

## The Methods of Gaining Agreement in Formation of Contracts

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### ABSTRACT

Every contract is based and founded on agreement. Agreement is primarily initiated by a proposal in the form of “offer”. However, it is sometimes difficult to recognize whether a proposal is an offer or a mere invitation to transaction. For an offer to result in a legal act, acceptance is necessary. In this article, it has been tried to examine gaining agreement with regard to offer and acceptance mechanism and to analyze strengths and weaknesses of Iranian Law of Contracts relating agreement as the basic foundation of contract by a comparative study.

**KEYWORDS:** Agreement, Offer, Acceptance.

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### INTRODUCTION

The first requisite for a contract to be formed is the agreement of two parties. Before a transaction is accomplished, it is customary for two parties to discuss the conditions and consequents. If this primary discussion doesn't lead to any agreement, it will not impose any obligation on either party and none of them is culpable for breaching the agreement. After the primary discussions, two parties come up with their ultimate and certain decisions. It is said that the agreement is gained when one of the parties accepts the offer made by the other one [1].

The primary discussions are sometimes so complicated and elaborate that it is difficult to analyze them. Discriminating the primary phase from offer and acceptance phase is not an easy task for sometimes one of the parties regards the other's conditioned promises as offer and tries to provide the means of performing the commitments while the other sees himself in the early stage of thinking about contract. In such cases, it should be cleared up if the announcement of two parties is the same as offer and acceptance or it is merely a primary negotiation. The discussions made by two parties of contract before the offer and acceptance stage have an efficient role in interpreting the contract and determining what they meant by commitment to it [2]. The question is that whether an obligatory legal relation binding two parties is formed with the commencement of primary discussions or it can be said that there is no legal bond between them and there is no cause depriving them of the freedom to negotiate. No one can be forced to commit to a contract on the pretext that he has commenced a discussion to determine the conditions of the contract or he may be blamed for not continuing and concluding the contract. However, it is undeniable that once discussions are begun, one party or the other may turn hopeful and regard the other side's statements as offer or acceptance which, consequently, can result in loss to such a person. In order to prevent such losses, it seems necessary to clarify the time of primary discussions and the final stage i.e. offer and acceptance. In the Iranian Civil Law, no obvious measure has been predicted for the realization time of offer and acceptance and jurists have propounded various opinions according to their own understanding and view of offer and acceptance. In this article, it has been tried to perform a comparative study and differentiate between primary negotiations stage and the final offer and acceptance phase [3].

#### **Part one: Offer**

##### **1-Definition of Offer:**

Offer is defined as expressing willingness to accomplish a contract under certain conditions. In other words, offer is the proposal of transaction and is put forward and intended to be obligatory as soon as it is accepted by the addressee. Now, the question is that how a proposal is realized as an offer by acceptance of which the offer or is bound to his/her offer. The first criterion, to verify whether a proposal is an offer or not, is the Objective Test. According to this standard, if the demeanor and speech of an offeror is in a way that normal observers believe that the offeror wants to be committed to his/her offer, this is sufficient for realization of offer even if he/she has not intended such a commitment. This standard has been offered by the jurists of the U.K. [5]. For instance, if A offers selling a book for one hundred dollars to B and B accepts it, A cannot violate the agreement on the pretext that he/she really had intended to sell it for two hundred dollars or the book was other than the one agreed upon at the time of transaction. Whether A is really bound to contract as soon as his/her offer is accepted or not is somewhat

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depended on the expression of the addressee's will to a degree which it can be said that the criterion is not merely Objective. There are three possibilities regarding the expression of B's intention: The first is that B really believes that A wants to be bound to his/her offer in which Objective Test is valid and B can require A to commit to his/her offer and A is obliged to fulfill his/her offer even if he/she claims that he/she had not intended to bind him/herself to any contract. This objective standard is simply enough to know the intention of B (offer addressee) and other standards are not to be sought. The second is the case in which the offer addressee knows that the offeror does not have any obliging intention. In this case, A (the offeror) is not bound and the objective standard is not interpreted to B's (offer addressee) advantage as he/she knows the fact about A's intention. The third possibility is when B (the offer addressee) does not have any information about A's (the offeror) intention whether he/she wants to commit him/herself to performing the offer or not, which has led to controversial theories. One theory is that the offeror is not bound; in other words, the objective standard is applied when A's behavior is in a way that every normal observer is convinced that he/she had had the intention to be bound and B had had the same intention as well. The contrary idea is that in the third possibility, A is obliged; in other words if the demeanor of A is in a mode in which normal observers are enticed to believe that A had had the intention of commitment, the objective standard is applied even if the offer addressee had not been aware of the offeror's intention. This theory, with no doubt, facilitates the approval of agreement and is favorable to B. However, the drawback put forth for this theory is that although the objective standard theory tries to prevent any possible disadvantages to the offer addressee, in the third possibility no loss is imposed to the offer addressee (B). Regarding the fact that the goal of objective standard theory is merely supporting and saving B from undergoing so-called damages, so the objective standard theory should not be applied in the third case because in this situation the expression of B's will does not bring about any losses or damages. In Iranian Civil Law, "Offer" is not defined and only the article 191 of Iranian Civil Law reads as follows: "Contraction is realized with the intention of fulfillment and with the prerequisite of being associated by something which implies intention." Taking into account the fact that the involvement of volition in formation of a contract is a psychological and internal movement and its realization is not essentially associated with an external sign, if the will of either parties is not expressed by a way or other, it will normally be impossible for one party to be aware of the other's intention to commence cooperation or even to prove it. Based upon this fact, the external declaration of intention to commitment is regarded as requisite for efficiency of will and its being a creative cause. So, it can be said that in Iranian Law system, the internal will should be expressed in a way or other. The first manifestation of will is the invitation to enter to an agreement or the suggestion to perform a transaction which is called "offer" and can be proposed by either transaction parties (buyer or seller, lodger or owner, etc.). If this offer is associated with other conditions and accepted by the other party, then, the offeror is obliged to fulfill it. Back to Iranian Law, the question is that if an offer takes place but the offer addressee does not know whether the offeror really wants to fulfill the contract or not, what should be done? As mentioned before, two theories have been proposed in British Law. According to the first theory, the offeror is bound to contract when addressee accepts the offer. According to the second theory, the offeror is not bound to contract with the acceptance of the addressee because the addressee undergoes no loss. According to the article 194 of the Iranian Civil Law, literal means, gestures and other implements by which the two parties of a contract are communicating to form the contract should be coherent and consistent so as either party accepts the same contract which the other means; otherwise the contract will be invalid. One of the items upon which both parties should agree is the intention to be bound. In this assumption the agreement of will does not take place for the offer addressee is not aware of the offeror's intention and the addressee undergoes no loss due to the offeror's non-engagement. The objective standard is applied where the will of offeror is doubted and if it is not applied, the addressee will undergo some disadvantage; however, in the assumption above, the consequence of its application and non-application is the same [6-9].

## 2- Conduct as an offer:

Offer can be aimed at an individual, a group of individuals or the whole people. It may be expressed explicitly or implicitly by conduct. In Common Law, when an individual has concluded a contract to sell a particular product but is presenting different products in the meantime, the presentation of other products is regarded as an "offer" (Treitel, p. 9). The question is that whether inactivity can be thought of as offer or not. Inactivity is one sort of conduct. Let's assume that there is an agreement to refer a dispute to arbitration. But none of parties take an action to implement this reference during a long time. Can we regard this inactivity as the cancellation of referring to arbitration? In cases like this, arbitrators can avoid investigating the case due to abandonment of the case by the parties. If the inactivity is coincident with other conditions and situations, it will form an abandonment offer; however, if there is only inactivity, it is difficult to regard it as abandonment offer because inactivity may be due to forgetfulness or other circumstances. Furthermore, when there is inactivity, it cannot be said that ordinary

individuals regard it as an offer and the mere belief that inactivity shows an offer would not be a cause to form an offer [10-13].

In Iranian Civil Law, according to the article 191, the intention should be expressed and regarding the fact that inactivity implies no reason to the existence of intention, it cannot be thought of as causing offer; however, if it is associated with circumstances implying offer, it seems likely to be regarded as causing offer as in Common Law. For example, if someone puts some goods within the sight of customers and writes their prices on them, though he does not take any action and is literally inactive, it can be regarded as sale offer because this inactivity is registered with some especial conditions.

### **3- The offer distinct from “invitation to transaction”:**

When two parties are negotiating to conclude a contract, many introductory communications may take place before the offer is finalized. Meanwhile, either party may answer to some questions put forth by the other one to give some information, e.g. one expresses the price for which he/she wants to sell the house or he/she can put a question to the other one about the form of payment. It has been said that when a party gives information, invites the other party to transaction and invites him/her to fulfill the offer. Whether this statement is an offer or an invitation to transaction depends on the intention by which the statement is done. For instance, if the declarer or the person presenting some information tells explicitly that the other party would not be bound simply by declaration, this shows that his/her intention is invitation not an offer even if the word “offer” is used verbally. This is true when the intention of declarer can be discerned obviously. Most of the time, the discrimination between offer and invitation to transaction is a difficult task as it depends on intention. There are some situations in which the distinction between these two notions is clear and these situations are determined by legal rules. It is worth mentioning that these rules can be applied without contrary intention but in this case, these rules determine the distinction between offer and invitation to transaction. They do such a deed without referring to the intention of declarer. Auction, goods exhibitions on front glasses of shops and other items are among examples of distinction between offer and invitation to transaction which will be studied later.

#### **3-1 Auction Contracts:**

During introductory discussions, one of the parties may invite the other to offer e.g. in an advertisement, one party informs the others that a good is being sold with particular traits and that applicants can send their offers. Such an invitation renders no obligation for the proprietor and he/she can cancel the sale any time wanted.

In some cases, recognizing whether the invitation to transaction was an offer or only an offer suggestion is difficult. The result is that if the invitation is an offer, the contract is concluded as soon as the other party accepts it; however, if the invitation is just a suggestion of offer, the acceptance by the second party doesn't result in conclusion of contract.

In auction contract, the general rule is that the offer is done by suggestion from the buyer and when the auctioneer declares his/her agreement, in some ways like tapping the gavel, the acceptance takes place. Before acceptance, the party suggesting purchase can take his/her suggestion back and/or the auctioneer can take the product back. When the goods are informed to be sold by a fixed base price in an auction, if the auctioneer accepts, by mistake, a price lower than the base price, no contract is concluded. In Iranian Law, jurists have not discussed profusely about the fact that whether the invitation to auction is regarded as an offer or as an invitation to offer. Dr Katuzian has cited the French and English jurists' opinions in his book *The General Rules of Contracts*. It seems as if the invitation to auction can be regarded as a suggestion of offer in Iranian Law taking into account the following reasons:

1- In most of the auctions, the base price is not fixed while one of the requisites for the realization of offer is to have fixed price which shows that the invitation to auction is not an offer by itself.

2- In an auction, there emerges no obligation for the auctioneer and no contract is concluded unless the auctioneer accepts the utmost price. On the contrary, if the invitation to transaction was solely regarded as offer, he/she should have accepted the highest price and it had been believed that the contract is concluded with the suggestion of the utmost price.

3- If the auctioneer does not accept the highest price without any sensible reason, then, the buyers suggesting purchase can file suit against him/her because the auctioneer has given hope to them by his invitation to auction and incurred some expenses upon them. But no one can sue the auctioneer to implement the contract because no contract has been concluded.

4- If the invitation to auction was regarded as offer, the contract would take place as soon as the first suggestion was done for a contract is comprised of two basic components i.e. offer and acceptance. However, not

accepting the first suggestion by the auctioneer shows that the purchase suggestion is not acceptance but an offer which the auctioneer can accept it or not.

### **3-2 Exhibition of the goods for sale:**

The general rule is that the exhibition of the prices of particular goods at showcase of a shop is not an offer to sell the goods; rather it is an invitation of customers to make the offer. The exhibition of goods at the shelves of a self service shop is merely an invitation to transaction. Only when the customer takes the product to the cashier, he/she makes purchase offer and the shopkeeper may accept it or not. The exhibition of fuel price in gas station is an invitation to transaction. The offer to buy is made by the customer and is accepted by the seller's behavior as by putting fuel into the tank. In case a gas station launches a self service system and the customer himself puts fuel into the tank, if the buyer's conduct is regarded as an offer, it seems that the seller does not have much option in not accepting such an offer.

There can be presented another reason to further emphasize the fact that the exhibition of products is not considered as an offer: a shop is a place for trade not to sell forcibly, hence, if the exhibition of products is regarded as an offer, in many cases, if the customers claim that they have accepted the offer, the shopkeeper may be exposed to many lawsuits to compensate for losses. However, the offer can be interpreted in this way that when the goods of seller (shopkeeper) run out, the offer is cancelled automatically. It has been said that if the exhibition of goods is regarded as an offer, it will end in unpleasant results. For example, if a customer picks a product to try and examine, he/she will be obliged to buy it. Nonetheless, if the exhibition of a product is thought of as an offer, it can be said that so long as the buyer's behavior is equivocal, the acceptance will not take place. This means that the more the customer's behavior is clear, the more the acceptance will be realized, for instance, suppose a case in which the customer puts the product on the cash desk.

It is likely to be said that this general rule lead to injustice in some cases. The customers may wait for several hours outside the shop with this supposition in mind that they will buy the products shown in front glass by the prices fixed on them. Now, is it right to allow the seller to change his/her mind just at the moment the customer wants to buy the product? It seems that the particular conditions of the exhibition of goods or the exhibition in certain circumstances is a clear reason denoting the existence of willingness to be bound which is substituted for the first rule i.e. the fact that the exhibition of a product is not regarded as offer [13-15].

### **3-3 Notices and other announcements:**

The reward notices to take the lost or stolen properties back or to surrender a criminal are regarded as offer. They are announced meaning obligation in a way that no other contract is needed to conclude it. The same rule works for multilateral contracts. In the case of *Mrs. Carlill against The Carbolic Smoke Ball Company*, the company published advertisements claiming that it would pay £ 100 to anyone who got sick with influenza after using its product according to the instructions set out in the advertisement. The court of appeal held that there was a fully binding contract for £ 100 with Mrs. Carlill and that the commitment of the company in advertisement was an offer. Especially, the company's claim that £ 1000 was deposited at the bank showed the serious intention to be legally bound [13].

The prominent example of reward notices in Iran is what called "Contract of Reward". In this contract, the offer is made by the rewarder whereby he/she is bound to pay a reward for doing a certain job. The offer may address a particular person or the general public. In the cases that the offer is for general public i.e. the goal of rewarder is to attain the specific result and the personality of agent is of no importance, the offer contains some conditions and clauses which restrict implicitly or explicitly the absoluteness of it. So, to clarify the amount of the rewarder's obligation, the content and conditions mentioned in the offer should be noticed. For instance, every general offer does not imply that there is an obligation to pay reward to the first person who fulfills the specific job and presents the result to the rewarder. In the same way, suppose that an institute claims to pay one million dollars to anyone who draws over than 50 pictures annually in order to develop the art of painting. In this example, the painter who has ready paintings beforehand cannot use the terms of announcement to be paid because the offer implies that the paintings should be prepared in the future and the reward is fixed to encourage painters to draw with more quality in the future (Katuzian, 2001, p. 293). The article 561 of Civil Law defines The Contract of Reward as follows: "the contract of reward is obligation of a person to pay certain remuneration for fulfillment of a job regardless of definiteness or anonymity of the agent". In this article, the obligation of a person to pay for fulfillment of a job is clearly regarded as offer. It is not necessary for this offer to include all conditions. Not only is the amount of work to be done not clear in this offer but also the payment may be claimed not elaborately (the article 563 of The Civil Law). Also, the offer may address the general public i.e. the rewarder can claim that he/she will pay a certain reward to anyone who fulfills the stated job [6-8].

### **3-4 Travel Tickets:**

There are many remarkably controversial ideas concerning when a contract between a transporter (transporting company) and a traveler is concluded. It has been said that railway companies make offer by publishing announcements which indicate the timetable or schedules of trains and the same is correct with bus traveling companies. Such offers can be accepted by passengers' informing their intention in a way or other, like request for issuing ticket or getting on the bus. The other opinion is that the transporter makes offer in the subsequent stage i.e. when it issues the ticket and the passenger accepts the offer by taking it. According to the latter opinion, the passenger simply makes an invitation to transaction by requesting the ticket and the offer is made by the transporting company and the offer is accepted by the passenger even if the ticket price is paid by the third person like the passenger's boss. It seems none of these opinions are accepted absolutely either in Iranian or in British Law system and it is likely to propose a third one. According to the third opinion it should be said that there is no uniform rule for the realization time of offer regarding travel tickets and that in each case whether the offer is made or not depends on the phrases of related documents and its context. For instance, if the transporting company presents some brochures in which the prices of traveling to different destinations, conditions of issuing tickets and other information are indicated, this should be regarded as invitation to transaction from the transporting company and when the passenger wants a ticket after studying brochures, in fact, he/she makes the offer because one of the conditions for realization of the offer is certainty of subject, price and other conditions which the offeror attains by studying the brochure.

### **3-5 Auction-Tender:**

In common law, stating the sale of a product by auction is not regarded as offer and the auctioneer is not bound to sell the product to the person who suggests the highest price. In the same way, tender notice to obtain a product or some service is not regarded as offer, too. Offer is normally by someone who suggests purchase of some goods while, in this condition, there is no contract binding the bidder to accept one of the offers. In case the auctioneer declares that he/she is bound to accept the utmost price or the bidder declares he/she is bound to accept the lowest price, the situation will be different.

In cases mentioned above, the invitation may be regarded as offer in itself or, in other words, the invitation to present offers is associated with the commitment to accept the highest price to purchase (the same is correct about tender cases). In this assumption, as soon as the highest offer of purchase or the lowest offer of sale is presented, the contract will be concluded. In the case of Black Pool and Port Talbot, a local authority sent invitations of offer to seven specific parties. Stated in these invitations was that no answer will given to the proposals sent after an appointed time. It was judged that the mentioned authority was to study the suggestions given in the specified time even if not obliged to accept them.

In Common Law, the ways mentioned above have been adopted. These situations (ways) are amended by passing law in some conditions. For instance, there have been some amendments in British laws by executive regulations of European Economic Community relating the prioritization of offers in auctions and tenders aiming at preventing discrimination concerning main contracts for common affaires and the services of member states vis-à-vis the citizens of other members. These regulations restricts the freedom of the caller to auction in accepting or refusing the offer and has predicted ways of compensation for people sustaining loss after making purchase offer.

Approving the first opinion in British law concerning the fact that announcing auction or sale is only presenting the goods for sale and doesn't bind the announcer, it has been told that, in suggesting sale in an auction, the precise price of the product is not clear and accepting the invitation cannot conclude the transaction by itself so, this suggestion should be regarded as invitation to offer. Reversely, the will of the winner of auction which includes all requisites for a transaction being the last price of a presented product among them meets the conditions of offer and accepting it concludes the transaction but does not bind the seller [12-14].

To approve the second opinion which says announcing an auction is an offer, it can be said that the announcement of auction is offer but it implies the fact that the auctioneer receives all suggestions with sincerity and honor selecting the more profitable one. The participants in an auction or sale volunteer and pay the expenses and prepare for other preliminaries in this trade competition solely based on these implied conditions and trusting the good intention and consistency of the auctioneer. No volunteer pays the expenses of participating in an auction if he/she knows the fact that the offer made will not be treated with neutrality and justice and that the announcer is free to do what he/she wants. So, before the main transaction takes place, a subsidiary contract is concluded concerning how to conclude a transaction between two parties the offer of which is announced by the auctioneer and accepted by participants.

In The Iranian Law, like The Law of United Kingdom, winning in auction or tender does not realize the transaction by itself because the right to choose by the announcer implies the fact that announcement is an invitation

to make offer. In British Law, some regulations have been passed to prevent the possible misuse by the announcer of auction which restrict the freedom of auctioneer in accepting or refusing the offer and have established ways of compensation for people who make offer but are incurred losses due to breach of rules. In The Iranian Law system, because such regulations have not been predicted, the announcer of auction can be regarded responsible considering the Article 40 of the Constitution.

### **3-6 Selling shares:**

In Law, the act of corporation concerning the invitation of the public to buy shares is not considered as offer and in fact, the act of the corporation is regarded as invitation to transaction. The main reason why the act of corporation is regarded as invitation to transaction is that the corporation has the right to determine the amount of shares which should be allotted to customer; however, if the act of corporation was regarded as offer, it had to determine the amount of shares for each customer [8-10]. In the case which corporation issues new shares for its existing shareholders, the situation is different and the act of corporation is offer because the amount of shares which each shareholder can buy is fixed and each shareholder can buy new shares proportionate to his/her former shares. The letter which informs the shareholders of this right is regarded as offer. The rights of shareholders are clearly specified in this letter and if the shareholders use their rights to buy, the corporation will be obliged.

### **4- The Influence Time of Offer:**

Regarding the fact that offer is a mental issue, there arises a question whether when an offer affects and where the influence of offer begins. In other words, when can it be said that an offer has started to influence and that the other party can conclude the contract by accepting it? In the Iranian law, the announcement principle is accepted according to the article 191 of the Civil Law concerning relative issues and the influence time of offer is when the offer is announced which can be verbal, written or by behavior. For example, a person who is incapable of speech may announce his/her offer of marriage or sale contract by gestures or a tradesman who works internationally usually makes his/her offer of sale or purchase by letter. In present transactions, offer is usually made orally.

## **Part two: Acceptance**

### **1- Definition of Acceptance**

Acceptance is defined as complete and unconditional assent and approval to the implications of an offer. The essence of contract is related to and depended on two wills to each other. Merely approving an offer is not regarded as acceptance. In a case in which the offered party merely declares his/her intention to purchase, acceptance is not realized. In a case in which the offer consists of several suggestions, the accepting party should specify the exact suggestion which he/she accepts. In one case, an offer was made to build a transportation terminal by putting it out to tender which had two options: in one option a fixed price was determined and in the other one another price was declared regarding the work force and raw materials. The participant accepted the tender without clarifying which suggestion the acceptance belongs to. The decree of court was that no contract was concluded because it had not been specified which suggestion was accepted [9-12].

### **2- Continual Negotiations:**

When the parties continue long negotiations, distinguishing the exact time of offer and acceptance becomes harder. In case the negotiations continue, either party may bring forward new privileges or demand new requests and the parties are likely not to agree on existing any acceptance in the end. The question is that by what criterion can we distinguish the agreement as the basis of a contract in continual negotiations? It seems that all discussions of parties should be examined and it should be determined whether the parties have come to an agreement in similar conditions. If so, the agreement is gained even if one or both of the parties have some requisites which have not mentioned in negotiations. It is possible that the parties have not come to an agreement but the subject of contract has been implemented. For instance, a contractor may commence construction operation despite the fact that there is no agreement with the employer and it is likely that two parties make decision about important subjects during implementation of the subject of contract. The contract may have retroactive effects and include the acts which have been done before the ultimate agreement.

In a case, the representative pilot of Homa Airlines had informed a British pilot of the offer involving pilot recruitment in Iranian Airlines via a letter on June 26, 1977 and wanted him to submit his acceptance within 10 days after receiving the letter. After receiving the letter, the pilot accepted the offered job and informed it by telex on June 30. As a result, the employment transaction was concluded by informing offer and acceptance and, according to the contract, the Iranian Airlines should have employed the pilot to navigate its Boeing 747. But as the Iranian Airlines

had breached the contract, it had to pay the resulting loss the major fee of which was the sum of 67 months' salary because the mentioned pilot had resigned from his former occupation.

The letter of representative pilot of Homa did not have offering conditions of a binding contract because the suggestion for concluding a contract is regarded as offer only when it is decisive and including all requisites and basics of contract in a way the second party determines his/her and the first party's judicial status and there should be no need to a later agreement or decision; however, the mentioned letter is neither decisive nor complete.

1- It is not decisive because it is mentioned in the letter that his employment depends on his success in probationary flights. This announcement shows that the airline company is not determined in its decision yet and is in the phase of decision making. There was possibility, even if a weak one, that the pilot might not be accepted in the test or could not fly in the way the offeror desired. Furthermore, the referee of such tests is the accepting organization. So, it can be said that the offeror is not deprived of the freedom to decide because the conclusion of the contract was depended on passing the tests and the company did not want to bind itself to employment right after the announcement.

2- The suggestion is not complete because regarding the basic conditions of contract in Iranian Law, the employment contract is subject to hiring services category and, the period of hire (which determines the amount of promised service) and the payment should be definite [13-16]. Not only is there no refer to the mentioned factors in the letter of Iranian Airlines but also the content of the letter sent by the pilot on June 30 shows that all employment requisites were ambiguous including the beginning time of payments. So, it should be said that the mentioned pilot and the Iranian Airlines were yet in the final phase of "preliminary negotiations" and no binding contract was concluded between them the breach of which could have obliged the offeror to pay for losses.

### **3- Accepting offer by behavior:**

Accepting an offer may happen by behavior or conduct. For instance, an offer to purchase may be accepted by providing the desired product or an offer to sell a product which has been accompanied by sending the product to a likely buyer can be accepted by being used of the product. Behavior is regarded as acceptance only when the offer addressee takes the action with the intention of accepting the offer.

In a case in which the offer or acceptance has taken place by the parties' behavior, determining what conditions are exactly agreed upon is difficult and sometimes this results in the assumption that there is no agreement at all. In British Law, the judges are given remarkable authority and they can decide in doubtful cases on their own. If the offer does not refer to any price, the court can impose conditions in which the normal and conventional price should be paid or it can include the requisites of another contract, requisites of an existing written agreement between them or requisites of a contract between one of the parties and a third person into the contract in dispute [9-12].

### **4- Complete Acceptance:**

Acceptance should be according to offer and in case it is not according to offer and alters the conditions of the offer, it should be regarded as a mutual offer. If there is an offer of selling 1200 tons of ironware and the other party replies to buy 800 tons or if there is an offer for doing a certain building work with a determined price and the acceptance is stated to do it with a different price, it will not be considered as acceptance. The mutual offer does not lead to conclusion of a contract. But when two parties start to implement a contract, it is regarded as a concluded one. In such a case, the terms of contract are the ones mentioned in offer plus the additional terms mentioned with acceptance unless the offeror declines them implicitly or explicitly. This is based on a conventional rule in common law which is called "Last Shot". According to this rule involving conflicting forms, the contract is concluded based on the terms of the last exchanged form. Mutual offer is considered as refusal of first offer which can be declined or accepted by the first offeror. In British law, there is no discrimination between a case that alters the conditions of an offer basically and a case that does not change it essentially. However, such an acceptance (with some alteration) is regarded as mutual offer in both cases which can be accepted or refused by the first offeror. In Iranian law; however, regarding the fact that the accordance between offer and acceptance is one of the requisites of contract conclusion, it seems that any alteration in terms of offer, be it subtle though, prevents the conclusion of contract by such an acceptance unless the offeror accepts the changes. Of course, this acceptance may be implicit or explicit. So, the mere silence of offeror regarding the subtle changes by the offer addressee is not considered as a sign of his/her consent to these changes and conclusion of the contract and he/she is not obliged to announce the second party in case of opposition. So it can be said that in such cases, acceptance is regarded as mutual offer but does not discredit the offer. However, when the change is conventionally trivial and inconsiderable and the offeror does not claim anything about it, it can be said that the offeror has accepted the changes implicitly and the contract is concluded regarding the so-called alteration. But in case the acceptance alters the offer fundamentally, it is regarded as

declination of offer and discredits it and the contract can be concluded with additional changes only in case the first offeror accepts it [13-17].

### **5- Announcement of Acceptance:**

In British law the general rule is that the acceptance is efficient from the time it is announced to the offeror. One of the reasons of this rule is that approving the acceptance is a difficult task: "even the Lucifer is unaware of human's intention." This rule is implemented even when the acceptance can be approved certainly. For example, when the offer addressee writes his/her acceptance down on a sheet of paper and keeps it or when a company registers its decision to accept the share purchase offer of an applicant but does not announce it to the applicant or in a case that the second party accepts a sale offer and orders the bank to pay money to the offeror but neither he/she nor the bank announces the matter to the seller or when a person communicates his/her acceptance only to his/her lawyer, in all abovementioned cases, the measure of acceptance is its announcement to the offeror though the certainty of acceptance is easily approved. The main reason for this rule is that if the offeror is bound to the terms of contract without being announced of the acceptance, this will render him/her incurred and the contract may be concluded without awareness of the offeror. If the announcement is done by a third person and without the permission of accepting party and the it is obvious from circumstances that the decision of the accepting party is not certain yet, such an announcement will not be valid [14-17].

In British law, the reception rule is accepted; however this is not absolute and there are exceptions to it as follows:

#### 1- Communicating acceptance to the representative of the offeror:

The efficiency of announcing acceptance to the representative of the offeror depends on the authorities of the representative. If the representative has the authority to receive the acceptance, the acceptance is efficient as soon as it is communicated to him. For instance, if the acceptance is announced to the general manager of a company, it is valid and efficient. If the representative has only the authority to communicate the acceptance to the offeror, the acceptance is not efficient till it is received by the offeror in person.

#### 2- The conduct of the offeror:

If the offeror is responsible for not receiving the acceptance, such an acceptance is efficient and concludes the contract. For instance, the offeror may happen not to listen to the accepting party's statements on the phone and does not want the accepting party to repeat his/her statements or the acceptance may be sent by telex to the offeror during working hours but not read by him/her.

#### 3- The conditions of offer:

The offer may implicitly or explicitly exempt the accepting party from announcing the acceptance. In a case that offer is made to purchase goods, such an offer may be accepted by sending the goods to buyer. A lodger can accept the offer to a new lease by staying in the same residence.

In the case of *Mrs. Carlill against The Carbolic Smoke Ball Company*, the court declined this reasoning that the plaintiff should have informed the defendants of its acceptance before they proceeded to use smoke ball. In the same way, when a prize is announced to find and give back lost property, the finder is not obliged to announce the proprietor of his/her acceptance. He/she can accept the offer by finding and giving back the lost property and when the property is found, the owner cannot cancel the contract or put off the offer.

In Iranian law, regarding a general rule which has been stated in the article 193 of the Civil Law, the statement of acceptance by taking action is regarded valid and it seems that the mere expression and issuing acceptance is sufficient for conclusion of a contract. The articles 191 and 339 of the Civil Law approve this notion. Based upon this, in the case that acceptance is stated by writing a letter, the mere writing of the letter is considered as acceptance. However, some professors of law and jurists have accepted the rule of sending and reception and believe in the fact that the acceptance is realized when the acceptance letter is sent. Nevertheless it seems that sending can be a token of acceptance realization and its being issued and it cannot be regarded as prerequisite for the realization and validity of acceptance. Such a prerequisite is not issued in law and we cannot add prerequisites other than ones stated in law. In other words, it can be said that sending is a means not basic prerequisite.

Of course, this rule is not mandatory and the two parties can put the reception of acceptance to the offeror or the offeror's awareness of acceptance as prerequisite for validity and conclusion of the contract. As a result, regarding the validity of acceptance and the time of contract conclusion, the Iranian law and British law does not overlap with each other. In British law the rule of reception is accepted while in Iranian law the rule of announcement is valid. Iranian law is like French law in this respect.



### **Conclusion:**

- 1- In British law, offer is the statement of the will to conclude a contract, via words or action, in a way that if the offer addressee accepts it, the offeror will be bound to the contract.
- 2- In Iranian law, offer is not explicitly defined in the Civil Law; however, it can be said that “offer is the statement of a person’s will who invites the second party to a contract based on a certain measure in a way that if the suggestion is accepted by the second party, the offeror will be obliged to the conditions of the contract.
- 3- In British law, for the offer to be valid and efficient, it should be stated and communicated to the second party in a way or other; however, particularity of the second party is not a prerequisite for validity of the offer. So, there is no difference whether the offer is announced to a certain person and people or to the unknown people and to the general public; however, it should be accepted by a particular person or distinct people so that the contract is concluded.
- 4- Notwithstanding the fact that in Iranian law the principle is based on internal will (the article 196 of the Civil Law), it has been explicitly expressed in the Civil Law that this internal will should be stated and shown in a way or other (the article 191 of the Civil Law). However, it seems that reception of acceptance by the offeror is not a prerequisite for efficiency and validity of the offer. There is no explicit statement in Iranian law regarding the public offer but the interpreters of the Civil Law believe in the fact that such an offer is valid in case it includes the prerequisites for the realization of offer.
- 5- Regarding the general rules in Iranian law, the mere offer is not binding by itself because a contract is concluded by the agreement and accordance of the two parties’ wills and a single will cannot be binding (the article 183 of the Civil Law). As a result, an offer can be obviously withdrawn in case it has not been communicated to the second party. After an offer was announced to the second party, the offer can be retracted if the second party has not declared his/her acceptance or the contract has not been concluded. However, the offeror can explicitly or implicitly bind him/herself to the offer and declare it as irrevocable for a while. In this case, the offer cannot be retracted.
- 6- In British law, offer is absolutely retractable before acceptance even if the offeror has been bound to keep the offer for a certain or uncertain period. This is true unless the second party has undertaken any promise regarding the obligation of the offeror whether this promise is cash payment or other action. This is based on a traditional rule in common law regarding the fact that an obligation is binding only when it is paid.

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