

Electronic contracts in Iran law

Mostafa Abbasi^{1*}, Ali Zare²

¹ Department of Law, Electronic Branch, Islamic Azad University, Tehran, Iran

² Department of Law, Tehran Sciences and Research Branch, Islamic Azad University, Tehran, Iran

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ABSTRACT

Objective: E-contract obeys provisions and the general rules of contract law and obligations based on principal conditions of contract and setting its consequences. **Methodology:** However, it needs accurate recognition and adaptation with general dominated regulations on contracts according to technical characteristics, contracting methods, and its legal support effect. Therefore, the objective of this research is studying e-contract in Iran law. Signing a contract by website, contract through data exchange, electronic contract through virtual presence in electronic talking room are types of e-contract. **Results:** The subject of contract doesn't have specific characteristics for having different contracting environment than traditional contract. Therefore, the parties don't have limitation in selecting the subject of e-contract in law framework according to the rule of free will. According to article 90 of civil law, contract parties will is the most principal condition of validity of contract. The place and acceptance of e-contract means sending and receiving contract according to article 29 of e-commerce law. **Conclusion:** Electronic contract being ad-joint, lack of physical presence of the parties in the contract electronically (remote), satisfaction principle of electronic contracts, and international aspects of electronic contracts are some features of e-contract.

1. Introduction

The e-contracts don't have any difference from the traditional contracts according to subject and accuracy principally. However, they are considered as new definition about the environment of contract that legislator didn't predicted specific law for it. The expression of "e-contract" was used in Europe Union regulations on e-commerce for the first time. Similar legal condition was considered for e-contract the same as contracts on papers and documents in the inclusion of these regulations in commercial transactions and there has been no specific definition for e-contracts. E-contract is generally defined as contracts with modern technology instruments such as electronic data exchange network, mail, and web pages in legal doctrines. In contracts signed by these pages, the supply of a property or any kind of services are announced by suppliers of the internet, electronic or written form of image and content required in the circumstances to require or invitations. Buyer asks by connecting to the network or its acceptance. Actually, parties will is transmitted by supplier exchange network.

Some legal scholars have defined this e-contract as: "Electronic contract is an agreement that the parties accept the proposal and open international telecommunications network by means of audio and video that can be alternative." this definition just is about the general manner of acceptance and didn't refer to its associated effects of exchange offer and acceptance. Some other legal scholars defined e-contract as "a contract to accept using international communicational networks and exchange e-data to create contractual obligations." (Motahari, 2008) or in another definition: "e-contract is totally or partially contracted by computer networks communication (internet space)." Therefore, e-contract in inclusion commercial or non-commercial actions associated to electronic acceptance includes various e-transaction aspects such as the supply of goods and services to the invitation to enter into contracts, purchase orders, electronic buying, electronic invoices, and payment order that each one may be a type of will or associated effect in electronic environment. The objective of this research is studying e-contracts in Iran law.

* Corresponding author: Abbasi@gmail.com

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2. Materials and methods

Generally, legal relationship in internet environment particularly contracts along with principle of party autonomy and freedom of contract is not function of a specific type as long as not to be opposite of parties laws. It means will for contraction is from satisfaction regulation and people can sign any contract in law framework. In terms of contracts that are legally function or official written form, these contracts face with security matter and structural obstacles for not proper condition or lack of situation of official signing formality such authorities or securitized and enshrined it in the Official resources records, such as contracts of purchase and sale of immovable property. However, solving this problem and bringing reliability of contracts are dependent on specific legal formality to make proper structure of related specific legal regulations that needs government active role in this matter. Providing a certificate of authenticity of signatures or authentication formality transaction offices of the authority need technical mechanisms and adjusting related legal authorities.

The contract parties can verify their signature by referring to electronic signature certification service providers, in writing their agreement with the reference electronic signature according to writing form of contract in Iran and most countries of the world. Although, the technical and legal conditions haven't yet been provided for official contracts such as contracts of purchase and sale of immovable property in the electronic environment. According to e-communicational technologies, the e-contracting form isn't steady, but its significant form in internet happens in the following three ways:

2.1 Signing Contracts by Website

Website in its electronic form is considered as display face of showing images, virtual writings, printing, etc. and their transfer. The website owner is generally the good provider or specific services for informing, advertisement, or e-contracts. Therefore, in e-contract through websites, clearly one party is trader or in charge of business. Today, more than thousands of websites are in internet as virtual business centers. Their customers find them according to their internet addresses. Customer can accept or confirm his will just by several clicking on terms of "I accept", "I confirm" on the mentioned pages and contract with another party. Of course, this depends on the methods and the sequence of offer and acceptance between the parties in symmetry. If the existed regulations in website are considered as invitation, customer can buy or demand for a specific service by electronic announcement. The common regulations and previous agreements among parties through the acceptance concept has important role in discerning invitation from each other.

2.2 Signing Contracts by Email

Email is considered as electronic expression of the traditional mail. Data communication by email is not usually the simultaneous relationship. Therefore these contracts can be considered as corresponding contracts and related regulations can be executed for them. Signing contracts through mail is considered as contract among the absent of a meeting similar to remote common contracts. In this regard, there is no difference among electronic contracts and contracts concluded by mail, by fax, traditional mail, and telex according to general law doctrines.

2.3 Signing Contracts through Data Exchange

Inn this type of contract, human element doesn't have direct physical interruption in contracting technical operations, because the contract parties arranged transaction and contract previously and replaced the necessary orders such as goods orders or services, their acceptance, or paying manner, price, etc. in internet. Therefore, according to the planned data of internet, the parties automatically accept he determined subject electronically. In other words, contracts with automatic data transfer in computer are function of the mother contract which was adjusted all its regulations in electronic environment previously.

2.4 Signing Contracts by Virtual Presence in Electronic Talking Room

In indirect contracts, such as corresponding contracts, parties have no physical presence when the contract was concluded in order not to effect on each other's characteristics by mental and psychological relationship. However in contracts with voice, image, and direct intellectual relationship between parties, the near relationship similar to virtual relationship is made. Actually this intellectual or direct metal relationship can be simile as a meeting and the recognized authorities can be considered the same as physical meeting.

Contracts are based on the principles of mutual commitment and adherence to the terms of the contract and meeting authorities is considered exceptional. Therefore, existence or non-existence of meeting authorities is hesitated. The principle is having meeting authority. (Katuzian, 1992) Therefore, the order of meeting authorities isn't adapted with e-contracts unless the legislator determines the authorities explicitly.

2.5 The Subject of E-Contacts

The subject of contract according to being electronic doesn't have specific features than traditional contracts for being in electronic environment. Therefore, the contract parties don't have limitation in law framework for selecting subjects according to principle of will freedom. The e-contract subject according to its features is divided to three types:

- A) Selling goods (in these contracts, the product is carried out outside the electronic submission obligations and in accordance with the general rules of play. But electronic manner may be paying the price)
- B) Providing services (such as bank services, airlines, etc.)
- C) Selling digital products such as book, articles, films, or electronic texts. In these selling, signing contract and its role are all done in electronic environment, the digital product is sold by permission of seller and installing a software of contract subject on customer computer and in return the price is paid electronically.
- D) According to article 6 of e-commerce, three cases can't be considered as e-contract subject including:
 1. Immovable property ownership documents

2. Pharmaceutical sales to final consumers.
3. Prohibiting announcement, notice, warning, or other similar phrases from buying particular recipe for goods exported or using specific methods for the acts or omissions. The reason for this exception may rooted from this probability that legislator didn't mentioned the data message as written judgment, because according to the stated article, "whenever a written s necessary by law, the data message is in role of written, unless in other cases...." In addition, according to article 33 of the mentioned law, sellers, and service providers in r-contracts should give necessary information at least the minimum information which is effective and necessary to make decision for consumers to be able to make decision to buy or not accept the product that is mentioned in clause 6. Of course the exceptions of the mentioned cases are stated in article 6 of e-commerce law was criticized by law doctrines about the subject of e-contract, because the legislator didn't remove the legal and technical obstacles of the mentioned cases and didn't predict the probability of providing legal condition to use these cases by e-contracts. (Elsan, 2005)

2.6 Parties in E-Contract

Principally, two sides of interaction are at least required for the formation of a contract. In signing e-contract, contract are signed usually by electronic devices that human force doesn't have direct intervene in some of them and computer automatically sign instead of them. Therefore, generally regardless of the formality of electronic transactions, the parties' intention is assumed in each element of contract. One of the most important difficulties of an e-contract is non-provision of necessary environment for common information of each party about real characteristics and familiarity to sign contract. In this case, each party should be satisfied with it and proof of the non-validity of electronic contracts will be on the plaintiff for difficult event and one of the parties.

As it was mentioned above, data message includes stating intention like other attributable reasons in claim and its non-validity is provable by other reasons. According to article 12 of e-commerce, "reason and document in claim may be in data form and the proving value (data message) can't be rejected since it is one of the most principal element of validity in any court or governmental administrative according to the present evidences.

According to e-commerce law, the presence of main origin, addressee, and data exchange among them is necessary to sign a legal relationship in electronic environment. However, according to clause B and C of article 2 in e-commerce, the aim of saying parties is not including a person acted about data message at all. In addition, the legislator limited the attributable matters of data message to main origin in two cases in this law. According to implying in other cases of data, data message won't be attributed to main origin. The data attribution cases to main origin according to the mentioned law includes: "A- If that was sent by main origin or in change a person who was authorized by main origin to do so. B- If the information system is programmed by main origin or or automatic in change case is sent" Therefore, in e-contracts with automatic signing, computer is a controlled instrument and under the will of parties.

2.7 Signing E-Contract

According to article 190, the parties intention in the most principal law for contract validity that parties should have efficient condition. Moreover, contract validity needs providing other conditions such as capacity of the parties, determination the subject of the contract, and legitimacy. The originality of contracts is satisfaction of parties, using proper devices to declare their demands that the most popular ones are the common words or actions showing satisfaction of parties. Announcing intention is possible by writing, because writing is considered as words. According to article 191 of civil law: "contract is signed by intention of thing implying the intention and will." Therefore, the legislator didn't limit intention to a certain device. In this regard, this device is dependent on something implying on intention. This case is true also about e-contracts. Therefore, by real intention in e-contract, the electronic structure of a declaration of intent involves its special features; although, the intrinsic validity of e-contract is protected and respectable by declaring parties intention. However, the form and declaration of e-contracts should be known and supportable according to law and adjusting legal support, balancing the the interests of the parties, and privacy policy. Therefore, contracts by electronic means according to its structure include agreement forms that the parties can agree to previous agreements signed himself to a formation; however, this matter doesn't have legal necessity at all and it should be noticed that, according to article 6 of e-commerce law, when a writing is legally needed, the data message (that is the same as legal condition of declaring intention of sending and receiving by electronic instrument) is sentenced as writing. Therefore, according to legislator, e-data, except the mentioned cases, is considered as written contracts in general law, and when it gets the written form following contractual law, its signing by electronic instrument will be efficient. Of course, an important point in written contracts is that they are both parties intention is so important in sign. Provisions of electronic signature and its legal validity remove an important defect of electronic contract.

2.8 Electronic Demand

Iran legislator predicted specific regulations in e-commerce to support consumer rights in e-contracts. According to article 33 of the mentioned law, the good ad service providers and sellers are obliged to offer effective information on decisions before signing contracts. By deducting on this article, it can be claimed that the electronic demand should include all effective information on decision making and acceptance of a demand.

Electronic demand is principally in data message form that has ability of changing to understandable written texts. In e-commerce law of various countries and also in Iran e-commerce law, the e-data message is known as valid intention declaration. According to article 2 of e-commerce law, the data message is processes by any sign of event, information, or conception by optical, electrical, and modern technological devise of producing, sending, storing, and processing information. Therefore, electronic demand in data message form makes a message based on intention by internet or new informational technologies and sends or receives it. In Iran e-commerce law, implying clause B of the article 2 in electronic technology conception electronic demand is called "main origin". Third, According to this law, the main origin is the main root or data message that is produced or sent by data message, but it won't include people act about data message." Since the electronic demand aspects lose the importance of demand place, electronic demand goes beyond boundaries and gets the meaning of global trait. However, the maker means main origin can limit its demand to a specific country or geographical region

or effect of demand that is its commitments to deliver goods or services to specific regions or countries. In contrary, the traditional demand is mostly limited to region, city, location, and country according to place. Fourth, electronic demand in internet environment is actually done by intermediaries of producing and sending demand. This intermediary provides e-services. Therefore as soon as sending the demand, the demander not become legally effective, unless the order of producing and sending it published by internet service providing intermediaries until demand gets legal form. Of course, demand may be damaged out of internet environment and intention of demander or by email. In this case, the demand is cancelled. (Sanderson, 1995)

2.9 Electronic Acceptance

Electronic acceptance in signing contract is stated as intention in adaptation with another party's demand. In other word, accepting includes unconditional acceptance of the offer to sign contract (Katuzian, 1985)

The consent of the demand provisions in the electronic environment is called electronic acceptance. According to article 26 of Iran e-commerce law, sending data is valid, when an informational system enters out of the origin or its deputy's control. According to contents of this article, data message in addressee's acceptance is valid, when his computer informational system is goes out of control of acceptor and enters to the demander informational system. Some authors know sending and receiving intention of electronic acceptance as e-contract signing time. (FeyziChekab, 2004)

Acceptance should include accuracy conditions and certainly its legal effects besides being expressed in external device. In addition, accepting intention should be announced in long-term. If acceptance is along with demand and free of defects in demand provisions, the contracted will be signed.

2.10 Determination Time and Place of signing E-Contract

Four main policies have been known about determination time and place of signing e-contract including time of acceptance announcement, time of sending announcement, time of receiving announcement, and time of demander awareness announcement. In Iran civil law, article 191, "a contract is signed by condition of implying on what is intended." It is mostly adapted with extensive conception of acceptance announcement (Ghasemzadeh, 2006). However, some authors of civil laws knows acceptance sending announcement mostly based on logical and practical aspect. (Safaei, 2007; Shahidi, 1998)

Therefore, according to legal aspect, contraction signing time is addressees' acceptance announcement time implying to demand according to civil law.

The e-commerce law predicted specific regulations in this field. Iran legislator determined the accomplishment place and e-contract acceptance according to article 29 of the mentioned law. According to this law, if information system establishment of sending data and receiving location data is the same, the legislator predicted 3 choices in this regard. (FeyziChekab, 2004): first choice: if the parties have not agreed otherwise, the data message, place of business, or working principle place of business or work as well as construction and location data message is addressed. Second choice: if there are many working places or main origin places, the nearest place to the transaction, under the condition of having validity, is sent; otherwise, the main place of company is the same business or working place. Third choice: if the main origin or addressee doesn't have business or working place, their legal residence is criterion. Therefore, in e-contracts, determination place and time of acceptance of demand has the meaning of acceptance or sending it according to article 29 of e-commerce. As it is seen, legislator limited place of signing contract legally and explicitly. After signing e-contract, sending or receiving locations, according to acceptance electronic contracts will be in agreement of the parties, place of business or employment, enterprise, and principal place of residence law, respectively. Here, role of signing e-contract time in determination contract place loses its importance by conscious or legal determination of signing place.

3. Discussion and results

3.1 The Characteristics of E-Contract

The intentions electronic declaration is on type of signing contract with no contradiction with nature of principles accuracy. The specific regulations have not been predicted in civil law or any specific laws for e-contract. However, the main characteristics of electronic transactions can be determined by inference and argument of the rules and principles governing the law of contracts, compared to the conclusion of these contracts with traditional contracts and reflecting on the nature of electronic tools and environment. Determination these characteristics lead to better cognition of legal aspects of e-contract and accurate analyses of the resulted effects.

3.2 Ad-joint Being of E-Contracts

Contracts that are signed in electronic environment f websites are considered as ad-joint contracts, because good seller and buyer tend to buy and accept it just in the declared conditions. There is no extra place to talk about new conditions or negotiations between buyer and seller. However, seller provides various choice for selling and various methods to pay the price buyer that buyer select choice according to his/ her will and suggest it as demand to seller. In contrary, e-contract by email is open for negotiation and moderating condition of transaction in advance of contract and these contracts don't have ad-joints aspects.

3.3 Non-Physical Presence in E-Contracts (Remote)

Physical presence of parties is not necessary. Parties reach their intentions by various ways to each other and sign contract. Principally, the contracts with no physical and direct face to face presence in meetings and no certain physical obstacles or mental relationship prevent their reciprocation is called remote contract. The main characteristics of e-contracts are to be signed in electronic environment without physical presence of parties (Khomami et al., 2010). Even presence of parties in electronic environment is not real. Therefore, e-contract can be known as set of remote contracts. (Anthony et al., 2002) Yet, e-contract can be called contractual ones for quick data transmission in internet environment. (Cloninger et al., 1994) of course, consecutive order of demand and acceptance in e-contracts depends on e-relationship manner and time symmetrical degree to demand. Nonetheless, e-contracts have some unique problems among absent of a meeting.

3.4 The Satisfaction Principal of E-Contract

The necessity of obeying a specific form of formality is not condition of contract accuracy principally in Iran law. Since the Iran legislator in article 191 explicitly refers: “contract is signed by satisfying on implying the intention,” therefore, the contract parties are free in selecting their intention accouchement. This freedom in intention announcement is true in nature of e-contracts, too. The difference is that the device of signing e-contract imposes specific technical operations on intention announcement in its structure nature as electronically, because intention announcement as data message, sending, and acceptance electronic methods is considered as usage of internet electronic devices. Thee satisfaction principle of contracts and similar e-contracts prevents from parties agreement on determination specific form for reciprocal contract, because according to explicitly of article 10 of civil law, “the private contracts is verdict than who signed it, if they are not the explicit opposite of law.” Undoubtedly, the satisfaction facilitates contracts and legal interactions among people that cased reliabilism and spread goodwill in transaction. Nonetheless, on the other hand, the satisfaction principle of contract provides condition of exploitation from this reliability besides the problem of proving expression of the will.

3.5 International Aspect of E-Contracts

The e-contracts have trans boundary aspect for international validity of internet network, because internet environment is a free environment for all, regardless of boundary and specific geographic location and enter it possible for each person. As the legislator referred in interpretation of e-commerce law to necessity of international characteristics. According to article 3 of the mentioned law, “in interpretation of this law, the international character must always be noted the need to develop coordination among states in its application and the observance of good faith.” In this regard, it can be stated that Iran legislator had paid specific attention in the legislation to the international e-commerce, electronic contracts in e-commerce law effectively. Therefore, the provisions of the UNCITRAL Model Law e-commerce was developed and prescribed in accordance with the provisions of the basic concepts. Of course, it is part of the laws relating to international electronic transactions in the same situation that are expected in the international practice of law issues, because Local and domestic laws to regulate electronic trading on the international dimensions are not efficient and adequate to resolve the legal effect of international legal relations in this sphere.

Conclusion

Most popular transaction in electronic environments refers on buying and selling aspects of goods and service provisions. The main commitment of consumers as one party of e-contract is paying the price of good and service. One characteristics of e-contracts is payment being electronic. Even electronic payment in some cases is considered commitment. Moreover, time is practical implies of customer acceptance intention. Today various electronic devices have arrived in transactions that have become alternatives of cash and checks.

Generally, contract with non-electronic environment and device is not called e-contract. Hence, e-contract is not different with non-electronic contracts according to parties and content, and subject. The difference of e-contract from the non-electronic contracts is its signing method or environment as using software and hardware devise to provide electronic environment makes specific place and physical limitations in its technical framework and consequently makes specific technological facilities to sign e-contracts.

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