

If the goods themselves are no longer in the hands of the defendant, he must pay the difference in price.

Article 426.

If it is proved in court that the contract was prompted by a desire to defraud or has been due to a collusion the contract becomes automatically null and void.

The property forming the consideration for the contract and the profits shall be returned, and the contracting party will rank with the ordinary creditors.



Article 422.

If a bankrupt has endorsed a promissory note, or if he has drawn a bill of exchange which has drawn on him, this persons responsible for the payment of the said promissory note or bills must pay them in cash, but an allowance by way of discount will be made for the period in which the promissory note or bill has notes or bills when they fall due.

Article 423.

The following are null and void, if effected by the bankrupt after cessation of payment:-

(a). Any voluntary settlement, any gift inter vivos, and in general any transfer of movable or immovable property, except for valuable consideration;

(b). Any payment, by whatever means, of debts due or not due;

(c). Any transaction relating to movable or immovable Property prejudicial to the interests of the creditors.

Article 424.

If, following an action by the trustee in bankruptcy, or by a creditor against those who had have transactions with the bankrupt or their nominees, it is established that the bankrupt, prior to the cessation of payment, in ordre to avoid his liabilities or defraud his creditors, has made a contract involving a loss of more than one quarter of the value of the goods at the time the contract was signed, and said contract may be annulated, unless the other party to the contract pays the difference prior to delivery of judgment by the court.

Proceedings for annulment may be started at any time within two years from the date of the contract.

Article 425.

If, in accordance with the preceding article, the court declares the contract void, the defendant, after final judgment has been given, must deliver to the trustee the goods which formed the consideration for the contract, and receive from him their price as evidenced by the contract, and this must be done before the bankrupt's assets are distributed among the creditors.

Article 415.

A merchant is declared insolvent by the court of first instance in the following cases;-

- (a). Upon the declaration of the merchant himself;
- (b). Upon the request of one or more creditors:
- (c). Upon the request of the public prosecutor of the court of first instance.

Article 416.

The court must by its ordre fix the date of the cessation of payment. Otherwise the date of the cessation of payment will be considered to be that of the ordre.

Article 417.

An ordre of bankruptcy is to be executed provisionally.

Article 418.

Dating from the ordre of bankruptcy, the bankrupt is deprived of all his property and of any property which devolved upon him as long as he is in a state of bankruptcy. The trustee in bankruptcy is vested with the rights and powers of the bankrupt and can exercise them in his name and place particularly for the payment of his debt.

Article 419.

Any person contemplating proceeding in respect of movable or immovable property against the bankrupt, after declaration of bankruptcy, must notify the trustee, or bring his action against him.

The same rule applies to the execution of a judgment.

Article 420.

If it sees fit the court may allow the bankrupt to intervene as a third party in act action brought against him.

Article 421.

As soon as a person is adjudged bankrupt, debts due by him which have not yet matured become payable, but an allowance by way of discount will be made for the period the debt has to mature.

BOOK II.

BANKRUPTCY.

CHAPTER I.

GENERAL.

Article 412.

The bankruptcy of a merchant or of a commercial company arises upon suspension of payment of sums due by them. Judgment declaring a merchant bankrupt, who died in a state of insolvency, may be given within one year after his death.

CHAPTER 2

DECLARATION OF BANKRUPTCY AND ITS EFFECTS

Article 413.

Within three days from his ceasing payment of his debts or other liabilities, every merchant must declare his insolvency to the court of first instance in the place where he resides and deliver to them his balance sheet and all his books.

Article 414.

The balance sheet mentioned in the preceding article must be dated, signed by the merchant and must contain the following particulars:-

- (a). A detailed statement giving the value of all movable and immovable property.
- (b). A statement of all his assets and liabilities.
- (c). A profit and loss account and a statement of personal expenses.

In the event of the failure of a general partnership company (serkat tazamoni) a joint stock partnership company (sherkat makhtalt sahami), or a proportional liability company (sherkat nesbi) the names and addresses of all the general partners must also be given.

Article 405.

A guarantor is not liable for payment until the principle debt falls due, even though payment of the debt may be exacted owing to the failure or death of the principal debtor.

Article 406.

The above regulations do not apply to a guarantee for the immediate payment of the debt.

Article 407.

If the right to demand payment of the principal debt is subject to previous notice must also be given to the guarantor.

Article 408.

A guarantor is freed from liability as soon as the principal debt is extinguished for any reason whatsoever.

Article 409.

As soon as payment of the debt falls due the guarantor may compel the creditor to accept payment or to release him, even though a delay has been mentioned in the guarantee.

Article 410.

The refusal of the creditor to accept payment of the debt or his refusal to deliver up securities where the debt is secured, immediately and automatically discharges the guarantor.

Article 411.

When the guarantor has paid the principal debt, this creditor is bound to deliver to him all the deeds and documents he required to take proceeding against the principal debtor. If the principal debt is otherwise secured, he must also deliver up the securities.

In cases where the principal debt is secured by a mortgage or real property, the creditor is bound to complete the necessary formalities for transferring the property to the guarantor.

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BOOK 10

GUARANTEES

Article 402.

Except by agreement between the parties (either under a special contract or by the terms of the guarantee itself) the guarantor cannot demand that creditor first exercise recourse against the principal debtor before demanding payment under the guarantee, if the principal debtor fails to pay.

Article 403.

In all cases where according to law or by private agreement, the guarantee is joint and several, the creditor may sue the guarantor and principal debtor jointly, or take action individually against one of them for the total amount of the balance of his, debt, and then sue the other for any sums still owing.

Article 404.

The above regulations apply equally when several person are, according to an agreement or by law, jointly and severally responsible for the fulfilment of the guarantee.