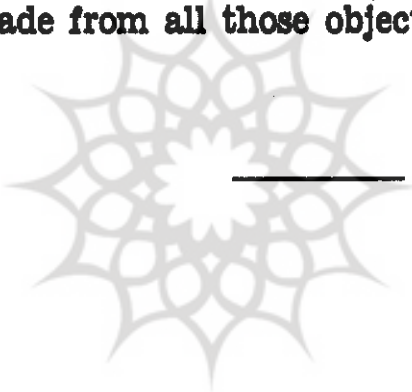


Article 848.

If the legacy be undivided share of the estate, such as a quarter or a third thereof, the beneficiary will become a partner in undivided shares with the heirs in that same proportion of the estate.

Article 849.

If the testator leaves as a legacy, in a specified manner, more than one-third of his estate, and the heirs do not consent to more than one-third, the portion will be separated from the estate in the same manner as laid down the will, up to the amount of one-third, and the excess will be void and if the legacy relates to several objects without specifying how much goes to each, a deduction will be made from all those objects.



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Article 842.

It is possible to dispose in a will of property which is not yet in existence.

Article 843.

The testamentary disposition of more than one-third of the estate is not valid, except with the permission of the heirs; and if some of the heirs agree, the disposition applies only to the share of those heirs.

Article 844.

If the legacy is a definite thing, that thing is to be valued. If its price is more than one-third of the estate, the excess belongs to the heirs, unless they allow otherwise.

Article 845.

The measurement of the third of the estate is fixed in relation to the testator's property at his death, not at the time of his making the will.

Article 846.

If the legacy consists of the profits of a property, either for a specified time or permanently, the portion of one-third shall be separated as follows:-

In the former case, the whole property, with its profits, will be valued. Then the said property will be valued, having regard to the loss of profits during the period of the legacy; and the difference between the two prices will be reckoned towards the third part.

In the second case, i.e. should the legacy be the permanent profits of the property, and for this reason the property itself has no value, the price of the property, having regard to the profits, will be reckoned towards the third part.

Article 847.

If the legacy consist of things of a standardised nature, not of particular units, the determination of the units thereof is the duty of the heirs, unless other arrangements have been laid down in the will.

SECTION TWO ON THE TESTATOR

Article 835.

The testator must be competent to possess the thing which is the subject of the will.

Article 836.

If a person wounds or poisons himself with the intention of committing suicide, or if he is guilty of similar conduct which causes death, and if after that act he makes a will, that will is void if he dies; but if, by chance, he does not die, the will is good.

Article 837.

If a person, by a will, deprives one or more of his heirs of their inheritance, that disposition is not valid.

Article 838.

The testator can revoke his will.

Article 839.

If the testator makes a second will in contradiction of the first, the second will is good.

SECTION THREE ON THE LEGACY

Article 840.

A will providing for the employment of a thing in a way contrary to law is void.

Article 841.

The legacy must be the property of the testator; and a will which disposes of the property of another, even though it is with the permission of the owner, is void.

Article 829.

The acceptance of the beneficiary before the death of the testator is of no effect, and the testator may revoke his legacy, even if the beneficiary may have taken possession of the legacy.

Article 830.

In relation to the beneficiary, the rejection or the acceptance of the legacy after the death of the testator is valid. Therefore, if the beneficiary rejects the legacy before the death of the testator, he may accept it after the death; and if after his death he accepts it and takes possession of the legacy, he may not reject it afterwards; but if he has accepted the legacy before the death, a second acceptance after the death is not necessary.

Article 831.

If the beneficiary is a minor or insane, the guardian will have to accept or reject the legacy.

Article 832.

The beneficiary may accept the legacy in relation to a portion of the legacy; in that case the will, in relation to the portion which has been accepted, is valid; in relation to the rest it is void.

Article 833.

The heirs of the testator cannot take possession of the legacy, as long as the beneficiary has not communicated to the heirs whether he rejects or accepts it.

If delay in this notification results in a loss to the heirs, the judge will compel the beneficiary to take a decision.

Article 834.

In a contractual will acceptance is not a necessary condition; but the *'vasi'* may refuse the duty referred to him during the lifetime of the testator; and if he has not refused it before the death of the testator, he will have no subsequent right of refusal, even if he was ignorant of the trust.

PART 4

ON WILLS AND INHERITANCE

CHAPTER ONE

ON WILLS

SECTION ONE

ON GENERAL CONSIDERATIONS

Article 825.

Wills are divided into two categories: possessory and contractual.

Article 826.

A possessory will occurs when a person bestows on another person, without charge, the property in a thing or a benefit belonging to him, to take effect from the date of his death.

A contractual will occurs when a person appoints one or more other persons to carry out an affair, or affairs, or to perform other possessory acts.

The person making the will is called the '*muvassi*'; the person in whose favour a possessory will is made is termed the '*muvassi*'; the thing which is the subject matter of the will is called the '*muvassa*'; and the person who, in virtue of a contractual will is appointed either as a trustee for an endowment, "literally (cf. Art 843 below.) a trust of one-third of a property" or a trustee for a minor, is called a '*vasi*'.

Article 827.

A right of property resulting from a will does not become definite except with the agreement of the beneficiary after the death of the testator.

Article 828.

If the beneficiaries be not limited in number, as for instance if the will is in favour of the poor or for a work of public benevolence, there is no need to accept.

Article 819.

Profits which may have accrued to the thing sold before the exercise of the right of pre-emption belong to the purchaser if they are separate, and to the pre-emptor if they are inseparable; but the purchaser may uproot or destroy any building which he has made or any tree which he has planted.

Article 820.

It is apparent that at the time of the sale the thing sold was defective and the purchaser has therefore been granted a reduction of price, the pre-emptor is entitled to deduct a corresponding amount from the price at the time when he exercises his option. The rights of the purchaser in relation to the seller with regard to a defect in the thing sold are the same as those which apply in the course of a contract of sale.

Article 821.

The right of pre-emption is an immediate one.

Article 822.

A right of pre-emption may be waived; and the fact that it is waived may be inferred from anything which points towards the fact that the above-mentioned right is renounced.

Article 823.

The right of pre-emption is transferred to the heir or heirs of the pre-emption after his death.

Article 824.

If one or more of the heirs waive their right, the remaining heirs cannot exercise their right only in relation to heir own portion; they must either waive their right entirely, or enforce it in relation to the whole of the thing sold.

cute a right of pre-emption in respect of the part which is capable of pre-emption, in proportion to its share of the price.

Article 813.

There is no right of pre-emption in an illegal sale.

Article 814.

The fact that the sale is subject to an option is not an obstacle to the exercise of the right of pre-emption.

Article 815.

A right of pre-emption must not be exercised only in respect of one part of the thing sold; the person entitled to the above mentioned right must either refrain from it altogether or perform it in respect of the whole of the thing sold.

Article 816.

The exercise of a right of pre-emption renders void any transaction which the purchaser may have performed before that and after the contract of sale, in respect of the subject of the right of pre-emption.

Article 817.

In respect of a partner who exercises his right of pre-emption, the purchaser is a guarantor for any defect, not the seller, But if, at the time of the exercise of the right of pre-emption the subject of the right is not yet handed over to the possession of the purchaser, the pre-emptor will not have any right of recourse against the purchaser.

Article 818.

The purchaser is not a guarantor respecting any defect or fault or decay which has taken place while the thing has been in his hands before the exercise of the right of pre-emption. The same applies after the exercise of the right of pre-emption and after the thing has been claimed, provided that he has not used it excessively or been guilty of waste.

قانون مدنی ایران با انگلیسی (۱۸)

(18) Iranian Civil Code

PART 3

ON THE EXERCISE OF THE RIGHT OF PRE-EMPTION (SHUF'EH)

Article 808.

When real property, capable of being divided, is held jointly by two persons, and one of them transfers his share to a third person with the object of selling it, the other joint owner has the right to give to the purchaser the price which he has paid for it, and to take possession of the portion sold.

This right is known as the right of pre-emption (*shuf'eh*), and the person who exercises that right is known as a (*shafi*).

Article 809.

When a building and trees are sold without the land, there is no right of pre-emption.

Article 810.

If the property of two persons is in a highway or a waterway held jointly, and one of them sells his rights together with the right of passage on the road or water, the other one has the right of pre-emption, even though he be not a joint holder in divided shares in the property itself; but if one of the parties sells the property apart from the right of passage, the other has no right of pre-emption.

Article 811.

If the share of the two partners is a (*waqf*) (religious endowment), neither the trustee nor the beneficiary of the (*waqf*) has any right of pre-emption.

Article 812.

If the thing sold consists of several units, and some of them are subject to pre-emption and the rest are not, it is possible to exe-