

قانون مدنی ایران با انگلیسی (۱۶)

(16) Iranian Civil Code

SECTION 15

ON THE TRANSFER OF OBLIGATIONS (HAVALEH)

Article 724.

By '*havaleh*' is meant a contract in virtue of which the claim of a person from a debtor is transferred to a third person for settlement.

The debtor is called '*muhil*', the claimant is called '*muhtal*', and the third person '*muhulun alaih*'.

Article 725.

A transfer of this kind does not become definite except with the consent of the claimant and the third person.

Article 726.

If, in regard to a transfer (*havaleh*), the 'debtor' (*muhil*) is not indebted to the claimant (*muhtal*), the provisions applicable to a '*havaleh*' will not apply.

Article 727.

It is not necessary, for the propriety of the transfer, that the third person should be indebted to the debtor; in that case, the third person, after accepting, in the position of a guarantor.

Article 728.

The solvency of the third person is not a necessary condition of the propriety of the transfer.

Article 729.

If, at the time of the transfer, the third person is indigent, and the claimant is ignorant of his indigence, the claimant can cancel the transfer and have recourse to the debtor.

Article 730.

After the transfer is definite, the obligation which was incumbent upon the debtor in respect of the transferred debt is discharged, and the obligation attaches to the third person.

Article 731.

If the third person was not indebted to the debtor, he may, after paying the sum transferred, have recourse to the debtor for the same sum.

Article 732.

A transfer is a binding contract, and neither the debtor, nor the claimant, nor the third person can cancel it, except in accordance with Article 729, or when the condition has been made that an option of cancellation should exist.

Article 733.

If, in a sale, the seller makes a transfer providing that the purchaser should pay the price to some person, or if the purchaser makes a transfer empowering the seller to receive the price from someone, and the nullity of the sale is established, the transfer is null; and if the claimant has received the price he must give it back; but if the sale becomes cancelled in consequence of a cancellation or deceit, the transfer is not null, but the third person is discharged, and the seller or the purchaser can have recourse the one to the other.

The provisions of this article will apply to other contracts also.

SECTION 16

ON PERSONAL SURETY (KIFALAT)

Article 734.

A '*kifalat*' is a contract by virtue of which one of two parties engages, with the other party, to produce the presence of a third person.

The person who engages is called a '*kafil*'; the third person is called a '*makful*' and the other party is called '*makfulun lah*'.

Article 735.

A '*kifalat*' takes place with the consent of the '*kafil*' and of the '*makfulun lah*'.

Article 736.

It is not necessary, for the validity of the '*kifalat*', for the '*kafil*' to know that there exists a lawful claim incumbent, upon the '*makul*'; the existence of a claim to a right on the side of the '*makfulun lah*' is sufficient, even if the '*makful*' denies it.

Article 737.

A '*kifalat*' may be permanent or temporary; if it is temporary, its period must be specified.

Article 738.

It is possible for another person to become the '*kafil*' of a '*kafil*'.

Article 739.

In a permanent '*kifalat*', the '*makfulun lah*' may, whenever he desires, request that the '*makful*' be produced; but in a temporary '*kifalat*' he has no right of claim before the end of the term.

Article 740.

The '*kafil*' must produce the '*makful*' at the time and the place which he has promised; or else he must incur the responsibility for the right which is proved to be incumbent on the '*makful*'.

Article 741.

If the '*kafil*' has engaged to surrender property if the '*makful*' does not appear, he must act in accordance with his engagement.

Article 742.

If in the '*kifalat*' on place has been specified for the surrender of the '*makful*', the '*kafil*' must hand over the '*makful*' in the place where the contract was made, unless the contract envisages another place,

Article 743.

If the '*makful*' is absent, a delay will be accorded to the '*kafil*' sufficient to enable him to produce the '*makful*'.

Article 744.

If the '*kafil*' hands over the '*makful*' at a time or in a place other than that which was laid down, or contrary to the conditions which he made, it is not incumbent upon the '*makfulun lah*' to accept this: but if he agrees, the '*kafil*' is discharged; similarly, if the '*makfulun lah*' requests the surrender of the '*makful*' in a way contrary to that which was laid down by the two parties, the '*kafil*' is not obliged to accept.

Article 745.

Any person who abducts a person from the control of the one entitled to control him, or his lawful deputy, without his consent, is in the position of a '*kafil*' and must produce that person; if not, he must take responsibility for the due which are proved to attach to him.

Article 746.

the '*kafil*' will be discharged in the following circumstances:-

1. If he produces the '*makful*' in the manner agreed upon.
2. If the '*makful*' himself appears at the appointed time.
3. If the obligation of the '*makful*' is discharged in any way from that which the '*makfulun lah*' claimed.
4. If the '*makfulunlah*' gives a discharge to the '*kafil*'
5. If the claim of the '*makfulun lah*' becomes in any way transferred to another person,
6. If the '*makful*' dies.

Article 747.

If the '*kafil*' produces the '*makful*' in accordance with the conditions agreed upon and the '*makfulun lah*' refuses to take delivery of him, the *kafil* will be discharged after reference to witnesses or to the judge.

Article 748.

The death of the '*makfulun lah*' will not involve the discharge of the '*kafil*'.

Article 749.

If one person becomes a '*kafil*' for a person in relation to several persons, he will not be discharged as far as the others are concerned by the delivery of the person to one of them.

Article 750.

If a person be the '*kafil*' of a '*kafil*' and another person be his '*kafil*', and so one each '*kafil*' must produce the '*makful*' pertaining to him; whoever of them produces the original '*makful*' is discharged together with all the others; and whoever of them becomes discharged by reason of any of the reasons mentioned in Article 746, the '*kafil*'s who come after him are discharged too.

Article 751.

If the '*kifalat*' is with the permission of the '*makful*', and the '*kafil*', not being able to produce the '*makful*', pays whatever penalty

attaches to him, or if he pays a penalty with his permission, he can have recourse to the '*makful*' and receive back what he has paid; but if neither was with the consent of the '*makfu'l*', he will have no right of recourse.

SECTION 17

ON SETTLEMENTS OF ACCOUNT

Article 752.

A settlement of account is possible either in the case of the adjustment of an existing dispute, or for the avoidance of possible dispute, or in the case of a transaction etc.

Article 753.

In order that the settlement of account may be in proper form the two parties must have capacity for the transaction and must have an interest in the subject of the settlement of account.

Article 754.

Every settlement of account is effective, except that which relates to an unlawful matter.

Article 755.

A settlement of account is also possible even when the claim is denied, therefore, a request for a settlement is not to be regarded as a confession of indebtedness.

Article 756.

Civil claims which have arisen as the result of a crime may also become the subject of a settlement of account.

Article 757.

A settlement of account without recompense is also lawful.

Article 758.

A settlement made in respect of a transaction, though it provides the final result of the transactions which it replaces, does not include the social conditions and attributes of the transaction.

Therefore, if the subject of the settlement of account is a definite object given in return for a consideration, its result will be the result of a sale, without the execution of the special conditions and rules appertaining to a sale.

Article 759.

A settlement of account does not involve a right of pre-emption, even though it takes the place of sale.

Article 760.

A settlement of account is a binding contract, even though it takes the place of contracts which are not binding; and it does not lose validity except in circumstances of cancellation through the exercise of an option or through deceit.

Article 761.

A settlement of account which arises from a dispute or is base on reciprocal agreement is final as the tow parties are concerned, and neither of them can cancel it, even if there be a claim of fraud: except in a case of non-compliance with a condition, or when an option of cancellation has been included as a condition,

Article 762.

If a mistake has occurred in the circumstances attendant upon a compromise, or in connexion with a settlement of account, the settlement of account is void.

Article 763.

A settlement of account under circumstances of reluctance is not enforceable.

Article 764.

Trickery in a settlement of account is a justification for an option of cancellation.

Article 765.

A settlement of account in a claim based on a void transac-

tion is void; but a settlement of account in a claim arising out of the voidness of a transaction is good.

Article 766.

If the two parties bring to an end, in a general settlement, the whole of their mutual claims whether existing or potential, in the form of a settlement of account, all the claims are accounted as being included in that settlement, even if the cause of claim was unknown when the settlement was made, unless the settlement of account did not include that claim, in accordance with evidence.

Article 767.

If, after the settlement of account, it becomes known that the subject of the settlement of account did not exist, the settlement of account is void.

Article 768.

In a contract of settlement of account it is possible that one of the parties, in return for the share which he receives, should engage himself to pay certain specified profits for a specified period each year or each month. This engagement may involve profit for the other party to the settlement of account or to a third party or parties.

Article 769.

In an engagement such as that specified in the previous Article, whoever derives profit from the settlement, there may be a condition that after the death of the beneficiary the profits may go to his heirs.

Article 770.

A settlement of account which takes place in accordance with the previous Articles is not cancelled by the bankruptcy or the indigence of the person who undertook the engagement, unless there was a condition to that effect.