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THE LEGAL NATURE OF THE CONTRACT OF PLEDGE (RAHN) IN THE HANAFI SCHOOL AND THE CONDITIONS OF ITS ENTRY INTO FORCE

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Abstract. *The article analyses the legal nature of the contract of pledge (rahn) in the Hanafi school of Islamic law and the conditions under which it enters into force. On the basis of the Qur'anic and Prophetic foundations of rahn, the classical Hanafi sources and the Ottoman Majalla al-Ahkam al-'Adliyya, it shows that the Hanafi school treats rahn as an accessory contract of security (tawthiq) which is concluded by offer and acceptance but becomes complete and binding only upon delivery of the pledged property (qabd). The article examines the asymmetric binding force of the contract, the requirements concerning the parties, the pledged property and the secured claim, including the distinctive Hanafi position on the pledge of an undivided share (musha'), and the status of the pledged property as a trust in its substance but a guarantee in its value. The practical significance of these rules for contemporary Islamic finance and for the law of pledge in Uzbekistan is discussed.*

Keywords: *rahn, pledge, Hanafi school, qabd, contract of security, musha', Majalla, Islamic finance, collateral.*

INTRODUCTION

Securing the performance of obligations is a fundamental problem of every legal system. In Islamic law, one of the principal instruments of such security is the contract of pledge (rahn), by which the debtor places property in the hands of the creditor so that the creditor may obtain satisfaction from it if the debt is not paid. The legitimacy of rahn is established by the Qur'an: "And if you are on a journey and cannot find a scribe, then a pledge taken into possession (fa-rihanun maqbudah)" (Qur'an 2:283). It is also confirmed by the Sunna: according to a report transmitted by 'A'isha and recorded by al-Bukhari and Muslim, the Prophet bought food from a Jewish merchant on credit and gave him his iron coat of mail as a pledge (al-Bukhari, 2002). On this basis the jurists reached consensus on the permissibility of rahn both on journeys and at home.

Although all Sunni schools recognise rahn, they differ on several important questions: whether delivery of the pledge is a condition of its validity or of its binding force, whether

an undivided share may be pledged, and whether the pledgee is liable for the loss of the pledge. The Hanafi school, which has historically prevailed in Central Asia, developed a particularly elaborate and in some respects distinctive doctrine on these issues. The aim of this article is to analyse the legal nature of rahn in the Hanafi school and the conditions of its entry into force. The tasks are: to define rahn and determine its place in the system of contracts; to analyse the role of delivery and the binding force of the contract; to examine the conditions relating to the parties, the pledged property and the secured claim; and to assess the practical significance of the Hanafi rules today.

LITERATURE REVIEW AND METHODOLOGY

The classical Hanafi doctrine of rahn is set out in the works of al-Sarakhsi (d. c. 483/1090), whose al-Mabsut devotes a separate book to pledge (al-Sarakhsi, 1993, 21:63), al-Kasani (d. 587/1191), whose Bada'i' al-Sana'i' analyses the pillars, conditions and effects of the contract in a systematic manner (al-Kasani, 1986, 6:135), and Burhan al-Din al-Marghinani (d. 593/1197), whose al-Hidaya became the most widely studied Hanafi textbook (al-Marghinani, n.d.). The doctrine was codified in the Ottoman Majalla al-Ahkam al-'Adliyya (1869–1876), whose fifth book (articles 701–761) is devoted to pledge (Majalla, 1876).

Among modern studies, W. al-Zuhayli's comparative encyclopaedia of Islamic law provides a detailed account of the disagreements among the schools on the nature and conditions of rahn (al-Zuhayli, 1985). In the field of Islamic finance, the AAOIFI Shari'ah Standard on mortgage (rahn) and its contemporary applications sets out the conditions under which collateral may be used in Islamic financial transactions (AAOIFI, 2017). F. E. Vogel and S. L. Hayes analysed the place of security devices in the overall structure of Islamic commercial law and their role in modern Islamic finance (Vogel & Hayes, 1998).

The study employs historical-legal, comparative and textual methods. The provisions of the classical Hanafi sources and the Majalla are analysed and compared with the views of the other Sunni schools where this clarifies the specificity of the Hanafi position.

RESULTS AND DISCUSSION

Definition of rahn. Linguistically, rahn means fixity and continuation, as well as detention. In Hanafi terminology, rahn is defined as the detention of a thing on account of a right from which it is possible to obtain satisfaction, such as a debt. The Majalla, following this tradition, defines pledge as "setting aside property from which it is possible

to obtain payment or satisfaction of some claim" (Majalla, 1876: art. 701). Two elements of this definition are essential. First, rahn is a detention (habs): its immediate effect is that the pledgee acquires the right to retain the property until the debt is paid. Second, the pledged property must be capable of yielding satisfaction of the claim, which is why it must have financial value and be saleable.

Place of rahn in the system of contracts. From the point of view of its purpose, rahn is a contract of security (‘aqd tawthiq). It does not transfer ownership of the pledged property to the pledgee and does not by itself create a debt; it presupposes an existing claim and serves to guarantee its performance. It is therefore an accessory contract, whose existence depends on the existence of the secured claim. From the point of view of the counter-performance, the pledgor gives the pledge without receiving anything in return, and Hanafi jurists therefore note that rahn has the character of a gratuitous transaction (tabarru‘) at its inception. This characterisation explains why delivery plays such an important role: as in the case of gifts and loans, a gratuitous transfer becomes effective only through actual delivery.

Formation and completion of the contract. The central question concerning the entry into force of rahn is the role of delivery (qabd). The Hanafi position, reflected in the Majalla, is that the contract of pledge is concluded (yan‘aqidu) by the offer and acceptance of the pledgor and the pledgee, but it is not complete and binding (la yatimmu wa la yalzamu) until the pledged property has been delivered into the possession of the pledgee. Consequently, the pledgor may withdraw from the contract before delivery (Majalla, 1876: art. 706). The jurists derive this position from the Qur’anic expression "a pledge taken into possession" (Qur’an 2:283): since the verse describes the pledge by possession, possession is part of what makes a pledge a pledge (al-Kasani, 1986, 6:135).

The Hanafi view should be distinguished from that of the Maliki school, according to which the contract of pledge becomes binding through offer and acceptance alone, and the pledgee may then demand delivery. In the Hanafi view, by contrast, offer and acceptance only create a contract that is legally existent but not yet effective in its principal consequence, the right of detention. In modern terminology, delivery is therefore not a condition of the formation of the contract but a condition of its completion and binding force (shart al-tamam wa al-luzum).

The manner of delivery. Delivery may be actual, when the pledged property is physically handed over, or constructive, when the pledgor removes all obstacles and

enables the pledgee to take possession (takhliya). The Majalla also recognises that the parties may deposit the pledge with a trusted third person (‘adl), whose possession is treated as the possession of the pledgee (Majalla, 1876: art. 705). In Hanafi doctrine, the pledgee’s possession must also be continuous: the security function of rahn is preserved only as long as the property remains in the possession of the pledgee or of the trusted person.

Asymmetric binding force. Once delivery has taken place, the contract becomes binding on the pledgor, who can no longer revoke it unilaterally, but it remains non-binding on the pledgee, who may return the pledge and release the security at any time. This asymmetry follows from the purpose of rahn: the contract exists for the benefit of the creditor, and the beneficiary of a right may always renounce it, whereas the person who has given the security may not withdraw it to the detriment of the creditor.

Conditions relating to the parties. The pledgor and the pledgee must possess legal capacity to conclude a contract of this kind. In Hanafi doctrine, sanity and discernment (tamyiz) are required; a discerning minor who has been permitted to trade may validly give or take a pledge, whereas the transactions of an insane person or an undiscerning child are void. Since rahn involves a gratuitous element on the side of the pledgor, a guardian may pledge the property of a ward only for a debt of the ward and in the ward’s interest.

Conditions relating to the pledged property (marhun). The Hanafi school requires that the pledged property satisfy several conditions. It must be something that can validly be sold: it must exist at the time of the contract, have a specific value and be capable of delivery (Majalla, 1876: art. 709). It must be property of value (mal mutaqawwam), so that a creditor can obtain satisfaction from it. It must be specified and identifiable. Beyond these general conditions, the Hanafi school requires that the pledged property be separated (mahuz) and not occupied by property of the pledgor that remains in his possession (mafrugh). Things that are implicitly included in a sale are also included in the pledge; for example, when land is pledged, the trees and crops on it are included even if they are not mentioned (Majalla, 1876: art. 711).

The requirement of separation leads to one of the most distinctive features of the Hanafi doctrine: the pledge of an undivided share (rahn al-musha‘) is not valid, according to the established doctrine of the school, even if the share is pledged to a co-owner. The Hanafi jurists reasoned that the purpose of rahn is continuous detention, and an undivided

share cannot be continuously detained, because the co-owner's right requires the sharing of possession by turns. The Shafi'i, Maliki and Hanbali schools, by contrast, permit the pledge of an undivided share. This difference shows how closely the Hanafi conditions of validity are linked to the conception of rahn as a detention based on possession.

Conditions relating to the secured claim (marhun bihi). The claim secured by the pledge must be one that can be satisfied from the pledged property. In principle it is a debt that is the liability of the debtor (dayn madmun). The Majalla states that a pledge may be taken in respect of property wrongfully appropriated, since the usurper is liable for it, but a pledge taken in respect of property held on trust is invalid, because the trustee is not liable for its loss and there is therefore no claim to secure (Majalla, 1876: art. 710).

The status of the pledged property. A further distinctive feature of Hanafi doctrine concerns the liability of the pledgee for the loss of the pledge. According to the Hanafis, the pledged property is a trust (amana) in the hands of the pledgee with respect to its substance, but it is held under guarantee (madmun) with respect to its value. If the pledge perishes in the pledgee's possession without his fault, the debt is extinguished to the extent of the lesser of the value of the pledge and the amount of the debt. The rationale is that the pledgee holds the property in order to obtain satisfaction from it, and its loss in his hands is treated as constructive satisfaction of the claim. If the pledgee himself destroys or damages the pledge, the corresponding amount is deducted from the debt; if the pledgor destroys it, he must make good the loss (Majalla, 1876: art. 741). The Shafi'i school, by contrast, regards the pledge as a pure trust, so that its loss without fault has no effect on the debt.

Use of the pledged property. Since rahn grants only a right of detention and not ownership or usufruct, the pledgee may not make use of the pledge without the pledgor's permission. The Majalla allows the pledgee to use the pledge and take its produce, such as fruit and milk, with the pledgor's permission, without any reduction of the debt (Majalla, 1876: art. 750). Many later Hanafi jurists, however, warned that if such benefit is stipulated as a condition of a loan, it becomes a benefit derived from a loan and therefore falls under the prohibition of riba. This distinction between voluntary permission and contractual stipulation remains important in modern practice.

Enforcement and termination of the pledge. The security function of rahn is realised when the debt falls due and is not paid. In Hanafi doctrine, the pledgee does not become the owner of the pledge by the mere fact of default: the pre-Islamic practice of forfeiture,

whereby the creditor kept the pledge if the debt was not paid on time, was abolished, and this rule is expressed in the report "the pledge is not forfeited (la yaghlaqu al-rahn)", transmitted in the hadith collections. Instead, the pledgee may demand that the pledgor pay the debt or sell the pledge. If the pledgor refuses, the judge may compel him to sell, or sell the pledge on his behalf, and the pledgee is paid from the price in priority to other creditors; any surplus belongs to the pledgor, and any shortfall remains a debt. The parties may also authorise the pledgee or the trusted third person to sell the pledge at maturity, and in Hanafi doctrine such an authorisation, once included in the contract, cannot be revoked unilaterally by the pledgor. The contract of pledge terminates when the debt is paid or released, when the pledgee returns the pledge, when the pledge is sold to satisfy the debt or when the pledged property perishes. These rules show that Hanafi law combined effective protection of the creditor with protection of the debtor against the loss of property exceeding the value of the debt.

Practical significance. The Hanafi rules of rahn have direct practical significance today. In Islamic finance, collateral is widely used in murabaha, ijara and other financing transactions, and the AAOIFI Shari'ah Standard on mortgage permits the pledge of various kinds of property, including the use of registration as a form of constructive possession (AAOIFI, 2017). The Hanafi concept of constructive delivery provides a theoretical basis for such modern forms of possession. At the same time, the Hanafi prohibition on the pledgee's stipulated benefit from the pledge remains a key safeguard against disguised interest. In Uzbekistan, where the Civil Code regulates pledge (garov) as a means of securing obligations and where Islamic finance is gradually being introduced, an understanding of the Hanafi doctrine of rahn can help to design financial products that are consistent both with national legislation and with the legal tradition historically followed in the region.

CONCLUSION

In the Hanafi school, rahn is an accessory contract of security whose essence is the detention of property from which a claim can be satisfied. The contract is concluded by offer and acceptance, but it becomes complete and binding only upon delivery of the pledged property, which may be actual or constructive and must be continuous. Once delivered, the pledge is binding on the pledgor but not on the pledgee. The validity of the contract depends on conditions relating to the parties, the pledged property and the secured claim; the requirement that the pledged property be separated leads to the

distinctive Hanafi rejection of the pledge of an undivided share. The pledged property is a trust in its substance but a guarantee in its value, so that its loss in the pledgee's hands extinguishes the debt to the extent of the lesser of the two amounts. These rules, codified in the Majalla, provide a coherent framework that remains relevant for contemporary Islamic finance and for the development of pledge law in Uzbekistan.

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