

قانون مدنی ایران بانگلیسی (۱۷)

(17) Iranian Civil Code

SECTION 18

ON PLEDGES

Article 771.

A pledge is a contract whereby a debtor gives a property to the creditor as a security.

The person who gives the pledge is called the "ráhin", and the other party the "murtahin".

Article 772.

The property which is pledged must be transferred to the possession of the creditor, or to that of a person agreed upon by the two parties; but it is not a necessary condition for the validity of the transaction that the property should remain in that possession.

Article 773.

No property which is incapable of being alienated or transferred legally may be the subject of a pledge.

Article 774.

A pledged thing must be a definite object, and the pledging of a debt or a profit is void.

Article 775.

A pledge may be given for any property which is owed, even though a contract which gives rise to the debt be subject to cancellation.

Article 776.

It is possible for one person to give a thing in pledge in respect of two or more debts which he owes to two or more persons.

In that case the creditors must agree among themselves as to who shall have possession of the thing; similarly it is possible for two persons to pledge a thing to one person in return for a claim which he has on them.

Article 777.

In the course of a contract of pledge, or in accordance with a separate contract, it is possible for the debtor to make the creditor his "*vakil*" (representative) empowering him to ensure that if, at the time appointed, the debtor does not pay his debt, the creditor will recover from the object pledged or from its price the amount of his claim; and it is also possible that he should arrange that the "*vakalat*" (representation) mentioned above should continue after the death of the creditor, vesting in his heirs: and finally it is possible that a "*vakalat*" should be given to a third person.

Article 778.

If it is laid down as a condition that the creditor has no right to sell the thing pledged, it (i.e. the condition) is void.

Article 779.

If the creditor has no "*vakalat*" for the sale of the thing pledged, and the debtor also is not ready to sell it or to pay the debt, the creditor refers to the judge who will compel a sale or oblige the debtor to pay the debt in another way.

Article 780.

The creditor who holds the pledge has preference over every other claimant in the settlement of his claim from the price of the pledged thing.

Article 781.

If the thing pledged be sold at a price greater than the claim of the creditor, the excess belongs to the owner thereof: and if, on the contrary, the proceeds of the sale are less, the creditor must have recourse to the debtor for the balance.

Article 782.

In the circumstances of the last part of the foregoing article, if the debtor has become indigent, the creditor shares with the creditors of the bankruptcy.

Article 783.

If the debtor pays a part of the debt, he has no right to claim the restitution of part of the thing pledged, and the creditor may retain the whole of it until the whole of the debt is paid, unless another arrangement has been agreed upon between the debtor and the creditor.

Article 784.

It is permissible to change the thing pledged for something else, with the agreement of the two parties.

Article 785.

Everything which in a contract of sale is reckoned as appertaining to the thing sold without any special mention thereof, enters also into the thing pledged.

Article 786.

The earnings of the thing pledged and the profits which may accrue to it, will form part of the thing pledged if they are joined to it; if they are not joined, they belong to the debtor, unless another arrangement has been agreed upon by the two parties.

Article 787.

A contract of pledge is binding as far as the debtor is concerned, but it is optional on the creditor; therefore, the creditor may, whenever he desires, cancel the contract, but the pledger cannot take back his pledge before he has paid his debt or before he has, in some legal manner, become discharged of his debt.

Article 788.

A pledge does not become cancelled by the death of the pledger or of the creditor; but if the creditor dies the debtor may request that the pledge may be given to the possession of a third person appointed with the consent of the heirs and of him.

If the parties concerned do not come to an agreement, the aforesaid person will be appointed by the judge.

Article 789.

The pledge is regarded as an "*amanat*" (article on trust) when in the hands of the creditor; therefore, the creditor will not be responsible for its decay or for its deterioration, unless he is at fault.

Article 790.

When the debtor has cleared himself from his debt, the pledge is an "*amanat*" in the hands of the creditor; but if, on being asked to return it, he refuses to do so, he will become a guarantor for it, even if he is not at fault.

Article 791.

If the thing pledged becomes destroyed in consequence of the act of the pledger himself or of some other person, the person who destroys it must give the equivalent of the pledge, and said equivalent will then become the pledge.

Article 792.

The "*vakalat*" (representation) mentioned in Article 777

will not apply to the equivalent pledge mentioned in the foregoing article.

Article 793.

The pledger cannot enter into possession of the pledge in such a way as to be contrary to the rights of the creditor, except with the latter's permission.

Article 794.

The debtor may make changes in the pledge, or perform other proprietary rights on the pledge which are of advantage to it and which do not impinge on the rights of the creditor, without there being any right for the creditor to prevent such action; if the judge may give permission.

SECTION 19

ON GIFTS

Article 795.

A gift is a contract in virtue of which a person gives over to another gratis the proprietary rights in a thing.

the person who gives is called "*wahib*"; the other party is called "*muttahaab*" and the thing which is the subject of the gift is called "*ain-mohubeh*".

Article 796.

The giver must have capacity to contract and to possess his thing.

Article 797.

The giver must be the owner of the thing which he gives.

Article 798.

A gift does not take place except with the acceptance of the receiver and with his taking possession of it, whether the receiver

himself takes over the gift or whether his "*vakil*" (representative) does so: and taking possession of the thing without the permission of the giver is of no effect.

Article 799.

In a gift to a minor, or to a ward, or to a person of unsound mind, the taking possession of the "*vali*" (legal representative or guardian) is lawful.

Article 800.

If the thing given is in the hands receiver there is no need for him to take it over.

Article 801.

A gift may be reciprocal. Hence, the giver may make a condition that the receiver should give him a thing, or perform *gratis* a lawful service.

Article 802.

If, before possession has been taken, the giver or the receiver dies, the gift becomes void.

Article 803.

After possession has been taken, also, the giver may take back his gift, provided it still exists, except in the following circumstances:-

- (1) When the receiver is the father, the mother, or the children of the giver.
- (2) When the gift has been reciprocated and the reciprocated gift has been handed over.
- (3) When the thing given has passed out of the possession of the receiver, or has become the object of the rights of another, whether by way of compulsion, as where the receiver has become a ward in consequence of indigence, or by way of choice, as when the thing given has been given as a pledge.
- (4) When a change has been made in the thing given.

Article 804.

If the giver revokes his gift, the fruits of the thing given belong to the giver if they are attached to the thing, and to the receiver if they are separate.

Article 805.

No revocation can be made after the death of giver or the receiver.

Article 806.

If a creditor agrees to surrender his claim upon the debtor, he has no right of revocation.

Article 807.

If a person gives a thing to another by way of a benefaction (or alms), he has no right of revocation.