

UNIT 7 - Banker's Rights – Right of lien- Explained



Introduction

- Lien is defined as the right of a creditor to retain the possession of the goods and securities owned by the debtor until the debt has been paid.
- It does not include the right of sale of goods and securities.
- Lien is available on bills, cheques, promissory notes, share certificates, bonds and debentures.
- Lien is not available on deposits, since deposits are neither goods nor securities.

Types of Lien

Particular Lien

- In case of a particular lien the creditor gets the right to retain possession only of goods or securities for which the dues have arisen and not for other dues
- Example: A laptop-repairer can withhold the delivery of laptop until his charges of repairing the watch are paid to him.

General Lien

- A general Lien gives the right to the creditor to retain the possession till all amounts due from debtor are paid or discharged
- This is available to bankers, factors, and attorneys of High Court and Policy Brokers only

Banker's Lien

- Banker has right of general lien
- To exercise the right of lien the bank must lawfully take over its possession
- A banker should sell the securities only after a giving a notice to the debtor

Features of general lien – Banker's

Implied pledge and right of sale

- To create general lien, no special contract is required. The right to sell the property is also available under bank's right of lien because a banker's general lien tantamount to an implied pledge

Limitation

- The right is not restricted by law of limitation. The act only restricts the remedy through court and not discharges the debt. Hence, bank can recover debts even when time have exceeded also.

Ownership/possession

- The possession is with the bank but the ownership remains the same

Conversion to particular lien

- If it is indicated that a particular security was obtained for one particular debt only, then the general lien gets converted into a particular lien.

Criminal Action

- When the banker exercises his right of general lien, no criminal action is available because there is no criminal act behind it.

Lien Can be Exercised Where

- The right of general lien is available and is always entrusted to bank in the capacity as a banker
- The right is available for goods and securities that are in the name of the borrower or in the name of guarantor

- Right can be exercised for other dues of same borrower, on goods and securities remaining in its possession even after the other loan taken against them, has been paid
- Lien can be used by giving a reasonable period notice. Sale Without notice, even if there is an agreement, is unlawful

Lien Cannot be Exercised

- Where there is any contract inconsistent with this right between banker and the customer
- Where the goods and securities are entrusted to the bank as a trustee or as an agent
- Where the goods and securities are entrusted for some specific purpose
- Where the loan is granted to one person and the goods and securities are owned by more than one persons
- Goods/securities handed over for safe custody
- Where the bills of exchange or other documents have been handed over by the customer with specific instructions to utilize their proceeds for the specific purpose
- In case of shares that are given for selling them in a future and apply the sale proceeds for a specific purpose
- Where some documents or valuables are left in bank's possession by the customer by mistake or negligence
- Where securities are given to bank to secure a loan, but that has not been granted as yet.