Offer and Acceptance of E-commerce in Iran

1Saeid Taghizadeh Heidar Abad*
2Abasat Pour Mohammad

1Department of Humanities, College Of Law, Sanandaj Branch, Islamic Azad University, Sanandaj, Iran.
2Assistant Professor, Islamic Azad University, Maragheh Branch, Iran.

Corresponding Author Email: Akharsu.Tatao@gmail.com

ABSTRACT

The first prerequisite for the creation of a contract is that the parties have reached an agreement. Prior to the transaction, it is customary that the parties talk about their condition and its effects. This preliminary negotiation does not lead to an agreement if the parties do not create any obligation and consequently, none of them are liable for the resulted damage. An agreement usually occurs when a said offer made by one party will be accepted by the other one. Discrimination of preliminary stage of offer and acceptance is not easy, because sometimes one side considers the other's conditional promises necessary and provides the means to implement obligations arising from the contract according to it, while the other side is still in a preliminary stage and in thinking. In such cases, it should be answered such question whether the parties aim is proposed or accepted or is just preliminary negotiations. The question is whether the preliminary talks before the required commitment can created a special legal relationship which causes the two sides commit a thing or it should be said at this stage there is not a law to force them not to cut off the conversation and get freedom. In this paper, we try to come up with a comparative study of law and the principles of international commercial contracts and review British law on commitment, time and place off fulfillment of the conditions of contract.

KEYWORDS: Offer, Acceptance, Contract, E-commerce, Preliminary negotiations
1- INTRODUCTION

In the principles of contracts law, a contract is defined as an agreement between two or more parties who want to have implications of applicable law. (Pedfiel, 2000, 190). According to a legal proverb, every contract is an agreement, but every agreement is not a contract. Based on the so-called proverb, the first prerequisite for the creation of a contract is that the parties have reached an agreement. (Treitel, 1998, 15).

The first issue is the ways in making an agreement to form a contract. For a long time there has not been a practical need to include an agreement on a defined and specific form, because the parties usually conclude contracts face to face, and generally concluding contracts with the presence of parties was necessary. But after reliable postal service was provided and making contracts from distance became possible, the necessity of compromise contracts in a proposed and accepted form appeared. (Ahmadvand, 1385, p. 6).

The second issue is on the concept of offer and acceptance. Prior to the transaction, it is customary that the parties to talk about their condition and the effects of contract.

Third issue is the impact of offer and acceptance, in other words, is the ability to extradition and refund from offer and acceptance. The extradition and return of offer or accept is not discussed in Iran's law independently and making answers to this question requires an analysis of the general principles of law. The ultimate purpose of this research is to determine the mechanism of offer and acceptance as the most original way to reach agreement and define the concept of the contract which requires the fulfillment of the conditions and criteria necessary for the resolution of the same terms and also explaining and accepting the requirement evaluating the ability of extradition from acceptance are another goals of this paper.
2- E-COMMERCE

While about one-seventh of e-commerce law is assigned to the definitions, the definition of e-commerce itself is not provided. In fact, the concept of e-commerce is so dynamic, evolving and widespread that it is not possible to define a comprehensive and concise definition about it. However, some agencies have to provide semi clear definitions in this regard. The World Trade Organization in a statement dated September 25, 1998 on e-commerce, defines it as "production, distribution, marketing, sale or surrender of goods and services through electronic means".

From the perspective of the WTO, the development of e-commerce transactions will promise low cost of production, facilitating contracts and intensifying competition. This type of trade, in his turn leads to decreasing prices, increasing quality and variety and ultimately, greater prosperity (Bacchetla, 1998, 15).

On the interpretation of Article 1 of sample law(1996)and in explaining the term "commercial", UNCITRAL is known it as the term which includes transactions concerning the acquisition, exchange and distribution, commercial representation, commissioning, leasing, operation of the mines, advice, engineering, licensing, investment, finance, banking, insurance, or the transfer of resource extraction agreements, partnership contracts and other industrial and commercial partnership or passenger transportation by air, sea, rail Pathway &.

3- CAUSE (REQUIRED) AND THE RESPONDENT

E-commerce law defines cause as "the originator" which is expressed in paragraph (b) of Article 2 of the Law of Electronic Commerce. The originator is the main source of "data message" and the message is given by him or on his behalf. But will not be include as the person who acts as an intermediate in the message, why the intermediate is not considered as the originator is that he is as a representative of principle, namely the warrant. (Department of Education and Research of the Judiciary, 1389, p. 126).

The respondent is as addressed in paragraph(c) of the so called law and expressed as an audience who acts like an intermediate. It is observed that the respondent is required to accept the principle message of the title which is an expression of will by the audience and has not independent power to fulfill the contract, and therefore cannot be considered as an audience. But his acceptance is equal to the acceptance of the main audience.

4- ELECTRONICS OFFER

From analytical point of view, there are no differences between ordinary and electronic offer and acceptance. Professor Franz Worth has defined offer as an issue which requires the consent form required dealing with the other side and its final effect is subject to the satisfaction of the other party, (Fransworth, 1990, 33). The possibility of providing electronic offers are stipulated in a number of laws on transactions, for example, paragraph 1 of Article 8 of the UNCITRAL2003 states that offer and acceptance can be in the message format, though some believe that some laws on lyre able to identify legal effect and credit permeated the message content without specifically stipulating demand or accept.
There is not a real article on the possibility of electronic offer in Iran's law. In addition, it lacks of expression on general rule in accordance with the UNCITRAL ones. Although at the beginning, the codification of rules with the general principle of law was acceptable. Therefore, this procedure on electronic offer identification would not be a problem, because on the one hand, it can be justified by resorting to the principle agreement of contracts and freedom of the parties in the procedure selection and the other hand, the authority and liability of the message of the law in recognizing the validity of electronic writing, electronic signatures and electronic deduction is possible. (Ahani, electronic contracts).

Important effect in an electronic offer by qualifying form is acceptance of the contract and the obligations of parties bound by the arising from. So it should not be assumed that the mere clicking on the index "I agree" or "agree" or "believe" and similar profile, is not binding. (Samavati, 1377, p.47).

5- OFFER AND DISTINGUISH IT FROM INVITATION TO TREAT

Even though the term “invitation to treat” is built on the principle of common law, but attributing some practical effects on it led to will also be considered in the rights of other systems. Invitation to treat is a term with a general sense that includes "discussions before contract" and "contract proposal" as well. Considering an invitation to treat to refer to advertising that is done on the Web sites sometimes causes issues that can be presented for analysis to the general rules of law. Moreover, when the invitation to treat is used on the concept of "preliminary talks" of contract in some cases, to distinguish it from "offer" becomes difficult and the situation should be evaluated. Advertising goods and services on
the Internet are incompatible as far as they are not opposite with good morals and public order.

In practice, it can be provide criteria for distinguishing offer from an invitation to treat, "The promise of contract is nothing but a common pledge to create a contract in the future ... the propose of contract also calls for the formation of the contract and cannot dictate the composition of de facto one" (Shahidi, ibid, p. 152). In fact, the main purpose of the preliminary talks is not making obligation and thereby the two sides will not make a commitment, by notifying the other of some facts and propaganda about the future benefits of the transaction which is the desire to do it in the audience make (Katouzian, ibid No. 148).

Article 11 of the 2005 Convention which is determined as "an invitation treat", in distinguishing offer from proposal states that: "contract proposals are made by one or more electronic devices and do not addresses a specific person or persons, but are available to all those who use the information systems. Such proposals are considered as an invitation to provide the offer, unless the can be concluded from the message that the bidder will be bound in case of accepting of order."

6- IN REVOKING OFFER

Revoking from an offer is applicable in two forms as: One is when the offer still has not been addressed the audience; second, when it reaches the audience. Consequently, two separate terms are used for these two assumptions in Britain and France law. In case the offer still has not filed the audience, they apply the term Revocation and in assumptions that the offer has reached the audience their used term is withdrawal (Pourmohammad, 1362, p. 29).

---

2. united nations Convention on the use of Electronic Communication in international Contracts.
In this regard, if required can be rejected before the expiry time to be end, or the cause be repealed it, there is not a general rule.

Under the general rules in Iran's rights, offer itself does not require making a commitment, because the contract will actually made with the agreement of both parties and the will of one side is not a binding principle (Article183 civil law). So, until demands are not addressed, on its refundable nature there is no doubt. After reaching offer to audience, until the audience has not signed the contract, is required to be accepted (Katouzian, 1371, p. 66).

Basically, the survival time of offer is a function which depends on the will of cause and he can take some time to determine its ability to combine it with acceptance in the long term that will not repeal it until the end of the stay but if he does not specify the required time for survival, duration of the terms and conditions of the issue will be a custom function. In business, a relatively short period is implied, because commercial transactions are carried out rapidly and time is an important factor in such transactions (Safai, 1389, p. 226).

In Iranian law, it seems that the commitment to the conservation of the given time on the basis of an implied contract between the required is necessary to keep the audience justified and requires a valid explanation in specified period to maintain the required notifications and audience implicitly accepts it.

The problem is that based on the above theory, the existence of such a contract is hypothetical and cannot be interpreted based on supposition and conjecture over the imposed contractual relationship, but irrevocability of the offer with a commitment or a of the theory of a civil liability is justified, in other words, accept the demands in these cases, although causes the extinction is considered as a fault or abuse of rights that suppliers are required to accept its civil liability and is responsible of compensation for the damages.
So we can say that the sanctions in revoking offer is commitment of civil liability, not offer survival requires, because with revoking from offer, the will of cause is expired and the issuance of it under the contract will not be accepted.

7- REJECTED OFFERS

The respondent of offer may be required to reject it; in this case its validity is destroyed. However, the respondent's answers on offers shall not be considered as rejection always. For example, the offered might demand more information about the subject of the transaction; it would not is as same as the rejection.

8- DEATH AND LACK OF QUALIFICATION IN REQUIRED

Before accepting on behalf of the respondent, the general rule is that the death of any of the parties or calls makes the end of the negotiations. If the transaction subject does not require the activity of the deceased person and if his heirs are able to trade, and on condition that the acceptor was not aware from death at the time of contract, it maybe is acceptable to build the contract (Katouzian, ibid, p.304).

Although in the civil law the cause of death, the verdict is not clear, but the tendency of legislator to follow the will of the esoteric doctrine on contracts and reputation in terms of declining demand in jurisprudence is among the signs that prove the authors believe it is necessary to decline such situations. In the electronic environment in case of death of the originator, the message containing the required data will be lost.
9- ACCEPTANCE IN THE RIGHTS OF E-COMMERCE

In electronic trade, after offer, one of the methods to show acceptance is clicking on "Yes" or "agree" or similar phrases by actually pressing the above button on the keyboard by which the agreement of the audience will be revealed. Now the question is this: Is clicking on the button is a sign of acceptance? Is downloading shows the accepted form of consent or it requires special procedures, and this is not acceptable?

The answer is that, except in the case of formal contracts, acceptance does not take any particular form and can be announced in the forms such as conversation, letter, telegram, or clicking "I agree" on the website page.

In paragraph 1 of Article 18 of the Convention on the International Sale, special procedures have not been established for the acceptance. In paragraph 1 of Article 11 of the rules of acceptable e-commerce in Iran, it has refused to accept the probative value of the message and the impossibility of it in electronic form confirms this meaning.

The question here is this: if the user accidentally clicks on the "I agree" button, would acceptance reasonably be achieved, or whether require naturally makes it a "reasonable" will and will take action to implement its terms? In response to such questions it can be said that the principle is that the will should properly located and the audience knows the true demands. So his claims to have been struck accidentally click agree must be proved and must not be on the contrary to the principle of effectiveness. Article 223BCisalsoconfirmed this subject.

The agreement should be clear and complete and include all circumstances. If the user (customer) do not perform his duty to read the terms before agreeing to them, he is
responsible to damages and he must act in accordance with the contract obligations every time (Department of Education and Research of the judiciary, ibid, p. 153).

Another question is whether downloading is a sign of acceptance or not? In the case of downloading and whether it is the concept of consent or not, we are faced with more uncertainty. It is argued that the act of downloading more shows user satisfy more often.

The fact that downloading shows consent without ambiguity is implied is not acceptable, because the main purpose of downloading is that a person acquire product or convey information to his computer, rather than to make consent agreement. We assume that a person download information about the sale of a specific product on the Website, in this case it cannot be said that his action is a type of acceptance and a contract has been formed. Maybe his purpose of this work is to study the characteristics of the product and the terms of the contract and see if they are appropriate to the conditions of contract adultery.

Another question is whether the silence is considered as acceptance? In general, the answer is absolutely negative. In most countries the accepted rule is that the audience silence does not mean his acceptance, but at the same time new business practices was not always in the case status. One of the exceptions to this rule is when interacting in contracts related to the silence were considered equal to acceptance.

If silence is accompanied by evidence that indicates acceptance, it can be considered acceptable, but the silence itself does not imply acceptance. The following paragraph 1 of Article 18 of the International Convention in 1980 stated that "silence or inaction per se implies no acceptance" (Khazaei, 1386, p. 84).
10- THE SEQUENCE OF OFFER AND ACCEPTANCE

There must be a common sequence between offer and acceptance. In Iranian law, the principle of succession of offer and acceptance is of popular consensus of legal scholars. It is that an acceptance should take place in the time which is suitable for offer in practice. Basic rules of civil law on contracts does not refer to this condition, but on the condition of the validity of the marriage in article stated that "customary sequence of offer and acceptance is a condition for the validity of the marriage." As law professors have analyzed this matter, this rule is not specific to marriage and is one of the general rules of trading. (Katouzian, ibid, p. 173).

The so called rule is accepted in the Convention on the International Sale of Goods. It should be noted that in international sales existing a break in the conventional sequence of offer and acceptance is acceptable and is a sort of sequence per se, but if the offer is made orally, it you must be immediate and continuously accepted. Although oral offer is very rare in international sales, but the Convention of International Sale makes concern on it in paragraph 2 of Article 18.

According to paragraph 2 of Article 18 of the Convention on the International Sale of 1980 "making acceptance is penetrating from the moment the demand is filed with the cutting. If the expression of satisfaction will not take place within the period of necessary determination or if there is no set time, within a reasonable period, the contract will be blunt. In calculating the normal time according to the circumstances of the transaction, communications like equipment used to speed calls for attention can be focused. Oral demand should be accepted immediately unless the circumstances indicate otherwise.
The sequence of offer and acceptance is necessary in a written contract, but it should be given a reasonable time to carry out the contract based on the distance to be considered by the transportation system. For example, if the contract will send from Tehran to Paris with airmail, where business page should be contracted, due to the circumstances, it must be submitted in a few days as normal to reaching agreement on the audience, a few days should be waited to get the answer. So if acceptance to offer is received 15 days after the offer, the sequence of offer and acceptance were considered, but if the audience sent acceptances sign after six months, it should be considered as mutual interaction (Khazaei, ibid, P. 87).

11- CONCLUSION

In the Iranian rights, of parties come to the transaction by signing the contents of the office with the knowledge and intent of the transaction and then decide on running the creation of the contract of sale (land sales). This will and intention of the parties in signing the book is as same as the deal on creative intention which is building contract and in this instance is showed by putting signs in their book as the following contents. The offer must be crucial to the intention and to conclude an agreement and make a commitment to implement it in such a way that it must be acceptable to the other party in the traditional covenant package and other optional prerequisites remains necessary. Offer recognition of promises and negotiations prior to the signing of the proposed transaction on the terms and words and speech may be made as telegrams between the parties and as long as they do not fulfill certain demands, we cannot warrant the formation of contract, even if the negotiations and offer resigned the sides of the deal.
Discrimination between offer and invitation to negotiation depends on the circumstances and there is no general rule about this issue in the Iranian law. The judge must take into consideration on the circumstances and discover the will of offered and determine whether it was a real request or just a simple invitation to dialogue. When he loses his qualification as a mad or bankrupt or dead person, then according to the degree of popular, the demand will be void. Next acceptance cannot create a contract, because entailed acceptance should continue to be valid.

REFERENCES


Pourmohammad, Abast investigate the role of agreement in the contracts Tabriz: Ayin publication, first edition, 1392.


Imami, Hassan, civil rights, the first volume, Islamiyah publication, the nineteenth edition, Tehran, 1377.

Jaafari Langroodi, Mohammad Jaafar, rights obligations, printed and Administrative Sciences School of Judicial Affairs, Qom, 1354.
Katouzian, Nasser, civil rights, certain contracts, the first volume, the seventh edition, Ganjedanesh publication, Tehran, 1378.

Katouzian, Nasser, civil rights, law enforcement, second edition, Enteshar publishing company, Tehran, 1371.

Katouzian, Nasser, civil rights, the general theory of obligations, vol 1 publication, Tehran, 1374.

Katouzian, Nasser, general rules of contract, the first volume, Behnashr publication, Tehran, 1372.


Khazaei, Hossein, international trade law, Tehran, ganoon publication, the fifth volume, first edition, 1386.

Olsan, Mostafa., offer and acceptance of electronic transactions, Tehran, Journal of Law, No. 43.1383.

Rene David, two major contemporary legal system, translation and summarization by DrHosseinSafai, Fourth Edition, Mizan publication, Tehran, 1381.

Safai, SeyyedHossein, Proceedings of the civil and comparative law, Mizan publication, Tehran, 1375.

Safai, SeyyedHossein, civil and Comparative Law Foundation, Mizan publication, Tehran, 1382.

Samavati, HashmatUllah, international trade law, theoretical and practical, Gognus, Volume I, 1377.

Shahidi, Mehdi, the agreements and commitments, Tehran, Hougdanan publication, first edition, 1377.