

**DOI: 10.7596/taksad.v6i1.750**

**Citation:** Karimi, A., & Akbari, M. (2017). Basic Conditions of Validity of Electronic Contracts in Iran and UNCITRAL Model Law. *Journal of History Culture and Art Research*, 6(1), 392-418.  
doi:<http://dx.doi.org/10.7596/taksad.v6i1.750>

## Basic Conditions of Validity of Electronic Contracts in Iran and UNCITRAL Model Law

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### Abstract

Diverse activities such as electronic exchange of goods and services, instant digital content delivery, electronic funds transfer, electronic stock exchange, electronic bill of lading, commercial projects, common engineering and design, sourcing, government purchase, direct marketing and post-sales services included in e-commerce field. Due to the increasing spread of the electronic world in all aspects, electronic contracts, in turn, was of great importance and made significant contributions in business contracts. The present study aims to investigate the concept, fundamentals and history of electronic contracts referring to UNCITRAL Model Law on Electronic Commerce and Electronic Commerce Act (1996). The results indicate that in terms of the conclusion and obligations of the parties, contract in cyberspace in general is similar to the contract in the real world and in this respect, there is no major difference between these two contexts. Potential electronic contracts considered as written ones and Electronic signatures recognized as valid as the basis of the validity of the will in electronic trading.

**Keywords:** Contracts, Electronic, Transactions, International Trades.

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## **1. Introduction**

Electronic contracts considered as one of the most modern methods of contracting, especially in the field of commercial transactions, as stated in paragraph 1 of Article 12 of the UNCITRAL Model Law: “As between the originator and the addressee of a data message, a declaration of will or other statement shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the form of a data message”. Although these types of contracts have been accepted, there are some unclear points including; the electronic contracts benefit from the same nature of traditional contracts, but the differences could be found in terms of form and validity of electronic contracts based on general rules and regulations of civil laws considered as a new topic which identifying and studying the relations and rights arising from that depends on the formal structure of the electronic environment and communication technology concepts known in this field. But here the question arises that whether the effects of electronic contacts in Iran are as same as the ones which are proposed in international trades or traditional contracts?

The laws governing the contract and how the law conflicts are being resolved in electronic contracts considered as the issues in comparison with traditional ones. According to the general principles of the traditional conventions on the issue of conflict resolution, we can benefit from them as the general principles in electronic contracts, but due to the procedures governing these types of contracts and certain aspects of it in some parts, it can be said that traditional rules are not responsible for conflict resolution and have to be investigated based on its specific features. For example, Article 27 of Iran Electronic Commerce Act which is the translation form of Article 15 of the UNCITRAL Model Law regarding offer and acceptance states that: “Unless otherwise agreed between the originator and the addressee, the dispatch of a data message occurs when it enters an information system outside the control of the originator or of the person who sent the data message on behalf of the originator.”

Since Electronic Contract concluded in cyberspace, the reasons have to be changed in compatible with this feature. Electronic contracts considered as a part of e-commerce; so as today many businesses are done electronically, electronic contracts are of great importance. Although the principles governing traditional contracts such as the capacity and legitimacy of the transactions... must be observed in electronic contracts; when these types of contracts are being formed, certain principles of them must be followed as such they could be effective among parties.

To deal with disputes arising from electronic contracts, special references are made in international practice. Although special investigation branches have been created in Iran to address disputes arising from electronic crimes, special civil courts in this category of contracts have not been established for electronic ones. It seems that Article 44 of the Electronic Commerce Act directed the settlement of disputes to Public Juridical Authorities, but creating specialized courts within the scope of these contracts will not be in conflict with the above-mentioned law and we will be in line with the global trend to investigating electronic contracts.

Electronic contract is one of the issues which must be described as one of the imported components to Iranian legal system, as in many ways; Iran e-commerce law accounted as a translation form of UNCITRAL Model Law. At first glance; some inspired by the common law system is visible in the Model Law which has been entered into Iranian legal system as an act, and although the combination of these two legal systems facilitate and integrate the rules governing electronic contracts in Iran and other legal systems and international trade arena, they have been faced the problems too, including the lack of a complete transfer of the sample law to Iran law of e-commerce, failure to comply with some provisions of the sample law with Iranian law, and the conflicting regulations in traditional legal rules and electronic contracts and the other factors which have to be studied more accurately with a proactive approach.

Electronic contracts have specific characteristics; as unlike traditional contracts, electronic ones can be created as data message in personal computers of each party. In other words, in traditional contracts what the parties agree orally or in written form is along with creating a new legal nature, but when electronic contract is created, one of the points have to be considered is synchronization of determination and the establishment of a legal nature. As it is possible that by declaring his will, a person establishes a data message on his computer, but if the mentioned data message has never been sent from his personal computer or the receiver has never received that, what should be done here? In such cases he has to be referred to particular electronic commerce law, and in the absence of specific provisions referred to general laws.

In addition to the ambiguity in the proof of electronic contracts, traditional and electronic contracts have significant differences in term of affirmation, and it has to be investigated that whether the electronic contracts that have been established in the proof of evidence are valid or not? In traditional contracts, principles governing the proofing aspects of contracts have

been established as a proof in law either through intuition or otherwise. Now this question has to be answered that whether the principles governing the traditional contract of proof will govern the electronic ones too?

In creating electronic contracts, the originality of data messages as well as sending data messages from originator accounted as limitations that should be considered during the development of the electronic contract, and in this respect they resemble the formal contracts which not only are not enough just for satisfaction and will declaration, but also should be such that the law could identify them. As in these cases the law will determine how to declare the will, this issue can be controversial.

## **2. The Concept and Nature of Electronic Contracts**

Contract is equivalent to the French word *Contrat* and refers to an agreement between two or more people, especially something that involves legal interests (Firoozi Tabar, 2016).

Contract literally means: “Concurrence of two or more people, conventions, treaties, agreements, political treaties and political ally” (Moein, 2004: 2/2652). In other words it literally means: “Convention” (Jafari Langroodi, 2005: 532). Another definition is as “the literal meaning of the contract including hereditary, covenant, financial, non-financial, reciprocal and non-reciprocal contracts, and of course the agreements which are extended to cancel the existing effects”. The Article 754 (Civil Code) has been used in this respect too (ibid).

### **2.1. The concept of electronic contracts**

Electronic contracts defined as any contract (specified and non-specified) which is signed by electrons through electronic intermediaries. It means that the will declaration is done electronically in intangible (virtual) context. Then it can be said that electronic contract is an agreement and cooperation among two or more wills to create electronic legal effects.

The so-called electronic contract applied for the first time in Official Journal of the European Communities. In commercial transaction section, it has been pointed to the same legal status of electronic contracts to other traditional paper-based ones and no specific definition of electronic contracts provided. In the legal doctrine, electronic contracts generally defined as contracts concluded by using new electronic tools such as electronic data exchange network,

e-mail and Internet Web pages. In contracts concluded by these pages, the supply of a property or any type of services is presented by the network provider through an image or e-mail, furthermore the conditions and requirements will be announced. Buyers connect to the network and express their offer or acceptance electronically. In fact, the parties will be exchanged through the network provider.

## **2.2. Electronic contracts and electronic exchanges**

We can find the difference between electronic contracts and “electronic exchange” (electronic transactions) which is commonly known in the literature by clarifying the concept of electronic contracts. By the U.S. Utah legal definition; electronic exchange is “an action or a series of actions which have been done between two or more people electronically regarding to business matters or government property” (Uniform Electronic Transactions Act, Article 2) thus, the above-mentioned term includes a general concept of electronic contract, as many electronic exchange of information which is done via the Internet is solely transmitting information and any data message could not lead to legal effects (Reed & Angel, 2003).

So, although the two terms are sometimes used interchangeably, what has been focused on in this study refers to those transactions which followed by legal effects. It should be noted, other terms such as "virtual contract" and "online contracts" are sometimes used in concept of electronic contracts and the same meaning is applied for them.

In addition; in Iran Electronic Commerce Act; which provides a set of rules and regulations regarding electronic transactions, definitions allocated another term as "distance contract" which defined as “Offer and acceptance between the supplier and consumer of goods and services using telecommunication device” (Paragraph S, Article 2; Electronic Commerce Act). However; the term has been used nowhere in the above-mentioned law and it seems that final terms have been made regardless of removing distance contract term. Distance contracts have been used in Article 37 and 38, so to not cancel the legislative act; the “distance contract” and “remote transaction” have to be considered synonymous and recognized as electronic transactions supervisors.

### **2.3. The nature of electronic contracts**

Given the dramatic developments in information technology trade and its two features of ease and speed, there's no necessity for businessmen to present in a meeting to discuss and exchange the information on business operations and contract, but they can transfer the comments and suggestions just through innovative electronic technologies. The other side can answer in the same manner. Now, if the contract concluded between the parties in this way; it will be named "Contract par correspond" (Amiri Ghaem Maghami, 2000: 238)

Contract par correspond is used in contrast to present contracts. Express contracts don't necessarily points to physical presence of both parties in the meeting, but it refers to contracts which are concluded through oral conversation whether in a meeting or in two different places (Jafari Langroodi, 1991: 155). For example, in telephone contracts; although the parties are not present in the meeting, in terms of time, this contract is not consistent with Contract par correspond, but the same contract will be considered contract par correspond in terms of the place (Amiri Ghaem Maghami, 2000: 241).

So, the contract par correspond refers to the one which its offer and acceptance will be done without any dialogue and negotiation through mail, telegraph, messenger or telex. The contracts in which the parties don't use oral conversation have been named "written contracts" too (Jafari Langroodi, 2000: 2585).

Internet contracts can be categorized as contract par correspond, firstly because they are not concluded by oral conversations and mediated through electronic intermediaries and secondly there may be spatial distance between offer and acceptance among parties. Although Iranian Civil Code is silent about contract par correspond, authenticity can not be questioned, as it is accepted by business civil law and evidence of the invalidity of the law can not be found. In addition; in Iranian law, the principle is based on the validity of transactions and contracts between parties unless a proof of corruption reported, and as any reason of invalidity of the contract has not been observed, contracts par correspond have to be considered valid. Therefore, the electronic contracts which categorized as contracts par correspond are true and valid. While the above-mentioned contracts will enhance business relations and will be followed by domestic and international business development, due to the absence of the parties and being unknown to each other, difficult issues and problems may be appeared between the parties.

### **3. Basic Requirements of the Validity of Electronic Transaction**

For a contract to be valid the parties have to meet some basic requirements. Article 190 C.L. identified the following conditions as basic and essential requirements: 1) The intention and mutual consent of both parties to the contract, 2) The competence of both parties, 3) There must be a definite thing which forms the subject-matter of the contract, and 4) The cause of the transaction must be lawful.

#### **3.1. Agreement of two wills in electronic contracts**

To conclude any contract, the contracting parties must have the intention to create a legally binding contract. The expressed intention to bind a contract is also named external will, outward will or intention (Safayi, 2006: 64). What shows the person intention to bind a contract is called offer and acceptance. So any contract concluded by offer (Article 339, C.L.)

##### ***3.1.1. Electronic offer***

An offer is an expression of readiness to do something which, if followed by the unconditional acceptance of another person results in contract. Offer requires no special form, it may be expressed in person or by fax, mail, telephone, e-mail or global network.

In some legal systems it is stated that a move or action that be considered as an offer by a reasonable person will be an offer, even if there will not be such an intention. It seems that the mentioned results are true for Iran legal system too. Since in our legal system; people intentions will be inferred based on their outward actions, unless the person himself/herself proves the lack of intention. However, it will be really dangerous and risky to consider the offer manifestation more important than the real intention for those who are dealing with electronic business; perhaps a weak site notification could lead to unwanted and undesirable contract (Ahani, 2005: 9-11).

Obviously, the electronic offer doesn't differ from traditional contract's offer in terms of its legal nature. An offer as real will has to contain the basic elements to create a contract. In contrast to traditional offer, the electronic offer benefit from some certain characteristics due to its special nature and means of communication. For example, traditional offer can be expressed by any means and conventional operations. But electronic offer is limited to data messaging which have transferred to internet pages and images by internet service provider to indicate the person intention. Furthermore, the traditional addressee is not limited to certain

people. But electronic offer addressees are those who are capable of using internet and are aware of the offer and conditions on website.

Electronic offer benefits from distinct characteristics which can be summarized in a few points as follow:

1- Electronic offer is a type of remote declaration. So to protect and support the electronic offer addressees who are mainly consumers, the legislator has foreseen certain rules which are generally must be considered and included as: expressing the specifications and address of goods and services have to be provided by supplier, determining the topic of the contract and its qualities, defining the prices of goods and services, payment method, the time of withdrawal, warranty and post-sale services. To protect consumer rights in electronic contracting; certain provisions in the law of e-commerce have been predicted by Iranian legislator. According to Article 33 Civil Code, vendors and suppliers of goods and services required to provide effective information in decision-making process before concluding a contract. With respect to this Article, it can be said that electronic offer must contain all effective information required for decision-making and accepting offers.

2- Electronic offers created primarily in the form of data messages that can be converted into written language. E-commerce laws in different countries and of course in Iran, electronic data message known as expression of valid will. According to Article 2 (Civil Law) “data generated, sent, received, stored or processed by electronic means and new information technology.” By using “b” clause of second Article in Electronic Commerce Act of Iran, offeror has been defined as “originator”. According to this law, originator means a **Hata! Yer işareti tanımlanmamış.** by whom, or on whose behalf, a data message purports to have been sent or generated prior to storage, if any, but does not include a person acting as an intermediary with respect to that data message.

3- According to electronic aspect of offer, the place of offeror will not be significant anymore, and electronic offer will be considered as a cross-border universal trait. But the originator can limit its offers to special geographic regions or specific countries, or confine its commitments to deliver the goods or services to specific geographical areas. Unlike electronic offer, traditional one is more limited to specific location, city, region or country spatially.

4- In fact, electronic offer is done through the medium, on behalf of that the offer is generated and sent. This medium provides electronic services. Therefore, the offer will not be in effective legal form, as soon as its emission from the offeror, unless the internet services have commanded on its creation and transmission. In some cases the offer will be invalidated



out of offeror control on the page or e-mail, and consequently the offer will be invalid too (Aldasooghi, 2003: 93).

### ***3.1.2. Electronic Acceptance***

Acceptance literally means accepting and receiving. Acceptance occurs when an offeror agrees to be mutually bound to the terms of the contract (Ansari & Taheri, 2006: 1507). A person who accepts an offer is called acceptor. An acceptance must be absolute and unconditional (Katoozian, 2008b: 69). In other words, the acceptor must accept just the offer and any addition to acceptance will not lead to conclude a contract and makes a new offer.

Acceptance may be explicit or implicit. Typically, the offer addressee expresses his consent verbally, but in some cases the acceptance can be understood through the actions and movements. Generally, the actions are related to fulfillment of obligations such as pre-paid delivery, start and etc. In other words, an offer can be made explicitly by statement, implicitly by conduct or even by silence, although not by itself, and must comply exactly with the offer. Silence cannot be interpreted as acceptance, unless the parties have agreed about the procedure. In addition, the silence could not be understood as an acceptance just by the speaker of offer unilaterally. Just stating that the non-reception of negative answer could be interpreted as positive one, will not commit the addressee at all. Expressing consent to offer contents in the electronic environment known as electronic accept. Whether electronic or non-electronic accept not bring any effect on the nature and the implications on legal relations. In contrast to traditional acceptance, electronic ones don't meet any certain conditions regarding the nature of the will expression in contracts. However different conditions will be observed in terms of form and the way the will is expressed. Generally; electronic acceptance will be accomplished just by click on electronic expression which is based on agreement on electronic offer contents. Typically; the acceptance may be announced through several different modes which are based on offer content; explicitly or implicitly. For example, by paying the price of offer or doing some kind of action and conventional movements would be considered as a sign of acceptance.

According to Article 26 (E-commerce Law); the data message accounted valid when entered into an external information system. According to the provisions of this Article, the data message regarding the addressee acceptance will be valid when the information will be out of control of accepted and entered to offeror information system. Some authors recognize the sending and receipt of electronic acceptance as the time of conclusion of electronic contracts

(Feyzi Chakab, 2005: 431). Acceptance; not only must contain the conditions of will authenticity and be completely legal, but also has to be expressed in external world. In addition, the acceptance ought to be announced in the period of offer validity. The contract will be concluded if the acceptance be in accordance with the offer and be free of any redundant and incomplete provisions.

The electronic acceptance can be announced by any electronic means such as e-mail, filling out the form on web page or electronic payment of sales price, as long as the offeror doesn't condition any certain way of electronic declaration.

Expressing electronic acceptance will be possible in many various ways including; electronic written document and its confirmation, e-mail text which contains a compliance with electronic signature, verbally through speaking rooms, implementation of the software programs, or digital products of internet and installing that on acceptor's personal computer. One of the common methods for electronic acceptance is simple click or double-click on the option word "agreed" which is followed by the symbol set below. In terms of form, electronic acceptance accounted as decisive and clear declaration. Nevertheless, it doesn't hinder the implicit expression of acceptance in provisions, since the electronic device transfers the data messages and there's no space to reason in this form of transfer.

### ***3.1.3. The validity of data messages in creating the legal nature***

Legal actions are those events result from human will and their legal effects depend on the same will, what leads to legal nature is human will. The will results in legal action and legal actions are credit and will not be any legal nature without the involvement of the parties (Shahidi, 2004: 132). Contract is a type of legal action to conclude and achieve the desired effects, the agreement of two or more parties will be necessary. At least two wills will be required to conclude a contract. To make legal effects, the first condition is parties' will, which will be a legal nature after it has been announced. The Article 191 (Civil Law) states: "A contract only becomes complete through the real intention of the contractor, and this real intention must be accompanied by some factor which proves that there was such an intention". Any special requirement has not been confirmed by Civil Law about the will declaration method. So, the will expression will be achieved through any means which can imply that. Furthermore, the Article 193 (Civil Law) states: "A transaction may be created by an act which indicates intention and consent, such as taking delivery or handing over unless in

circumstances excepted by law.” So except exceptional matters, concluding a contract can be achieved just by an intention.

After reviewing the introductory part, a question arises here is whether the exchange of information through Internet and the other electronic interfaces can be considered as a valid method to confirm people intentions in creating legal consequences? If people choose the electronic devices to create the legal nature, will Trading Relations Act recognize their rights and consider it credible?

According to Civil Code considerations and what has been said above, the answer will be positive and an introduction to electronic contract acceptance and validity. However, regarding the importance of e-commerce in today’s world and the expansion of commercial and transactional relations among people on the Internet context, in particular; national and international lawmakers have predicted the validity of electronic contracts.

As stated earlier; people demonstrate their intentions through the words, gestures and written modes, especially in present (Express) contracts in which the parties know each other and can speak each other, special problems have not been observed. Written contracts can be attributed to intended parties through their signature. But it’s a little bit complicated in electronic commerce context, as the parties have no physical presence and even they may be unknown to each other. Following the Article 13 of UNCITRAL Model Law on assignment of data messages, Iran electronic commerce act has established the following rules included in Article 18 to 21 (Civil Code).

UNCITRAL Model Law on Electronic Commerce, adopted in 1996, provides in this regard: “In the context of contract formation, unless otherwise agreed by the parties, an offer and the acceptance of an offer may be expressed by means of data messages. Where a data message is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose.” Obviously; the above-mentioned Article explicitly accepted the electronic contracts and consider them valid and applicable (Vesali Naseh, 2007: 120).

Electronic commerce act; “consists of a set of rules and principles to be applied for easy and secure communication of information in electronic intermediaries using state of the art communication systems” (Article 1, Electronic Commerce Law), has recognized the electronic contracts. The validity of the data messages have been known as the written

message,<sup>3</sup> the data messages have been recognized valid in claims and defenses. Therefore; will be declared via the electronic message is valid as real intention.

### ***3.1.3.1. Offer and acceptance via electronic messages***

Proved that the will declaration through the electronic interfaces considered valid and qualified, or in other words is one of the ways in which the offer and acceptance announced through the data messages. UNCITRAL Model Law expressly considered this issue and provides: “offer and acceptance can be announced through the data messages, unless the parties agree in another way. When data messages used to conclude a contract, contract validity or applicability must not be rejected just because of using data messages.” Iran Electronic Commerce Act, which is a translation version of UNCITRAL Model Law, didn’t provide a definition for offer and acceptance and even didn’t mention explicitly the offer and acceptance. Of course the law draft, before final approval by the Guardian Council following the Article 11 of UNCITRAL model law stated that: “offer and acceptance may be expressed by means of data message” (draft Article 23), and “the offer and acceptance announced through data messages regarding the originator and addressee is valid too” (draft Article 24). The aforesaid Articles have been removed in final modifications.

Although there’s no explicit rule regarding the electronic offer and acceptance, as Iran e-commerce law is based on data messages exchange through electronic interfaces, and according to Articles 6 and 12 which recognized the data messages valid, it can be concluded that offer and acceptance which are mediated through data messages benefit from appropriate legal validity. In other words, digital or virtual nature of parties will be acceptable and there’s no legal prohibition.

### ***3.1.3.2. The regulations of offer and acceptance through data messages***

UNCITRAL Model Law and consequently Iran Electronic Commerce Act have not predicted any special provision on status and conditions of offer and acceptance in concluded contracts through electronic interfaces. But data messages regulations have been discussed in details and regulations of public contracts can be extended too.

There’s no physical presence of parties in e-commerce context, and maybe they are not known to each other. Iran Electronic Commerce Act of Article 18 to 21 following the

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<sup>3</sup> The Article 6 expressed: “whenever a legal written will be required, the data message will be such that...”

UNCITRAL Model Law Article 13 has specified some regulations attributed to data messages as follow:

A. Where the Data Message is Attributed to Originator:<sup>4</sup>

1. When data message sent by originator or by a person who is authorized by originator to do (Paragraph A of Article 18).

2. If data message planned by information system<sup>5</sup>, or automatic authority sent by originator (Paragraph A of Article 18).

Thus, all data messages sent by originator or the computer systems which are sent by originator supervision attributed to the originator and make commitments.

B. Where Data Messages were Considered Posted from Originator:

In two cases, the data message addressee can assume that the received messages are attributed to originator and act upon it:

1. A method is introduced by or agreed with the originator indicating that the "data message" is in fact the same "data message" that was sent by the originator (Paragraph A, Article 19). It may be possible that the originator and the addressee agreed on certain method to the assignment of data message; in this case, the agreement will be considered valid and reliable. Generally, any change and modification in production, transmission, reception, store and process of data message can be reliable based on parties' agreement.

2. The "data message" as received by the addressee resulted from the actions of a person whose relationship with the originator or with any agent of the originator enabled that person to gain access to a method used by the originator to identify "data messages" as its own (Paragraph B, Article 19). When the addressee got the data message conventionally and be legally rightful, then the data message will be attributed to originator.

C. Transmission of Data Message from Non-Originator:

Sometimes the data messages are not transmitted from originator and cannot be attributed to that based on existing provisions. In this case, if the addressee is not capable of proving the data attributed to originator, the received data messages will not be attributed to originator and there's no responsibility towards them. Sometimes the messages may be transmitted

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<sup>4</sup> Originator is the main source of data message, through which the data message is produced or sent, but it doesn't include the person who acts as a mediator (Article 2).

<sup>5</sup> Information System is a system to produce (originate), send, receive, store or process of data message (Article 2).

improperly, again in this case attributing the data message to originator is not possible. In this respect; Article 20 expressed that: “Article 19 of this law does not comprise the cases where the message is not issued from the originator or is mistakenly issued”.

D. Based on Article 21 (E-Commerce Law):

Every data message is deemed to be separate and distinct “data message” unless it turns out that given “data message” is a duplicate of the original “data message”. Whenever the addressee receives a data message from an originator, allowed to consider it independently and act accordingly, unless she/he finds that the data message is the duplicate version(copy) of the original data message.

D. Acknowledgement of Data Message Reception:

Due to the specific nature of cyberspace which arises the security discussion of electronic exchanges, to assure that both parties have been informed completely, data message attribution to the originator is not enough solely, but the intended addressee must acknowledge the data messages. In this respect; following the Article 14 of the UNCITRAL model law, Iran e-Commerce law 22-25 Articles established provisions as follow:

*1. The acknowledgement of receipt is conditioned:* Where the originator has expressly stated that any legal effect of the “data message” is conditional on receipt of the acknowledgement, the “data message” is treated as though it has never been sent, until the acknowledgement is received (Article 23, e-Commerce Law). So it may be possible that on or before sending a "data message", the originator has requested or agreed that the receipt of a "data message" be acknowledged, in case that no discussion or agreement has been reached on how to perform it, any automated communication or correspondence or adoption of any proper measure on the part of the addressee that reasonably assures the originator of the "data message" receipt, is deemed to be the acknowledgement of receipt (Article 22, e-Commerce Law). So, if the acknowledgement of receipt is conditioned, its effects will lead to legal effects on the resulting message, and lack of acknowledgement by addressee will be considered as failure to fulfill transmission by the originator.

*2. The acknowledgement of receipt is not conditioned:* Iran Electronic Commerce Act is silent on a case that receipt acknowledgement has not been conditioned. Of course, the case had been predicted in paragraph 4 of Article 15 of the UNCITRAL Model Law, and consequently had been noticed in Article 32 of Iran Electronic Commerce Act which had been removed

because of some objections declared by Guardian Council before final approval. “Where the originator has expressly stated that any legal effect of the “data message” is conditional on receipt of the acknowledgement, the “data message” is treated as though it has never been sent, until the acknowledgement is received.” In this case; the originator has to do the following:

a. To announce the addressee that no acknowledgement has been received and by providing a reasonable time which is not more than 24 hours, ask the addressee to acknowledge the data receipt.

b. If no acknowledgement received in the appointed time, the originator will send a complementary message and declare that the data has never been received and there must be no legal effect on it.

As the above-mentioned Article has been removed, it is not clear that what should be done when the receipt is not acknowledged. According to Article 26 stated that: “the dispatch of a "data message" occurs when it enters an information system outside the control of the originator or his/her agent”.

3. *Acknowledgement method*: Acknowledgement method is voluntary and parties may agree on certain procedures acceptable to them. If the Acknowledgement method determined by both parties, they must behave accordingly, otherwise the transmission will not be achieved. If there is no agreement on the form or any particular way, then based on Article 22 (e-Commerce Law): “in case that no discussion or agreement has been reached on how to perform it, any automated communication or correspondence or adoption of any proper measure on the part of the addressee that reasonably assures the originator of the "data message" receipt, is deemed to be the acknowledgement of receipt.” So when there is no agreement on the particular way of acknowledgement, it will be done in one of the following two ways:

- By any means of communication and correspondence by the addressee.
- Adopting any proper measure on the part of the addressee that reasonably assures the originator of the "data message" receipt, is deemed to be the acknowledgement of receipt (Vesali Naseh, 2007: 130-132).

### ***3.1.3.3. Declaration of the will of the data message in a variety of contracts***

A contract is concluded by mutual consent, and considering certain formalities and using specific verbal expression of intent not accounted as the condition of contract validity. In this respect; Article 191 (Civil Law) states that: “A contract only becomes complete through the real intention of the contractor, and this real intention must be accompanied by some factor which proves that there was such an intention”.

In electronic contracts, the human element has no physical intervention in technical operations of concluding a contract, as the parties have organized the contracts electronically in advance, and replaced the necessary commands such as ordering goods or services, accepting and paying the price and... by computers. Therefore, based on computer planned data, the parties can automatically declare their offer and acceptance on the determined subjects and conditions, and conclude a contract.

#### **A. Consensual Contracts:**

A contract that arises from the mere consensus of the parties. In this regard; Article 191 (Civil Law) which states: “A contract only becomes complete through the real intention of the contractor, and this real intention must be accompanied by some factor which proves that there was such an intention”. According to consensual contracts, the contracts concluded based on compromise and mutual consent, it doesn't need any external formality or symbolic act to fix the obligation, and no submission of the deal is influential in concluding a contract. It can be the results of works and functions and the implementation of commitment.

Article 5 of the Model Law on Electronic Commerce "UNCITRAL" (1996) provides that: “Information shall not be denied legal effect, validity or enforce-ability solely on the grounds that it is in the form of a data message.” E-commerce law in our country is not the same, however, by referring to the Articles 6 and 7 of the law regarding the acceptance of the data message as “written” and electronic signature instead of hand signs and of course the Article 12 in the case of acceptance of electronic documents and evidence, it can be concluded that the electronic validity and authority can not be denied in our legal system.

#### **B. Formal Contracts:**

Although based on the general rule, there's no specific form or procedure to express and realize a contract, in a limited number of cases according to the agreement of the parties or the rule of law, the intentions have to be realized in specific form to be the origin of impact. In these types of contracts; the intentions will be valid if they manifest in specific form,



otherwise it will be void and ineffective. So the formal contract is one which has to be legally enforced by following a prescribed format, and without considering the formalities it will be void and invalid (Shahidi, 2004: 27). In other words, in addition to mutual agreement and common intention of the parties, in formal contracts specific words and terms expressed in certain legal formalities.

The need to comply with formalities could be based on mutual agreement or arising from the law. The contractors may agree on specific form of formalities. Based on Iran Civil Code Law, if the intended agreement is not inconsistent with existing laws or public order, can be accounted valid. For example, if parties have agreed on all aspects of the contract and its implementation will be subjected to plan a document in future, any commitment will not be defined for parties before the document has been planned. This method is usual in international trades, especially in complex transactions. First, contract parties create their "preliminary agreements" in official form, and then express their intention to set another document. In some cases; the purpose is to consider the second document is a confirmation of previous negotiations, but sometimes, this document is aimed at contract suspension to set the document, so that the intentions only mentioned in the second document will be the basis of mutual commitments.

Sometimes, international laws and documents accounted as source of formalities. In our legal system; considering some formalities, such as "written form" of the contract known as condition of its validity. Such that, business documents have been interpreted as "written" in Commercial Law (Articles 308, 226, 223 and 311) and company formation is subject to set status (Articles 1 to 19, Article 195 to 198).

### **3.2. The intention and consent**

Imaging and confirming the agreed matters considered as the source of intention and consent, the concept is closely related to the climax of emotional satisfaction in legal validity. So the intention is the end of sensual motion of consent. Consent is not as same as the intention, but it cannot be separable too (Jafari Langroodi, 2000: 2053). In other words, every voluntary conduct is started with the imagination and perception, then the gains and losses will be measured based on material and spiritual needs, and finally the person will be intrinsically eager to do that, the above enthusiasm will be called consent (Katoozian, 2008a: 53).

Consent may be entered freely and without any external pressure on the other party; in this case the contract will be valid, but where the consent is the result of external pressure and coercion, the contract will be considered invalid one. Based on Article 199 (Civil Law); there is no valid consent, where the consent was given only by error, or where it was extorted by duress or abused by deception. As the consent is not accounted as the basic condition of valid contract, but it's a condition of contract influence.

After passing through the consent and desire stages to conclude a contract, the person will be determined and this stage is called intention. A declaration of intention is the utterance of a will to bring about a legal effect in Civil Laws. The intention is the final stage of sensual motion of consent. Thus, the intention is the last part of consent and generally cannot be separable. The phrase of consent and intent which denotes to separate entity of them is error-based and wrong (Jafari Langroodi, 2000: 2923). However, the intent is the basic element of concluding a contract, and a contract without an intention is out of validity.

The other factors would invalidate a contract are duress and error. Error defined as the false impression of certain affairs which the ignorance is the worst form of it. If the error is such that can be interpreted as a lack of consent, the contract will be void. Always the error influence is not the same in contracts. Sometimes it is as big as that can lead to cancel that transaction and destroy the will agreement. In other cases, may be associated with no effect on contracts (Shahidi, 2002: 163).

Like errors in the type of contract, the errors in the contract subject may be result in lack of influence of contract, but regarding the Article 183, 216, 339, and 342 assumed that the lack of influence is as the same as contract void. In other cases, the error may be associated with lack of influence of contract, or may be provide a cancel authority to one of the parties; such as a mistake in the description of the transaction or the price, and sometimes doesn't have any influence on the contract.

Duress defined as unusual and illegal external pressure on a person which aimed at to draw attention of one upon a certain legal affair, such as harassment or injury (material duress) or intimidation and threats (spiritual duress). In this regard, Article 202 states that: "Duress is caused by acts which affect reasonable person through threats against his person, property or honor in a way that he cannot be expected to withstand. In connection with such threats the age, personality, nature and sex of the person must be taken into consideration." Based on Article 203 (Civil Law): "Duress will make a contract unenforceable even when it is caused by an outside party other than the two parties concerned."

Errors have to be considered in online electronic contracts too. The problems are more common in computer environment. The mistake will be done by seller or the buyer of the product or service. As an example, a buyer wants to buy a product from Sony Company in Japan, he/she enters a company internet database. The site completely appeared equal to Japan Sony released products, after the contract concluded and the product sent, they got that the product has been sent from Singapore. Here the focus is on the error, and no intention of online buyer to buy a Singaporean product. Consistent with most countries legal laws, the transaction is void in terms of error (Articles 199, 200) (Noori & Nakhjavani, 2003).

### **3.3. Capacity of the parties**

Principally, to conclude a contract at least two interactive parties are necessary. Besides legal capacity, each seller and buyer has to possess capture capacity towards the object of sale and the price. By capture capacity, both seller and buyer are able to capture what they are committed to. The basis of the capacity to exercise rights is the understanding and differentiation. Because the intention which is necessary to carry out the legal conducts can be found just in those who are reasonable and are capable of differentiation (Safayi & Ghasemzade, 2006: 182).

One of the biggest challenges in conclusion of electronic contracts is the lack of necessary environment to civil inform of any parties of the real capacity and personality of each other to conclude a contract. In this case; each party has to be satisfied with provided information, and the pretender will be responsible for proving the invalidity of electronic contracts. Data message which consists of intention, as well as the other reasons is attributable to in fights, and its invalidity is provable by other evidence. According to Article 12 (Civil Law): “Evidence and any supporting document may be in the form of “data message”. The evidential value of a “data message” can by no means be repudiated solely due to its form and framework at any court or governmental office.”

Based on Electronic Commerce Law, to conclude a legal relationship in the electronic environment, the originator, the addressee and data message exchange between them is essential. However, according to (b) and (c) paragraphs of Article 2 (Civil Law), by no means, the parties are who in contact with the data message, or act as mediator. Based on the above-mentioned law, the legislator has assigned unique attributed data message matters to originator in two ways. According to Article 18, data message has been attributed to the

originator as follow: a) If it is sent by the originator or by a person who had the authority to act on behalf of the originator in respect to that “data message”, b) If it is sent by a programmed information system or automated agent on behalf of the originator. Thus, in electronic contracts in which the contracts have been concluded automatically, the computer acts as a tool which is under parties’ control (Maghaminia, 2013: 89-90).

In concluding electronic contracts usually transactions done through electronic means, in some of these conclusion methods, Human Resources is not involved directly and the computer automatically acts on behalf of their will. So, in general, regardless of formalities electronic transactions, the existence of party intention has been assumed in each component of transactions.

One of the biggest challenges in conclusion of electronic contracts is the lack of necessary environment to civil inform of any parties of the real capacity and personality of each other to conclude a contract. In this case; each party has to be satisfied with provided information, and the claim will be responsible for proving the invalidity of electronic contracts. As stated earlier, data message which contains the party intention, like other reasons is attributable in lawsuits, and its invalidity will be proved by the other reasons.

### **3.4. Definite subject-matter of the contract**

According to its specification, electronic contract can be divided into four types:

a. Sale of Goods; in these types of contracts, the obligations of good delivery will be done out of cyberspace and in accordance with general regularities and principles, but payment is done electronically

b. Offering services such as banking, airlines and

c. Selling digital products; such as books, articles, photos, videos or electronic literature. In these types of sales; the contracting is done completely in electronic context. By seller permission, digital product will be installed on client computer and the price will be paid electronically. The major part of digital products consisted of Software which are often sold by one of following practices:

- 1- Directly (such as a CD containing one or more software)
- 2- Issued a license to use the product, such as reading a particular book or article, or view certain slides or film

3- Subscription or transaction in terms of data exchange

4- Online sales which delivers a set of physical software automatically. Note that in these ways of selling digital products, contracting is done with a special features, which the most common one is clicking on specified option or a packaged deal which the opening means accepting and installing (Jinfaray, 2007: 198; Golizade, 2008: 168-169).

d. Providing information: like contracts have been done to provide scientific or economic reports of institutions or specialists. In this type of contract which the main issue is to provide information, the obligor is not commitment to the deliver other goods or services; such as providing information about a valuable exchange of different currencies, tariffs on transportation and interpretation of meteorological conditions (Maghaminia, 2013: 87-88).

Basically, the inclusion of any property as a matter of buying and selling or providing services in the electronic contract may be possible, but according to the Article 6 E.C.L., three cases can not be used as electronic contract issue, they are as follow:

a) Ownership documents of immovable property.

b) Sale of medical materials to the final consumers.

c) Announcements, notifications, warnings or the like statements issuing a particular provision on the use of goods or prohibiting the use of certain methods or their omission hereto.

The reason of the above-mentioned exception may be dates back to the legislator has not considered the data message in written form, as based on the mentioned Article: “When the existence of a written document is deemed legally requisite, “data message” can be used as a replacement except unless for the following cases...”. Also, in accordance with Article 33 of this law, “Sellers of goods and service providers shall, in good time and before entering into contract and providing the consumer with information affecting his decision making for the purpose of purchase or acceptance of the terms”.

Of course, exceptions referred to Article 6 E.C.L., including the issues of electronic contracting has been criticized by legal doctrine; as the legislator has spoiled the possibility of removing legal and technical barriers implicitly, and has predicted the possibility of providing legal grounds for use of those materials through electronic contracts (Alsan, 2006: 141-148).

### **3.5. Contract's legitimacy**

Cause of transaction is just as indirect goal and motivation that the dealer imagines in his head. Like a person who sells his car to buy a house, in this example; selling house considered as the cause of car deal. In contrast; due deal is the person direct goal to do a transaction, such as getting money by selling the car. One of the conditions for validity of the transaction is the contract legitimacy. "In a contract, it is not necessary to explain the reason for making it, but if this is done the reason must be a legitimate; otherwise the contract will be null and void" (Article 217 of the Civil Code). Under the provisions of Iran's Civil Law, mentioning the cause of transaction is not necessary. However, if it is mentioned in transaction, it must be legitimate otherwise transaction is void. Thus, illegal cause can void the transaction if it is mentioned explicitly in the contract or transaction. For example, if one wants to buy a house to establish a place of corruption, whenever he explains the reason of deal, it will be void, but if the reason is not stated the transaction will be true. The Article will be helpful, as it makes the court free from the exploring the dealer intention and motives unless he himself explains his goal. In Shia Law; illegal causes will be void when the other party be aware of that, whether explicitly or not (Shahidi, 2002: 57).

Mentioning the cause of transaction is not necessary based on Article 217 of the Civil Code, as it has been understood that normally people less tend to express or write their cause and motives in their transactional relations and communications. Obviously; if the transaction cause be clear and against the law, the deal will be void. In addition, if it can be concluded from the conditions and circumstances that the transaction cause (motive or reason) is illegitimate (illegal), the transaction will be void. Based on predicted rules and regulations, if the transaction cause is illegal, and the parties are aware of that, the electronic transaction will be void too.

### **4. Conclusion**

Although the same regulations are governing the electronic and traditional contracts, emergence and development of electronic trade has led to a new challenge in the current law. In addition to the general sense of uncertainty of electronic relations, contracts which are concluded in this context are subject to some uncertainty and doubt in some legal aspects.

On December 9, 2005 in accordance with UN General Assembly Resolution 60/21 "United Nations Convention on the Use of Electronic Communications in International Contracts" has

been approved as the most important international treaty in the field of e-commerce. The treaty considered as the ongoing process of unifying different types of legal systems in this field. Although United Nations Convention on the Use of Electronic Communications in International Contracts has not been accounted as the first UNCITRAL experience on enacting the uniform regulation at the international level, at least in the field of e-commerce, it is the best offspring and result of years of effort and research which can be used in domestic and international fields. As the Vienna Convention on Contracts for the International Sale of Goods (1980) is the most important reference in international sale contracts, considering the computer-based contracts outside the scope of definition of written contracts may result in to a major gap in reliability and predictability of international sale contracts. Electronic contracts have both complicated and facilitated the international sale transactions by providing quick and easy ways of doing business, as such even a person with a computer can be a skilled competitor in the global arena

Following results obtained from the present study;

1. One of the most important legal electronic commerce issues is the electronic contracts discussion. These days most of commercial trades, transactions and service delivery are being done through the Internet. The spread and expansion of these types of business transaction among people is associated with some legal issues regarding the rules governing people contractual relations. The recognition of new communication technologies in the formation of contracts, their way of formation and credibility, the ability to attribute them to electronic documents, electronic signature issues, electronic payment and etc. considered as important issues in this field.
2. With respect to the approval of the Electronic Commerce Act, electronic contracts, both in terms of formation and also in terms of nature will be valid in the framework of the legal system, if they are not against the law explicitly. Since our e-commerce law is procedural rules, so the legal effects of data message have been assigned to general rules.
3. The principal of “consensual” aspect of contracts and the authority to choose the way declaring the will, result in not existence of any barriers to accept the intention electronically. Since “data message” is not created in “written” form or is not a “signature”, to consider formal conditions in some contracts, data message accounted as written rule or signature based on e-commerce regulations. In electronic contracts, two wills agreement is made in terms of offer and acceptance via electronic message. Paragraph 1 of Article 15 of the UNCITRAL Model Law provides: "Unless otherwise agreed between the originator and the

addressee, the dispatch of a data message occurs when it enters an information system outside the control of the originator or of the person who sent the data message on behalf of the originator.”

In addition; the article 26 of International Trade Law states that: “the dispatch of a "data message" occurs when it enters an information system outside the control of the originator or his/her agent.” The article is about the data transmission and declares that the message will be sent when it is out of originator control and enters to the addressee or third person information system. So it can be concluded that the criterion to determine the time of message transmission (whether the offer or acceptance) is the time of their entry into the information system which is out of control of originator (offeror or acceptor). In other words; originator role which may be press a button on the keyboard or pressing the mouse to send, never be the time criterion. For example, if the originator sends the data message on Saturday, and they enter to addressee or third party information system on Sunday, for any reason whether on or of the third person information system or network traffic, the time of sending data message is realized on Sunday. Finally, concluded that the transmission will not be successful, if the data message doesn't enter the addressee or third party information system for any reason.

4. Electronic contracts categorized as Contract par correspond, and even it could be said that the Contract par correspond is better equivalent than the written contracts. Since unlike written contracts, people may not know each other in electronic contracts and might haven't seen each other. Although the Contract par correspond has not been considered in Iran Civil Code, they are absolutely valid and true.

5. To be assured of electronic contracts security and protect people legal rights, a qualified electronic contract must consider as valid as any contracts in which parties are present. In this regard, paragraph 1 of Article 12 of the UNCITRAL Model Law provides: “As between the originator and the addressee of a data message, a declaration of will or other statement shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the form of a data message.” That is why any contract to be signed electronically will be valid if the legal conditions observed in conclusion. Although by referring to some Civil Law Articles such as article 219 and 223 we can prove the authenticity of electronic contracts, approving Electronic Commerce Law on 2004/10/17 legitimized the transactions which conducted via the Internet and new communication system. Mentioned law Article 5 validated the



agreements and specific contracts (private) regarding to modifications in generating, sending, receiving, storing and processing the data message.

6. Declaring the parties will and intention through the electronic mediators will be valid and accounted valid in creating legal nature. Since any specific way has not been recognized by Iran Civil Code to how the will should be expressed. A contract only becomes complete through the real intention of the contractor, and this real intention must be accompanied by some factor which proves that there was such an intention (Article 191). So, the offer and acceptance will announced through the data message and will be valid legally. In other words; digital and virtual nature of contracts are completely valid.

7. Although the electronic contracts concluded in an entirely virtual and intangible context, the legal nature cannot be separated from the time and the place. As a result, these types of contracts are limited to time and space coordinates. Although Iran e-commerce law is silent about the time and place of contracts, it has predicted some special regulations in terms of the time and place of sending and receiving data message which based on mentioned regulations, the time of electronic contract conclusion is equivalent to the time of receiving acceptable data messages.

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