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**A COMPARATIVE STUDY BETWEEN IRAN AND AMERICA
REGARDING THE RIGHTS AND OBLIGATIONS OF DEALERS IN AN
INTERNATIONAL E-COMMERCE CONTRACT**

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ABSTRACT

Due to the increasing development of commerce and the needs of human society to do commercial transactions as well as the need to accelerate the business that have led to the formation of E-commerce, Today, E-commerce as one of the most functional areas of international trade has taken the bulk of world trade transactions. This field of commerce interpreted as a relatively new area in business and law in Iran, which unlike many first world countries it is not for many years that Iran has created a civil law for this field. In this dissertation we have comparatively studied the rights and obligations of e-commerce contracts dealers in Iran and America which is considered the world's largest business place in the world. At the beginning, the differences between the two legal systems and the Commercial law were studied. In fact, this issue should have been raised whether the laws adopted in the track of e-commerce are in response to criteria of this newly established law. Are the general rules of contracts applicable to e-commerce contracts? It is also important to investigate to what extent the Sovereignty should be limited regarding contracts in e-commerce. In all scientific research the method of data collection was library and this research in terms of data collection from start to finish naturally based on library. In this method, we deal with the study of legal methods and court verdicts and original documentation of the relevant verdicts. On the one hand by a comparative study of the two legal systems, and on the other hand by the international provisions of e-commerce contracts, in this dissertation we have tried to offer an appropriate response in order to explain the legal situation, the definition of the types of contracts and clarification of existing regulations.

Keywords: *Rights, Obligations, Dealers, Contract, Commerce, Electronics, Iran, America*

INTRODUCTION

Now, it has been for more than forty years that with the use of modern communication technologies that the Internet is its prime example, Communications have found another color and have had a significant impact on all personal and social life aspects of human beings. As a result of modern communications, a new world has emerged along the real world, a world where geographic boundaries have lost their meanings. Passing through it does not need a passport or visa is possible for anyone, even if they do not have identity. Speed of communications is to the extent that makes us think communication is established through the streets of a small village. Those who have the ability to properly use are the pre-eminent in the context of its activities, both those who are in the world of media, education, culture (with positive and negative purposes) and so, and those who compete in the world of modern business. This research tries to pay attention to some issues of the world of commercial law in the virtual world that the principles governing the formation of electronic contracts is one of these issues.

The regulations governing the formation of electronic contracts are one of the most important topics in the field of e-commerce. The first electronic contracts in a general sense date back to the 1930s, when the telegraph was brought into the business world. Seeds sown at that time have yielded to day and the form of commercial communication has changed. Thanks to the virtual world, vendors can offer their products outside of their geographic location, state Terms and conditions of sale and any other information relating to the goods or services and in fact create electronic market Buyers which scope is not limited to a particular city or place but it consists of the entire earth inhabitants. Electronic markets let their clientele

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the possibility that at any Geographic points of the earth where they live be able to easily serve their needs and provide them at a competitive and affordable price. This means that the buyers themselves no matter if they are consumers or businessmen have access to the markets which physical edition was already out of reach due to geographical restrictions, but from now on in the virtual markets they select their desired item after checking hundreds of other electronic markets with the most favorable conditions. And as soon as possible they can receive it at their door or if it is a digital product they are able to immediately download it on their computer systems. And in the transactions that are bigger, counters containing traded goods will be submitted at the agreed time. With this introduction we can say that the advent of electronic commerce is the fruit of new communication tools and electronic markets. E-commerce covers a wide range of business, commercial activities and services, such as Internet access, consulting, advertising, marketing, finance, information and electronic transaction (Akhlaghi, 1999).

Due to the day-by-day increasing development of electronic trading it is very essential and important to study its legal aspects. If the legal uncertainty is not eliminated, the development of this market will be stopped and its fans will be reduced. In this context we should use the help of the traditional legal principles and urged the veterans to come to the field because the experience of the elderly is worth more than power of the youth. The law of contracts has grown over the Centuries. In its growth the industrial development and further advancement of technology has been very effective. If in the past a contract was signed only in-person meetings, Introduction of modern methods of communication such as the postal service or phone-though they are not new at the present time, has led to the introduction of new regulations in the law of contracts to eliminate the legal uncertainties. At the current time, in which new methods have been developed and we experience the emergence of another world entitled the virtual world along the physical world, west ill need to develop the legal requirements by eliminating legal uncertainties. Parties which are involved in Electronic transaction, including merchants and consumers, should been sured that the agreements made in the virtual space are binding and the other side will act according to that. The conclusion we can draw is that not only are the electronic contracts and rules governing this type of contract, including how, where and when they have been formed and the rights and duties of dealers important from the academic point and theoretical discussions, but also the commercial and practical point of view is very important.

Research Purposes

1- This study, in terms of operating aspects regarding the domestic law and the law of America, has several goals that are feasible to verify that whether the targets are applied in the US are applicable to the domestic law or actually that domestic law can reconcile the impact of e-commerce with American law or no.

In practical point of view, the determination of both goals is one of the important features of this research.

2-What applications does e-commerce have at the level of Domestic law and international law in the trades carried out by people? What practical application does it have American law and what does it cover in domestic law? A comparative study between them will help to grow domestic law and develop it.

3. Generally, when America's law has been discussed in relation to electronic commerce and its nature and impact are analyzed and a positive thing is glaring in those contracts which require our domestic law to cover these important issues which by this research will be specifically dealt with.

The Conclusion of Electronic Contracts

Before the spread of the Internet, the majority of electronic contracts would be done through Electronic Data Interchange (EDI). These systems connect manufacturers and suppliers of goods to retailers and assembly plants to eliminate paper work or previous correspondence and provide making inventory system based on client facilities.

These systems were based on continual relationship between both parties and agreements were made available in accordance with the sample form, which had prescribed the future of relations and conditions of both parties. The diversity of these contracts like the diversity of legal systems and their validity depends on the case and legal knowledge and practice of regulators and their positions. Discussion of contracts law is naturally applicable to this type of contract.

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The Rules of Common Law in the US

The rules of common law have been transformed and found another face. In there, a separate clause is applicable provided that the requirement should be made clear to the audience. Advertisement of a given product or service does not mean requirement, although it is assumed advertisement is a mere invitation to deal or, if requirement has all the necessary and important elements (such as particulars of sale, price and ...).

However, in accordance with the practice prevailing in America, because it is not offered to a specific audience, it is not valid. Requirement should be applied to the transaction side and in order to present to them, either directly said or written or as a message be announced to others, the necessity of having an addressee, which is an indication of the intention of composition and not news, it does not impede the requirement being for certain groups or the general public (Skinni, 2007).

How to State Acceptance

Acceptance in all legal systems makes the occurrence of contract fulfilled. If due to requirement or because of it or as a result of the common procedure normally on parties or by custom and tradition, the addressee without informing the requiring suppliers be able to do something to show their willingness, the acceptance is valid from the moment the action has been done (Skinni, 2008).

The Time When Electronic Contract is Made

General Principles of Law stipulates that adoption and its notification to the parties to fulfill the contract is necessary and the contract is concluded in jurisdiction where it has been accepted. Presenting information about the products or services relating to sales on the Internet is not considered binding but is considered a mere invitation to the transaction.

The court according to purpose of supplier and considering the circumstances makes it clear that what the purpose of presented information was and if the seller wants to show their willingness to trade, presented information is binding and if it is not their intention, the presented information are interpreted an invitation to the transaction.

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General Provisions Governing the Regulations of Electronic Contracts

The rules governing the provisions are not related to the contract being electronic or on paper Such as provisions should be clear and unambiguous and that the parties should compromise on it (Almasi, 2010). To serve this purpose the conditions stipulated in electronic contracts must be presented to the other side. Regarding when being aware of the terms of the contract has been established, but there is also this idea that a person who enters into a contract if at the moment of signing the contract was aware of the terms and conditions in the Terms and Conditions or with the exercise of reasonable care should have been aware, in this case they should be bound to the terms and conditions governing the formation of contracts (Amiri Ghaem Maghami, 1999).

The Legal Status of Electronic Representatives in Concluding Electronic Contracts

From the viewpoints of statute is the possibility of contracting through e- representatives has been prescribed, but in practice the existence of competency is considered one of the basic conditions that any legal system has been required for the conclusion of the transaction. Furthermore, the existence of volition (will) is another necessary condition (Jafar Nejad Ghomi, 1998).

This means that only legal and natural people are capable of doing legally binding deals. So, as an e- representatives is without the attributes (competence, volition and satisfaction), so there are two ways, either not to consider contracts signed by them invalid which results in the removal of internet markets, It

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does not seem possible, or the role of e- representatives must somehow be justified in order not to impair the validity of contracts.

It should be noted that in Iranian laws along strict provisions, the conditions that are the basis of mutual consent of the parties are referred as collusion provisions (Article (1128) of Iran Civil Code) for such provisions being valid it should be established that the parties acted with awareness and does not have to be mentioned in the contract (opposing views have also been offered). But in the implicit provisions, the terms of implied condition are obligatory.

These provisions are necessary in both legal systems written and the common law which was discussed in the third chapter. Of course they have different views as regards how to verify the intention and consent in order to sign the contract.

Negligence is Especial Conditions for Each Contract

Some have dealt with the problem from the perspective of how the intention is authenticated at the time of contract being concluded through electronic representatives and they believe that Court rather than be after requiring and special acceptance one very contract and look for authenticating the intent and consent of the parties in particular, should neglect and by being sure of general purpose of the user declare the contract valid (Bahrami Ahmadi, 2011). This perspective prescribes it possible to contract through electronic agent and pays a specific attention to special declaration of intent and consent of user in any contract.

Prescription of Concluding Electronic Contracts through E- Representatives

In concluding electronic contracts which expressing the willingness is delivered by the data, message or electronic communication, Electronic Communications Convention has assumed a clear position and provides that "...The validity and enforceability of the contract should not be denied solely because it is in the form of electronic communication."

This means that the contract can be achieved through automated message systems which are electronic agents; the valid intention can be displayed.

On the other hand, the Electronic Communications Convention authenticates contracting signed through electronic representatives and declared that an e- contract can be signed between a person and e- representatives representing another person.

Guarantees and Disclaiming the Responsibilities

In the US, Guarantees and disclaiming the responsibilities are subject to laws. General business transactions are subject to the Commercial UNIT code. Consumers' transactions in addition to being subject to Federal law a real so subject to consumer protection laws. Commercial UNIT code has expressed the explicit or implicit guarantee of goods. IMPLIED Guarantee is applied for the goods being tradable and favorable for a specific purpose on sales of the product ruling, unless the guarantees are expressly exclude.

Express Guarantee

Express guarantee is based on the contract and is the result of negotiations between the parties and the terms of the contract. Such guarantees may include quality features and suitability of the product for a specific purpose. To specify the guarantee does the seller does not need to exactly use the term of guarantee. The seller's obligation is part of the transaction suffices for conformity of the sold thing with the sample and what previously was committed.

Conclusion

With regard to what has been mentioned in this dissertation:

Iranian law makers in 2003 have set these rules, but because he has just got familiar with the issue he has not been able to forecast all its cases, so according to Article 30 not mentioned cases are subject to the General Provisions.

Speaking of The International Law, Commission on International Trade Law (Uncitral) has tried to apply unite, uniform and homogeneous rules on electronic transactions, electronic commerce and electronic signatures the same rules, and even sometimes a model or pattern. International regulations with respect to a wide range of international trade, including the sale, transport, insurance, inspection, and...are not yet

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complete. So what e-commerce dealers have expressed regarding commitments of parties are first steps and almost tentative.

Several reasons can be cited to explain the causes of backwardness of e-commerce in Iran the most important ones are:

The lack of infrastructures and network equipment for quick and easy access of people to the internet

The absence of ratified legislations of e-commerce

The lack of new electronic banking system in the country's banking system

Non-existence of international credit cards and other electronic shopping cards

Lack of supporting the companies in the field of e-commerce in Iran and also the absence of institutions and public and private companies providing e-commerce in Iran

The low level of people awareness and attention to electronic and information technology in Iran (lack of proper culture-fostering)

Recommendations

According to what mentioned in conclusion:

1. Not only must an Iranian legislator issue Leading and specific rules in sales but also in other areas of electronic commerce, such as electronic transport and electronic insurance and avoid current generalizations in e-commerce law because the growth of e-commerce would connect e-commerce world to Iranian businessmen and the continuance of business life in Iran is determined by these laws and regulations. Surely in such regulation, what matters is the law in practice dealers that according to the background of our historical and traditional laws and inspired by the principles of Islamic law it should be connected scientifically to the international development of electronic business. Otherwise, any transaction of an Iranian person in the electronic scene arises several internal, foreign, and domestic disputes.

2. The United Nations Commission on International Trade Law is the main undertaker of making regulations of international trade uniform and in variable. With the help the United Nations International Law Commission which is in the charge of preparing drafting these regulation based on the common principles of the laws of countries-which is difficult, and expert-creates rules and regulations in this area, particularly the obligations and rights of dealers-which not only prevents the arising of international disputes and conflicts, but also leads to development of international trade law.

3. Scientific and educational centers in Iran, in addition to Education and training the practical and scientific people in this field, should conduct required Research works with the help of concerned teachers and organizations and ministries to do the groundwork for the formulation of required plans and bills.

Although recommendations seem general, but, you probably acknowledge that not only the drafting of the provisions in the above cases is impossible for just one student but the experience of the past thirty years has shown that tens of international and specialized organizations and Islamic Consultative Assembly still have not achieved such success. It is hoped that the provisions of this thesis come of any help, although a little in this way. Amen

In Electronics sales, which is a new phenomenon there is not barrier between domestic law and international laws like the current method of law. So, its rules and regulations rights do not have legal and legislative like that of traditional sale.

1- The national laws of countries have specific regulations and rules on commerce and electronic transactions that separates them from traditional sale but not from foreign and international trade sale.

2- The Iranian legislator in 2003 has set these legislations, but because the concept is new in Iran, they failed to forecast everything, so in Article 30, items not have mentioned are stipulated subject to the General Provisions.

3- As regards the International Law, the Commission on International Trade Law (Uncitral) has tried to make electronic transactions, electronic commerce and electronic signatures uniform and invariable and homogeneous, and sometimes develops a model.

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4- The international regulations according to the wide range of international trade, including the sale, transport, insurance, inspection, and...are not yet complete, so what e-commerce states regarding dealers commitments is still in the initial phases and trial period.

8. Not only must an Iranian legislator issue Leading and specific rules in sales but also in other areas of electronic commerce, such as electronic transport and electronic insurance and avoid current generalizations in e-commerce law because the growth of e-commerce would connect e-commerce world to Iranian businessmen and the continuance of business life in Iran is determined by these laws and regulations. Surely in such regulation, what matters is the law in practice dealers that according to the background of our historical and traditional laws and inspired by the principles of Islamic law it should be connected scientifically to the international development of electronic business otherwise, any transaction of an Iranian person in the electronic scene arises several internal, foreign, and domestic disputes.

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Issuing Commercial Regulations

Unlike traditional business, in e-commerce contracts are not like previous written contracts and buyers do not pay in cash to make a purchase.

So, there is no doubt that the normal trading rules and extant systems cannot be used in the previous fashion; Therefore, it is necessary that in order to prevent damages to the parties, a clearly and precisely formulated rules be enforced in business.

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