and mortgagee has found various new methods of deceiving each other. Therefore, the need of the hour is to amend the laws and make it more stringent so that no party attempts to enter in fraudulent transactions.

MCQ

1. The duties of a mortgagor are

- (a) Duty to avoid waste
- (b) Duty to indemnify for defective title
- (c) Duty to compensate mortgagee
- (d) Duty to direct rent of a lease to mortgagee

2. Which of the section imposes a duty on the mortgagor to not to commit any act which leads to the waste of property or any act which reduces the value of the mortgaged property

- (a) 67
- (b) 68
- (c) 69
- (d) 70

3. It is the duty of a mortgagor to compensate the mortgagee for a defective title in the mortgaged property.

- (a) True
- (b) false
- (c) Can not say
- (d) None of the above

4. If the mortgaged property is in possession of mortgagee who is paying all the taxes and other public charges, then it is the duty of mortgagor to compensate mortgagee for incurring such expenses.

- (a) True
- (b) false
- (c) Can not say
- (d) None of the above

5. Where the mortgaged property is leased by mortgagor then it is his duty to direct lessee to pay the rent, etc. to the mortgagee.

- (a) True
- (b) false
- (c) Can not say
- (d) None of the above