Verification and Interpretation of Electronic Contracts in Iranian Law

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ABSTRACT

Electronic commerce has rapidly developed despite its short history and its complexity and expansion is increasingly added. The prevalence of the use of electronic devices in contracts and the diversity of the contract convening methods are followed by legal effects and the legal conflict will eventually create and the electronic feature of the contract is not considered a preference. An electronic contract does not have any difference with the rest of the contracts and the problem in regard to convening and identifying and validating of other methods of interaction are also true about electronic contracts. The aim of this study is to investigate the role of the electronic reasons in the verification of the contract in the cyber space and the conditions of the reasons in order to verify a contract and its features to be accepted in the court. In the evidence of the claim assertion, the original document is a secure criterion to recognize its integrity and authenticity and in the electronic evidence, the original document is not as a version to be created by the document issuer. On the other hand, the electronic evidence does not have the material and tangible nature. Accordingly, the realization of the original concept is not possible in its traditional form. But, the use of technical methods of the functions of an original document can be provided in the electronic evidence. Therefore, it is necessary to use electronic signature to recognize the originality of the document and the authenticity of the electronic documents concepts.

Keywords: Electronic Contracts, Contract Interpretation, Assertion, Evidence, Responsibility.

INTRODUCTION

The increasing development of goods production technology and service providing has made the competition in the trade world very difficult and the countries try to use new methods to reduce costs and save time and increase efficiency in order to win this competition. Electronic commerce is one of the main advantages of technology or information technology⁴. The concept of time and space has become vague by the use of e-commerce as a tool in the way of economic develop and growth of the society and is stated to the maximum saving in the reduction of the distances and costs and time.

In a real world, the parties of commercial interactions usually sign the contract face to face and show themselves by signing the documents. But, in the electronic contracts, the parties have a remote relationship². As it was mentioned in the electronic contracts, the parties of the contract are not principally in one place and the contract is signed in a remote distance. It is possible that the

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exigency and the acceptance that is interacted between the seller and the customer do not have the comparison and time series. Electronic commerce needs rules governing over the relationship between the parties. The primary and more important issue about these rules is the agreement or the electronic contract and the question is whether electronic contract is valid or obligatory? Determining time and space in the convening of an electronic contract is important. In fact, determining the time of convening in terms of determining the time of ownership transfer or the risk and transmission loss is important about the goods sale contract. The place of the contract convening is the determiner of the ruling laws and the court is the useful between the parties in the time of conflict.

ELECTRONIC CLAIM ASSERTION EVIDENCE AND ITS FEATURES TO BE ACCEPTED IN COURT

The Concept and Elements of Electronic Evidence
Electronic evidence represents the action the source of which is the new technologies. With regard to lexical meaning of evidence, characterized meaning of electronic evidence is that it deals with electronic power. Electronic evidence, in a sense, includes a variety of arguments including telephone, telegram, fax, telex, voice and audio cassettes.

An electronic evidence in a virtual environment could be an e-mail, traces of an illegal entry to another site, an attack on a website or stealing information and data, electronic records stored on a computer memory or the information of receiving or withdrawing money from a bank account. The "data message" in the Iran’s law of e-commerce is been recognized as electronic evidence in case of specific legal conditions2.

Components of Electronic evidence
They include: integrity, authenticity, access, sign, accuracy and security. Data Integrity: The integrity of the electronic evidence increases its proven value. This shows that the document that has been sent to others has not changed and is been originally transferred. Accordingly, the document which has been maintained and classified is original and has not changed. One of the technologies that are used for the more accurate solution of the integrity problem is using “time” component4.

The Undeniable Capacity
The electronic message receiver likes the actions such as shipping, money transfer and etc. on the basis of this message when he is sure that he is able to prove that the other party has sent it (whenever he has really sent the message) and stand against the claim of the difference of the received message with the data of the sent message by the sender5.

Disclosure
In most electronic transactions, what is exchanged is very important. In today's world, certain information has always had confidential character and having information has not had financial aspect and is transmitted in the friendly trend of electronic communications, for example ID number, age of individuals and mental problems and so on. However, if the parties are not sure about keeping this information, we cannot see the expansion of electronic exchange, communication and trade5.6.
Originality

According to Article 96 of the Civil Procedure Code, the original document should be presented to prove the case of the evidence. Plaintiff must present the original form of the documents the copy of which is attached to the petition in the hearing session.

Authentication of Electronic Documents and Its Position

In the evidence objection system, the authenticity of the document has an important role in the credibility of the evidence and the document is a certain criterion for the identification of its integrity and its authenticity. In electronic evidence, the original form of the document does not mean a copy of the document directly created by the issuer of the document. On the other hand, the electronic document does not have material and tangible nature. Accordingly, the realization of the “original” concept is not possible in its traditional form. But, the use of technical methods of the functions of an original document can be provided in the electronic evidence.

The concept of originality and its function

The purpose of presenting the original document is proving the integrity of the document. The copy of the document can be easily changed without its fakeness being recognizable. The copy of the document is creditable until the time when the parties do not object about it. But in the case of the objection of the other party, the original form of the document should be presented to the court in order for its integrity to be studied. In electronic documents, the realization of the concept of the original, in its traditional form, as the tool in which the information is stored for the first time is not possible. Since, when the data are entered to a computer for the first time, they are stored on the main memory of the system and are then transferred to short-term memory or other magnetic mediums and then the data are transferred to display screen and are made visible. As soon as the computer is turned off, “the original” is deleted and what remains in the memory is a picture of what has existed for the first time in the temporary memory. Not this version nor the other versions are original and are all considered as pictures. But the main function of the document meaning as the integrity can be provided by another method. In cases in which the lawmaker necessitates a special element for the validity of the evidence, its function is adequate. Therefore, in cases in which the lawmaker necessitates the signature, judicial procedure does not hesitate in accepting finger printer instead of signature and sometimes the written document without signature is considered validated.

Access

Recovering data and documents in computer in necessary situations is one of the cases that has an essential role in the identification of the attribution ability of electronic evidence since these documents and computer data have essential role in the attribution ability of electronic evidence and they are at the risk of deletion and destroy. If there is no possibility of the evidence recovery, it basically does not worth much to the citation.

† It is in the determining vote number 2752 dated in 1939 of the supreme court of the country (Iran) that: in case of the realization of the license, its elements have authentication against the author although there is no signature or the signet in it because sending the letter without signature is the opposite of the norm based on the fact that the author has to obey its referent but it should be made clear that the author has sent it.
Signature
Signature literally means passing or finishing or the finishing of a matter. Within the broad meaning, it means writing first name, last name or a special symbol that mark the identity of the signature owner and indicates the occurrence of a transaction underlying ordinary or official documents. Legally, signature is a symbol that someone takes as the responsibility from the transaction\textsuperscript{13}.

Accuracy
The evidence that lack the necessary accuracy and are full of mistakes will not have the adequate validity. The element of accuracy in electronic evidence has various aspects and should be studied in separation of its dimensions. Generally, there are three types of documents with computer source as:

The first: documents that are calculations or analyses that are produced by the computer through software system and information receive of other tools such as remote sensors.

The second: documents that are the copy of provide information to a computer by humans.

The third: computer documents that are combination of provided information by human and analyses and calculations by computer. At first, there is no human factor in creating computer evidence\textsuperscript{14}.

Security
In fact, security cannot be one of the pillars and elements for electronic evidence. Security should be reflected in the other pillars of electronic evidence. The electronic reliability and citation will briefly talk about the security element in computer systems. Security in a computer system defines the certainty of keeping the information and the lack of access to them and change or removing information reliably. The meaning of security, in its special concept, is keeping data against illegal people and controlling access level of users. Since web technologies and software substructures are complex, the situation for the security violation is provided and when the web technologies are disturbed, they can be used as the attack factor but security, in its general concept, includes various issues and realizes various objectives such as access control, the users’ identity confirmation, the secrecy of information, the accuracy of the data and the undeniable receive and sending of information\textsuperscript{8}.

The possibility of attacks on the authenticity of electronic documents:
The way we can attack to the authenticity of the electronic documents’ originality is important. These are subjects that are studied in this issue.

Denial and Hesitance Reveal
The purpose of denying, the announcement of disowning the handwriting, signature, signet or fingerprint of the informal document to the attributed person is done by himself. The purpose of doubt, lack of acceptance of the handwriting assignment, signature, signet or fingerprint of informal document to the attributed person is done by someone else that is realized in electronic evidences as the denial of the electronic signature attached to the document. Denial and hesitance reveal is only possible for the ordinary electronic documents and certain documents are not deniable and able to be hesitated due to article 15 of the electronic commerce law. If the ordinary electronic documents have document assignment statistics to the issuer, they are undeniable. Article 18 of the E-commerce law stipulates in terms of the document assignment to the issuer\textsuperscript{8}. 
Forgery claim

Due to article 15 of E-commerce law to the message data, signature and certain electronic backgrounds can be claimed for forgery. Each one of the parties against whom an ordinary or formal document is been delivered (whether the document is attributed to him or not) and wants to protest to its originality, he should propose this matter as forgery claim because forgery claim is heard both for the formal and ordinary documents. In an electronic environment, words such as flaws, pruned and crossing are meaningless and forging claim must prove forgery due to the electronic space. In the context of electronic transactions, intervene in data processing and computer messaging system, unlicensed use of the applied appliances of encryption system such as special key of creating signatures and without history electronic signatures in electronic offices are listed as forging symptoms.

Electronic Signature and Reasons of Claim Assertion

In our law, evidence system is legal and in civil law, article 1258 has stated the reasons of claim assertion to be as:

1. Endorsement,
2. Written attribution
3. Testimony
4. Evidence
5. Swear

So, any reason produced and stored by computer is electronic evidence.

Document

A document is considered evidence that has signature and the existence of an electronic or digital signature is necessary for the validation of the document and message data are not considered as document without electronic signature and may consider as a part of evidence. Therefore, an electronic document is a set of message data and a logically attached electronic signature that is processed and stored by the help of electronic devices.

Article 6 of E-commerce law states that: whenever a written text is obligatory in the view of law, the message data in the form of the written expect for the following cases:

A: ownership documents of immovable property;
B: selling medicinal products to final consumers;
C: announcement, warning, or other similar phrases that state particular recipe for goods from the use of specific methods as the action or prohibitions.

Confession

According to the definition of Article 1259 of the Civil Code, confession is a voluntary action based on which the station gives the news of events in his loss that have legal effect.

Witness

Also like confession, should not be necessarily oral and article 1285 of the Civil Code certifies this idea and consequently, written witness is also the acceptable form of oral witness in courts of law but the process of testifying is not a part of the conditions of witness and may be its confirmation in the court is due to the hearing of both parties and the damage to the witness.
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Evidence
due to 1321 of the Civil Code: “evidence is conditions that are known as a reason for a task in the law or in the sentence of the judge”. Articles 1322 to 1324 divide the evidence law to legal and judicial. What is clear is that the legal evidence are out of the article 12 subject of E-commerce law because on the one hand, the administrations and courts are aware of it after the promulgation of the law by the laws of the Civil Code and on the other hand, the identification of the rules over the claim is due to court and no magistrate can prevent the implementation of the legal rule due to the excuse of the claimant silence and the deficiency of his reasons.

Swear (oath)
Swear is will declaration by which the person knows god as his witness and places himself in the verge of punishment of the lie swear. Swearing has some formalities that is announcement by the majesty word and the court can determine its quality if necessary. It is inferred of the content of the law that swearing should be done before the responsible judge orally and the article 288 of the Civil Code is necessary.

TYPES OF ELECTRONIC EVIDENCE

Ordinary Electronic Evidence and Its Proving Value
Evidence that is produced, stored and processed by an uncertain information system and electronic signature is called ordinary electronic evidence and its issuing evidence of attribution and its identity with integrity cannot be certified. Moreover, simple electronic signature was used due to the low level of technology. In such evidence, the breach can easily access, change or eliminate the evidence. One cannot be sure of the integrity and secrecy of the evidence. Due to the use of simple electronic signature, no one of the security components is realized in the evidence.

Certain Electronic Evidence and Its Proving Value
article 14 of the E-commerce law states in this field that: “all the message data that are securely created and kept are validated and attributed in legal and judicial courts of law in terms of concepts and signature, parties commitment or the party that has underwritten and all the people who are considered as its defendant.

Signature Definition and Its Legal Position
Signature is to write the first name or last name (or both) or draw certain symbols that mark the identity of the owner of the mark under ordinary or official papers and documents indicating the occurrence of transaction or the commitment or testimony and the like. It should be accepted that electronic signature has the legal effects of the signing person identity and his obligation to its content like the written signature. Electronic signature is pointed that is electronically produced, declared and stored. Iran’s law of E-commerce also states in 7 articles that whenever the law necessitates the signature, electronic signature is adequate. Due to the mentioned law, there are two signatures: simple electronic signature and certain electronic signature.

Simple signature
Any electronic data that is attached to the message or is logically related to it and determines the relationship of the signer with the related data is called simple electronic signature. As these situations are realized, electronic signature is done. Any electronic signature that has the general condition of the signature and lacks the conditions for the certain electronic signature is called simple electronic signature.
**Certain signature**

It is a signature that provides a high level of certainty that the signature is belonged to the issued person and the message has not changed in the transfer. To achieve this, signature should have conditions that article 10 of the law of E-commerce states it as follows:

The conditions of the certain electronic (digital) signature:
A: it should be unique to the signer.
B: it should indicate the identity of the message data sender.
C: it should be issued by the signer or under his inclusive will.
D: it should be attached to the “message data” so that any change in the “message data” is identifiable and recognizable.

**Four Reasons of the Importance of the Electronic Signatures as Follows**

1- Stating intention: stating intention is the first and the best reason for signing a document. Individuals show their intention to validate by signature.

2- Legal prerequisite: some laws know the existence of a signature necessary in the document to be legally considered as applicable.

3- Setting identity: in the electronic environment where the parties are away from each other and do not see or know one another, most of the time the signature determines the signer's identity.

4- Integrity of the document: signature can be used to ensure the integrity of the document. This means that the document has not changed after signing⁹.

**CONCLUSION**

Some articles, and especially those parts of E-commerce law that have considered electronic document of equal proven value, are severely problematic. Attention to technical and scientific dimensions of electronic commerce is faced with these essential forms regardless of the formal aspects and the natural rules of the reasons of claim assertion which cannot certify the lack of flaw and impenetrability of electronic documents with the prediction of all the scientific conditions and safety of the computing and information systems. Every day, a new method in electronics and computer science emerges and perhaps hackers and professional thieves are considered as the main obstacle to the development of e-commerce and "mistrust" before its limitation and legalization by the law makers. Other important forms of unprofessional law making at least in the field of electronic signature and experience is that it is not evident who is responsible for the great matter of misusing, producing, sending, receiving, declaration and using of electronic signature and experience. In electronic documents, the realization of the concept of the original document does not mean a version without mediator. Digital signature provides the integrity of the document in electronic evidence. On the other hand, the reveal of denial and hesitance and the claim of forgery have been changed as the methods of the denial of the originality of the document in electronic evidence and due to the immaterial nature of the evidence, they have found special symbols. The claimant of the originality of the document should use the appropriate technical methods for the proof of the certainty of the evidence and its authenticity.

**Recommendations**

It is necessary for the law maker to legislate the hearing and the trial method in courts on the electronic issues and conflicts and claim adduction method and petition submission and its components and to what extent the electronic data have legal value should be specified.
REFERENCES