Comparative Study of the Commitments Contract Parties the Sale of Electronic and Traditional

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ABSTRACT: E-commerce involved several activities so electronic exchange of goods and services, instant delivery of digital content, electronic funds transfer, Forward mail, business plans, joint design and engineering, Sourcing, government procurement, direct marketing and after-sales service. We know that e-commerce world is spread in all aspects. And electronic contract has the most important in trade. This study named as comparative study of dealers in electronic and traditional obligations sale. It used descriptive-analysis and comparative approach to evaluation electronic contract and traditional contract. Findings investigated that creation of electronic contract and obligations of the parties made a new concept of trade based on contract in the virtual space. There are not any differences between traditional and electronic contract. The application of electronic contract is based on the information system and data exchange message. This information is based on material of willing and content of electronic production that are traded in electronic contract. Electronic contract are a type of documents and electronic assign is the critical principle in this contract. Ejab and acceptance are material of payment and other legal activities so barter determined with employer and do with computer based web. It needed to clearly programming, termination, Aqalh, clearance, change commitment and etc.

Keywords: Selling Electronics, Traditional Sale, Electronic Contracts

Statement of the main problem

Internet environment is one of the most modern instruments for contract and fulfilment of the obligation which results from it, especially in trade deals. The nature of electronic contracts in relation to credit, form and assimilation of it with rules and public regulation of civil rights regard to contracts, is a new era which its recognition, investigation of relationships and legal works of it, is dependent upon structural form of electronic environment and innovative concepts of known communications. Considering to this, we can say that structure of the form and technical features of electronic environment, has created a modern and extensive evolution in various aspects of legal contracts. This will potentially affect concepts of contracts (Maqami Nia, 2012).

In law, advent of various concepts and relations based on different applications of internet has doubled the need of recognition and investigation of new communicative electronic devices in legal communications for creating a balance between personal benefits and support of their rights.

Today, Electronic rights considering to their low sources, is not known sufficiently, so publishing Jurists' thoughts in various ways like descriptive, review, analytical and survey have significant role in expanding electronic and creating rules and performing suitably to it. Electronic rights have various pros which each of them, require lots of researches.

For forming a contract, it is mandatory to have at least two sides. in electronic contracts, usually it is done by the help of electronic tools which in some of these approaches, human force does not interfere with it directly and instead of their will, computers work automatically. Therefore in general, no matter of doing electronic transactions, it is done by supposing that both sides agree upon it. One of the most difficult electronic contracts is non availability of required situation for each of the sides from their actual personalities. In this case each side is required to satisfy with the provided information and in case of verifying non credibility of electronic contract for each of the sides, claimant is responsible for it. As have been implied in aforementioned discussions, message which signifies expressing the will, like other reasons are attributable for lawsuit, and non credibility of it can be proved by other evident. according to article 12, rule of electronic dealings, " documents & evident of a claim may be in form of a
message and in no organization can reject the value of proving one of the main elements for credibility of contract, just for form (rule of electronic transaction, approved 2003).

Most of frequent transactions in electronic atmosphere are taken for buy and selling goods. The main commitment of consumers as one side of these electronic transactions is buying the purchased good or using the provided services. One of the features of electronic transactions is paying the purchased goods online. Even electronic payment, in some cases besides of being considered as performing the commitment, justifies practically for costumer will. Today in electronic transaction, different tools have been appeared which is a replacement for money or cheque (Maqami Niya, 2012).

Commitments of both sides in electronic contracts can also be investigated within electronic contracts itself. This study investigates form and nature of electronic contracts and commitments of both sides, considering to the rules and conditions.

Tools for doing the commitments in electronic and traditional sales

Form of contract

In general, Form of contract in virtual network, is similar to actual world, and in this respect there is no vast differences between these two, therefore jurists avoid of define it separately.

But according to article 11 of UN for selling contracts, it is said like this: "it is not necessary for selling contracts to be written or proved, and in form it is not required to follow any other requirement.

Existence of contract can be proved by evidence (Vice Chancellor for Research and Education of Judiciary, 1389).

In general there are four ways for making a contract on the internet:
Making commitments and electronic contracts by website
by electronic mail
by transferring data
by virtual presence in the room of electronic speech

Commitment aspects in electronic and traditional selling

Subject
Selling of goods
Providing the information
Promisor
Time of sending message
Place of sending message

Factors of doing traditional and electronic selling

The realization Factors electronic and traditional selling
Credit of expressing will

People for expressing their will use gestures. What is important in transferring thoughts is being understandable, because using a specific form in communicating is affected by conditions of people. In science of law it is like this: expressing will and purity of contracts is not dependent upon form of criterions. Investigation of the truthfulness of contracts in law shows that making a contract is done by agreement of both sides and following certain rules or specific expressions is not the requirement for commitment. Article 191 of civil law "merely being economized of to something which justifies of it" is enough for making a contract of Rules and legal procedures. Although the overall rule is that there is no a special form for expressing will and making a contract, but sometimes by agreement of both sides or law it is necessary that wills be shown with special form to be origin of work. In these series of contracts which are called "formal contracts", agreement of two wills is valid in a case to be special in a form; an agreement which would be formless, is null and void (Ahani, 2004).

Requirement and agreement

In traditional and electronic selling, will of two sides is shown in the form of requirement and agreement

Requirement

Requirement is the will of someone which calls another one for making a contract; announcement of an intention for making a contract with this understanding that acceptance of other side will create a mandatory agreement (Katouzian, 1380).

Someone who requires for, in case of another side agreement, requirement is visible" (Fijan, 2010).
Electronic requirement is not different in its legal nature. Requirement as a written will, firstly by diversity of devices for transferring it, must be warrant of basic elements for making a contract. Electronic requirement in terms of the nature of communicative devices have special features than traditional requirement. For example, expressing the traditional requirement is possible through every device. But electronic requirements that are limited to messages by internet service providers are converted to text and images through internet pages. Also addressee of traditional requirement is not limited to certain people. But in electronic requirement, users are people who by using computer can enter to electronic atmosphere and by electronic requirement and its conditions be aware of internet pages (Maqami nia, 2012, 13)

**Agreement**

Agreement in contract as expressing is a will which is proclaimed in accordance to will of other side. In other words, agreement consists of accepting without any conditions offered for making a contract. Proclaiming the satisfaction in electronic atmosphere is called electronic acceptance. Electronic or non-electronic of agreement, doesn't make any damage to the nature of will and ways of justifying for creating legal communications. Electronic agreement doesn't have special status in expressing the nature of will in contracts. But in terms of form and way of expressing will we can observe a different status in accepting electronic. Usually, accepting electronic is only possible through by clicking on the electronic express, which indicates of agreeing on the electronic conditions (Maqami niya, page 91 & 92).

**CONCLUSION**

Electronic transaction on the process and transferring electronic data includes: text, voice and image. Electronic transaction have various activities which are: Electronic transaction of goods, instant delivery of digital contents, transferring money electronically, transferring stocks electronically, electronic waybill, commercial plans, common design and engineering, source finding, governmental purchasing, direct marketing and after sale services.

In general, In view of contract in virtual network, it is similar to actual world, from this point of view there is no significant different between these two. Therefore jurists prevent of defining it separately for electronic deals. For selling, electronic selling agrees upon traditional way.

According to features of electronic transaction, we can say that electronic contracts are based on information systems and transferring data which these data express will or contents of the electronic product which can be dealt. Electronic contracts are potentially among written contracts and electronic signature is known for a primary expressing of will in electronic transactions. This must have been subset of civil right rules which consists of the comprehensive electronic transaction.

An important evolution which is done in the transactions by using computers and information systems is using software for receiving and providing order, also receiving and paying goods that are negotiated and measures like this. In traditional ways of transactions, there were never facilities for transferring like posting, telephone, Fax and so on. Actually, in this way, accepting and requiring, in some ways is done by performing commitment and payment and other legal ways of planned ones by employer. Even it is possible that by better planning, annulment, clearance, transferring the commitment and requirement and so on is done by device.

**Problems, challenges and shortages**

Electronic contracts are known as contracts which abide general rules. verbal Adaptation of the legal rules of contracts with technical concepts of electronic, sides volunteer in supporting goodwill and supporting balance of themselves in contracts by internet, conditions governing on various ways and performing commitments by internet are among the issues that made the electronic contracts hard to believe. One of its main reasons goes back to various concepts and electronic rules governing electronic contracts, which was with no background and social and economical needs and have a relatively negative value in legal issues. Although electronic rules with its special contents is not in contradiction with civil right but doesn’t have much integration with formative and technical concepts like civil rules and little penetration in comparing this rules with legal contracts in electronic. Problems that coagulation, identification and authentication have, in other ways is also more or less available. However, as a means of sending and receipt of offer and acceptance of information systems facilitate this process and automatically transfers the recording process and provide evidence for binding. As a result by proposing that "in this trade, rules which are evident for traditional contract, is reshaped" have no legal justification. Despite similar
electronic contracts and traditional contracts in the most rules governing the emergence and development of e-commerce, brings a new challenge in the current legal contract. In addition to the ambiguity of electronic interactions in a general sense, in the form of contracts, in some aspects of the law are subject to uncertainty and indecision. Despite all efforts at the global level to adopt laws and regulations in this field, still, the capacity and authority to carry out the transaction and detailed analysis of contract law are not analyzed in a good way and there were some problems detected from them. Law of e-commerce, despite its long name, not only opened a knot of problem and legal uncertainties but in some cases has accepted the state regulations, absolute, abstract and incomplete shortcomings. Nevertheless, the analysis of general contract law can be applied to the extent that the two main objectives of e-commerce, namely the conflict of quickness and inexpensively be not in contradiction.

Suggestions
Considering to the fact that much of the issues related to civil contracts is in balance with commercial contracts and electronic atmosphere and need rules and overall conditions, which it’s configuring will cause to the multiplicity of its concepts and limitations of comparing legal rules with electronic contracts. Therefore it is recommended that all of the issues and electronic transactions be formulated by specific rules.

In relation to different aspects of electronic deals, there should be a comprehensive rule which be able to eliminate some challenges and problems in this area.

REFERENCES
Ahani B. 2004. Electronic contracts, family rules journal, 9th year, no 34-35
Education and Research Deputy of the Judiciary. 2010. rules of electronic law, Jungle publications, page 227
Electronic rules approved on 2003
Maqami Nia M. 2012. Ways of electronic contracts and its features, civil rights scientific- research based journal, 1st period, no 1, page 87.