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Protection of consumer rights in Cyberspace

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Abstract

Today's civil law faced new challenges and situations for protecting human in role of consumer and also attention to industrial life growing made new branch of law called consumer law that have some positive result in all economic, social and political aspects like increasing household income, reduce conflict and tension between buyer and seller in society and increased public participation in development of political participation. Discussion of consumer's right about good and services has a wide range of actions that relates to the issues of quantity, quality, distribution, information, service, guarantees, price and considering people view. It should be noted that in general sense, consumer rights, will not limit only to final consumer rights of goods and services, But Companies should be responsible for all members of society, even the next generation. During the presented paper emphasize laid on clarification of Cyberspace nature and origin, Sources of consumer protection law, consumer rights in these sphere, conflict of law in electronic and natural space and etc.

Keywords: Cyberspace, electronic trade, consumer law

Introduction:

In introduction of International human right declaration accepted 1948 BC according to 1327 S stated that basically human rights should protect by legal performance for preventing human of forced to Rebellion against tyranny and pressure and in article 7 of declaration

mentioned all people are equal before law that have right to protected by law without any kind of discrimination, also in article 125 stated everyone has the right to provide food, housing, medical care and necessary social services for his own life and his family's health.

Today's civil law faced new view of problems and situations for protecting human in role of consumer and also attention to industrial life growing made new branch of law called consumer law that have some positive result in all economic, social and political aspects like increasing household income, reduce conflict and tension between buyer and seller in society and increased public participation in the development of political participation.

Discussion of consumers' right about good and services has wide range of actions that relates to the issues of quantity, quality, distribution, information, service, guarantees, price and considering people view.

Consumer rights means the collection of Authorities and privileges that consumer take by purchasing good from sales' party till in some cases such being faulty, taking losses, inefficiencies or errors, damages use of to be faulty, taking losses, inefficiencies or errors, damage to compensate rights to their loss.

It should be noted that in general sense, consumer rights, will not limit only to final consumer rights of goods and services, But Companies should be responsible for all members of society, even the next generation, for example Damage to the environment or water pollution, even to produce high quality goods or production motorcycle and cars that pollute the air more than standard rate are Oppression of people's rights for using of clean environment.

Therefore in a general view, consumer rights include: Consideration long-term interests of all members of society including consumer final's production or other society members, but if these rights also create for consumer in cyberspace or no?

Space that come to the collection of internal human's relation by computer,

Telecommunications issues regardless of the physical geography and from here connect to all aspect of human relations like trade that makes sense with consumers.

But exactly what covers this space?

Virtual space or cyber:

Cyber derived of Greek word "kybernetes" meaning is derived from that means Rowing or Guide. The first, term ((Cybernetics)) has been used by mathematician named Nober Veniz in book cybernetics and control in the relationship between animal and machine published in 1948. Cybernetics is a science for studding and controlling mechanisms of human, machine and computers' system.

Cyber is a prefix to describe a person, an object, an idea or a space that is related to information and computers, and term ((cyberspace)) first time has been used at 1984 by William Kybsun science-fiction story writer in his book ((Nvrvmnsr)).

Cyberspace is a set of internal human relations by computer, Telecommunications issues regardless of the physical geography In fact this space is a range of brain space that can be logically extended to all forms of life and gives meaning to them. You can experience different state of mind such as Imagination, romanticist, fantasies and different levels of consciousness in cyberspace.

Cyberspace is not just a simple information highway or road; this space is more mental than anything, approximate border between the conscious and unconscious realities with ability to clarify the reality of life. This environment is a graphical chat environment, which in this environment user can communicate with others by graphic smiles and can choose one or more graphic smiles to represent him. In

this paper will consider the issue of multiple views.

A) Protection of consumer rights in cyberspace

1-by entering internet to human life and development of modern information technology and communications, electronic trade is growing and its achievements are important for national and international trade and rapidly progress.

One of the advantages of electronic trade is the possibility to make contract via internet, these agreement provide opportunity for servicing to consumer, to unlimited access without time limitation of wide range sellers' suggestion and opportunity for comparing different web sites that offer the same services and products and make the work easy.

Thus The United Nation International Trade Commission approved electronic trade law on 1996. Europe codified instruction for electronic trade on 2000 and offered it for approval to European Union members.

In Iranian law, electronic trade law approved 17/11/1382 S including 81 articles and 7 Notes, articles 33 till 49 includes consumer protection law, moreover article 48 of executive bylaw approved by board of ministers on 2/5/1384 S mentioned consumer protection that exactly presented below:

Article 48 executive bylaw on electronic trade law:

02/05/1384 AH Cabinet meeting on the proposal No. 12194/1 dated 18/6/1383 of the Ministry of Commerce according to Article (48) of electronic trade law approved mentioned law on 1382 S by the following :

Article 1-In present law the terms are used in the following meanings:

A-legal and civil organizations that protect consumers called Organization:

Generally any organization, company or association that according to the law or in their executive by protecting goal of consumers in areas such as the price of goods and services whether manufactured or imported, including manufacturing systems, systems related to distribution till consumption stage, Loss of consumer goods and services created or recorded.

B-Costumer: Any legal or natural person by any aim except for the purposes of trade or professional jobs applies to the purchase of goods and services.

C- Supplier: Any natural or legal person that work according to its commercial or union capacity or profession.

2-Organization can attempt to file complaint at judicial body or any other authorities in following order and predictability by law.

A-by the request of affected consumer

B-by the demand of one or more consumer while many consumers have similar losses

C-independent act of organization without private complainant's demand

Note1- Affected consumer is a person who is injured or damaged at the result of supplier abuse of consumer protection rule according to third part of electronic trade law and in accordance with Chapter 8 of the Act of Union approved on 1382 S.

Note2-any person mentioned in article 1 and 2 shall submit his application by documents and supporting material of his crime to the Organization.

Article3-consumer request will register by organization and receipt will issue including applicant's name, date and registration number, manner of litigation and complaints by the relevant authorities will be in accordance to relevant references procedure code.

Article 4-organization should answer to the receiving application during a week and in appropriate send the case to the relevant authorization, otherwise shall offer appropriate response to the petitioner. The times with the consent of the consumer and If the issue requires more agencies' investigation may be extend for one month.

Article 5-Organization can determine litigant according to reasons and evidences that based on the case may be designer goods, materials producer, manufacturer, supplier or vendor, or a set of them.

It is important to remember that in consumer protection subject at cyberspace; moreover than international and national sources, there are other sources as main for this law which will be briefly mentioned.

Other sources for consumer protection law in Cyberspace:

1-Trade customs

Custom consist of following elements:

1-Certain functions

2-repeted action by certain group whether in the country or any part of the country

3-at least most of the countries people repeat that action

4-action should be voluntary not innate

5-action that collected four mentioned elements but not in written law format.

The role of custom is recognized in most countries and is clarified in articles 220,224,225 of Iranian civil law and 367,366,349 of Iranian trade law, moreover article 9 of United Nation convention state and approve on International agreements on customs and habits: the parties are oblige to any kind of agreement on costume and habit common between and in principle of trade agreement approved by international unification institute of private law, If the norm is simply

absurd, excluded that as a law that governing the contract.

2- Courts verdicts and arbitral awards:

Layout system is an important factor in development of law and major source of legal principal and referring to the previous verdicts are natural and when the parties agree for referring to arbitration in case of dispute arising from the contract or business, Judges are not necessarily bound to a specific local law and in this case courts' verdict and arbitration bodies in similar cases can be a source of electronic trade law.

B- Conflict of laws in electronic Relations and protecting the rights of consumer

As mentioned legal sources are vary in trade and consumer protection and presumably laws of different countries are governed by separate discussions, in continues we will consider the conflict between laws and choosing the governs law.

Manner for choosing governs law in electronic trade:

Because of the possibility to make these kind of contact in wide and supranational sphere, such a discussion are fully justified, if the buyer and seller be in different resident status The first question that arises is which law privilege on their contractual relation?

Of course the internal regulation of a country with name "governor law equal to government "is not regnant on all aspect of contract, because it's possible for courts to refuse of partial or wholly executive law that by compromise parties or conflict resolution rules are enforceable for some reason like conflict with public order or jus cogens, Discussion for determination of governing law on electronic contracts, shouldn't create the impression that the contracts are different from the

traditional contracts, Because principally electronic contracts also will follow general rules in conflict resolution about other contract.

Before examining the issue, it should be noted that there is difference in the concept of (jurisdiction) and (governing law).

Competence is related to determine the court which in reality has the capacity to handle climes, meanwhile governing law deals to rules and regulation that competence court must be based on it, so the country that clime competence doesn't apply its own national law to the case, this is why for example it's possible which litigious related to dispute arising from internet contract raise in England and England court according to parties consensual implement French law in that case.

At following four separate topics related to the law governing electronic contracts will be discuses:

First topic: importance of governing law and principle of sovereignty in its determination

Second topic: Presented theory in identification of a competent court

The third topic: the constraints governing electronic contracts

Fourth topic: law Territory governing electronic contracts

First: importance of governing law and principle of sovereignty in its determination

Necessity to comply with the laws and regulations of certain major aspects are important.

Necessity in agreement adherence from law and regulation are important in different aspect, as a principle parties are free to determine governing law on their own contract, so they can decide at any way interested for them in this section, then at inclusion of these to

mater on electronic contract cannot be doubted.

(A) Law governing electronic contracts: The law governing electronic contracts is important in many ways. Hence It is the law that determines whether the signed contract is binding between the parties or not? On the other hand some of the specific issues in electronic contracts as a proof for its formation or time and contact location may have different provisions according to different laws that have influence on itself to formed or not formed.

Silence and electronic trade law is left open in other areas for use and adhere of general contract rules.

So it seems with silence of electronic trade and executive of general contact rule, can extend time and direction of contract to electronic contract. In this sphere from four theories offered: declare, send, Collection and Notice of acceptance which notice of acceptance in Iran is acceptable.

According to this theory by electronic sending, accept is concluded, because sender don't have access to that, even if electronic letter After clicking on the send button fails, contract party can prove sign up by proofing acceptance issue.

According to article 27 of Iranian electronic trade sending ((message)) when will realize, that arrives to an informatics system outside the control of the principal or his deputy.

About direction of electronic agreement most law systems believe that contract is binding when the acceptance is received, however the possibility of private compromise in forming of contract also not prohibited by sending or receiving acceptance, according to this differences can realize the importance of determining Iranian law or British law for example.

In some cases emphasize on governing law have more tangible importance. For example the electronic auction explicitly should follow the civil law of a particular country, thereby In case of multiple nationality and residence, customers shall informed as a mentioned law. In some cases like these the often flexible law and an interpretation should determine as governing law. However by the emergence and spread of internet, the legislatures faced new challenges. Particularly in Europe and the US, principles and enforcement rules on law determination and competent court Transformed, and the need for consumer protection provides revision for principle of contract freedom.

And contact parties as are free to agree and put any legal requirement, also have the option to choose the governing law on their own contract. Principle of will sovereignty which is derived from the Authenticity of individual freedom philosophy at eighteenth century despite the difficulties and criticism that sometimes entered on it still is validated as a base and slides for interpretation.

(B) Iranian law

Trade electronic law is silent on the field of conflict of law and electronic court, about it law should say: basically any provisions of simple act in order to conflict haven't been developed with national law, applicable to the contract. At the time of drafting sample law there was sense that such action by aiming the Supreme Law that is proofing value for electronic documents would conflict In contrast to typical document.

Based on Iranian domestic law Article 968- civil law- suggests limiting the free will of both contract parties if both are Iranian.

According to this article "obligation arising from contracts follow law of contract place unless parties be foreign

nationals and expressly or implied agreed to another law" .At the opinion lawyers majority; the article is considered Jus and contract party unless in case that both be foreign national cannot hold their own contract in Iran under law of other country.

However some lawyers truly said:' believing to Specified rule as preemptory law in article 968 of civil law were unlike the legal logic and made some problem in international exchanges including the rule of conflict resolution will be effective only upon contract holed in Iran.

Considering the possibility of Procurement procedures for electronic contracts

Message date:"text" or "signature" is not in traditional sense third party monitoring condition also doesn't provide by message, on the other hand procedures have special philosophy that justify its need that removing them don't seem possible or reasonable.

Therefore law and electronic trade act should coordinate themselves with formal procedure; in order to achieve this aim has done many national and international efforts, about condition and being written the aim has been to eliminate paper-based from "written" concept and acceptance of "message date" instead 'written' form that stated in text related to electronic trade at 2 different ways:

The first way is to reform legal texts by substituting word 'written' with such words like 'registered' or 'inclusion', that recent words instead of relying on based-paper rely on recording or preservation concept of the words therefore involves message date.

Second way is putting "message date" and "written" at the same set or knowing them instead of each other, as article 6" UNCITRAL l" state "if

according to the law date should be in written form this necessity will pass by "message date".

Article 6 of Iranian trade electronic law in a same text state: "any time exultance of a written is necessary, Message date has the same meaning" about signature also electronic trade law have the same samples, for example "UNCITRAL" law states: "when private signing is necessity according to the law, this necessity will meet bye message date, provided that electronic signature be alienable in terms of goal and proper with message date produced or sent for that by considering all agreement conditions.

Article 7 of the Electronic trade law also declared on 17/10/1382: "If law deems necessary signatures, electronic signature is adequate"

Intervention of third party or observer official document by him is quietly distinct from "written" or "signed", therefore equality of message date with signature or hand writing is not provider of this constraint.

If countries want to provide conditions for presence and observance of third party in electronic format, they should predict reference, these references work instead of traditional office and do their obligation in electronic way, as according to some electronic trade law it's possible.

For example article 11 of uniform trade law state: "if law deems necessity of signature or official transcript be accompanied by an oath, it will fulfill, if be attached person electronic signature with other required information or required text.

Second: theory represented for determining a competent court

Although in this view also considered both internal and international standards but at a hearing court there is special

importance for distinguishing interest and loss level of conflict countries in dispute.

This theory relates to some certain rule and events and special legal classification therefore from this fact can easily understand which finding competent court when applied that there is no conflict between till for determining amount and interest base by this law require separate governing law.

Under this theory in electronic contract, supply services should be in accordance with rule and legal act of country or state in case of silence that deemed special services that offer contract, unless it is proven that the contract is closer with another country or state contacts.

In other words, in this theory can find a combination of old and new foundations, law of contract place would be the governing law as principle, but this problem don't prohibit court from examining other symptoms which are imply on other countries interest and profit.

Third: limitations and obstacles of governing law

The law recognized applicable by parties or using conflict resolution rule on electronic contract will face some restrictions which in most cases for their relation with internal safety or public interest of court direction cannot be inconsistent with that limitations or obstacles.

Thus the issue of will sovereignty to determine governing law mentioned some of limitations by comparative look. Here we discuss general restrictions in the way of governing law on electronic contract, regardless of voluntary or imposed origin by law.

Restrictions of governing law often apply by competent court but in some

cases may have general and pervasive bases, these limitations are discussed in the following:

1} jus cogens

In some countries, in cases where parties are resident of a country, they contract there but capabilities law enforcement of foreign countries may violate Jus cogens and the result seems negative that in this case if even at another countries court according to the compromising parties' law handled the case, sentences have no validity and verdict is not enforceable.

Without doubt in electronic field should have more flexibility otherwise many profitable relationships in electronic sphere will not form or will referred to the law or legal that seem more logic or practical.

In most cases limiting law just is for confliction between Jus cogens rules with mentioned law, for example if Iranian court deal to conflict between American businessman and British businessman about an electronic contract according to German law and in that contract there was no support for trade secrets by parties agreement, Iranian court in case of connection with internal Jus cogens according to article 65 electronic trade law will run this agreement, at international private law the case is accepted that internal peremptory norm are not applicable at international private law.

That part of domestic peremptory law made limit on international private relation non-compliance was not possible, this intervention is very limit in commercial and finance problems, because always principle of sovereignty will is base and criterion for arising legal question and doesn't infringe of its provision just in exceptional cases for example if prohibition of usury is from internal peremptory norms, the magnets permit between foreigners in their

contract and in domestic Iranian law will not face any barrier.

When the parties agreed to lake of trade secret, at financial relation between foreigners according to foreign law intervention of domestic peremptory law is without justification.

2} public order: rarely with underlying public orders of the country where conflict is being processed, it's possible to replace full or partial act with governing law that mentioned in electronic contract.

According to Iranian civil law article 975; 'court cannot implement foreign laws or private contracts that are against good morals or hurting Society feelings or with other reason are in contrary with public orders, even if their implementation be allowed by law.

3} good morality: if just one part of electronic contract be against good morality according to opinion of competent court, although where governing law be in contrary with this opinion, court will be excused of implementing contract terms, this is clearly inference from Iranian civil law article 975 moreover according to article 58 of electronic trade law; "saving, processing or distributing private (message data) and expression of ethnic or racial origin, ideological views, religious, moral characters and message date about physical condition or mental or sexual without their explicit consent by any title is unlawful." Even if the data subject's consent intended some condition for saving, processing and distributing (message data), article 899 of criminal law and article 71-73 of electronic trade law have set penalties for (abuse protection of private message date).

However if a contract hold outside the country in contrary with Commercial Law article 58, Iranian court directly will prevent of its enforcement because

of conflict with good morality contained in peremptory norm.

Generally one of the common rules of law conflict is that foreign laws in contrary with public order or good morality of court direction country are inapplicable, for example electronic law in British contract for gambling or promote vulgarity is illegitimate, simply is not valid and is inapplicable just because of applicability of foreign law.

4} immovable properties, in most legal systems, contract that are relating to immovable property are subjected to the law of the country where the property is located.

Looks “the rule of law in place of immovable property will strengthen because of legal relation between them have sufficient contact with domestic discipline of the country where immovable property located”, so about electronic contract also it must said when the contract directly or indirectly relates to immovable property or arising rights from this property the rule is that contract have strong relation with the place of immovable property.

4} the electronic contract on good transportation

According to Vienna convention (note 1 of article 4) in case that there is no consent between parties on especial applicability law, law of country that have more relation with contract will apply. However such contract that is not included in this law, are goods transport contract. Although carter residence have been in the country that loading or unloading done or the place that sender trade office situated, rationally has largest relation with the country.

Fourth: law scope governing electronic contracts

Another argument arising about the law governing electronic contracts is to determinate scope and domain of the

law that which means what matters and disputes about contract can referred to governing law and which law should apply by the court for determining substantive rights of electronic contract parties in different subject? Here we mention; firstly inclusion of governing law in electronic contract if chosen by parties don't need to court involvement and parties can implement contract according to compromise law, secondly as mentioned in article 969 of civil law as one of accepted rules of international law (documents are subject to law of contract place in view of adjustment) and article 1295 of civil law highlighted this rule and according to mentioned rule at electronic contract and lake of opposite rule and electronic documents will implement.

Contract conflict with public order:

However in case of conflict between electronic contract and law of court direction competent court declare it; governing law can be base and declared inconsistent with public law, both are inapplicable by court verdict and recognition of governing law.

1} the nature of the contract validity

Proving the validity of contract will carry out by resorting to the governing law. Governing law is effective for determining legal statue of mistakes, dissemble, Coagulation contract or not and also for determining if the offer realize by accepted or submitted.

2} Elements of contract body

Governing law on contract body such as the need for being written signed and also expressed his desire and intention to be bound by any law will govern that is true in the case of electronic contracts.

However the willing to broadly interpret from the requirement for a contract because of conflict with principle of accept is not good, any way in

electronic contract, contract form with consumers are under the law of their residence.

Generally if 'form' be the condition for fixing a contract will be subject to governing law on contract but if be condition for proving the contract will be subject to local regulation of contract place.

3) Capacity

Rome convention has been silent regarding the legal capacity of contract parties and is known under domestic law of countries. In Iran, though civil law (Article 6) is known capacity among personal affair, and (article 7) mentioned it out of personal affair, however, the recent article, foreign nationals residing in Iran, about capacity are obedient to law and regulation of their government.

First part of (Article 962) civil law also confirmed this sentence but second part enter an important exception to identify the capacity of foreigners by means of their national legislation which according to the general rules of contract due to the preemptory nature, electronic contract also will be separated. Pursuant to this section of (Article 962), (However, if foreign citizens in Iran do a legal action and according to law of their government were not eligible or capable for that action, they recognize capable for that action if the person be capable and eligible under Iranian law regardless of their foreign citizenship).

Unlike Iranian civil law in law of most countries, including UK, this issue has raised by some lawyer which capacity of contract parties determine by governing law on contract.((of course there is no fixed rule about it as precedent and comments have been dispersed)).

The analysis seems to have problem in two senses:

The first determining governing law with party compromise base on capacity of contract parties on determination of governing law and if capacity also be subject to law sequence will created.

The second objection is capacity determination according to law governing contract which underlies parties' abuse to the law that have the most contact to the contract and have different rules with country which it rules governed, because parties with choosing rule for example have simpler rule for capacity of legal entities or considered more or less age or according to case capacity or non capacity will be proportional with current affairs and its interests and this case considered ((use of International private rule are in contrary with it goals)) so like article 962 of Iran civil law ((in Germany, Switzerland, Sweden, Egypt and Algeria also adopted this solution which alien may not invoke to law of their country and against law contract place clime capacity.))

4) the interpretation of contract

The legal basis of the principle must be interpreted that are applicable on nature (note A article 10).it's also mentioned in Rome convention.

5) performing contract

According to (Article 10) Rome Convention, the results and effects of contract breach including compensation shall be determined in accordance with governing law, although the amount of damages will be determined in accordance with the procedure handler, but the scope and governing rules on determining of damages will be considered in accordance to applicable rules.

6) Contractual responsibility

Proving contract liability in competent court is always legally which by parties agreement or conflict resolution rules is

applicable so elements of liability will also condemn the governing law, For example, if a contract between an English and an Italian in electronic form be made for transporting certain goods and goods damaged in transit route, in British law, officers must be use ((all measures)) to prevent damage. Obviously in mentioned example, determining every law as governing law on responsibility, non responsibility and Responsibility rate of the shipping charge will be effective.

Conclusion subject contract conflict with public order

Due to the diversity and complexity of electronic contracts may not pursuant to the Act or any special law apply to determining governing law, because electronic contract may dependent on a variety of legal title and description which all cases are outstanding of legislator control by wisdom and custom.

For accurate, practical and fair determination of governing law on contract in the first instance court or arbitration body should do its best for obtaining both parties compromise law. The choice of law cannot conclude less than the usual references to the importance of the contract, also parties' compromise in these cases must be clearly reasonable. If parties be silent or court should without any domestic law reason, in compliance with the legal norms and standards regarding to acceptable and accepted theories, should base governing law in their decisions that is not necessary domestic law and in this regard should mention two thing:

1) Court should consider that contract have the moist relation with rule of which country to run the best law in determining Governing law on electronic contract, the most common

diagnosis, circumstances of the case, international conventions and transnational of electronic contract must be considered.

2) Court should not add to the scope of legal restrictions imposed on law with party's compromise or by running rule of conflict resolution on electronic contract.

Broad interpretation of jus cogens and internal public order provides injustice and also creates misunderstanding of availability and inflexibility of domestic law for merchants of other countries that are obstacles in way of interaction between Iranian traders and others.

Criminal protection of consumer rights in cyberspace

1 - Crime against the rights of the consumer in electronics trade

No offense defined in penal code of states but in article 2 of the Islamic Penal Code have brought an expression about crime which state any act or omission that determined penalty in law for that is crime, indeed penalty marks public censure which Community defines reprehensible actions by expressing that.

In this Article come legal description of the crime and the punishment which has the greatest importance because society cannot unilaterally and arbitrarily decide about citizen fate and for any reason restrict their freedom, before that is necessary to determine prohibited and punishable criminal things by legislature and these offenses may have criminal or civil concept.

Criminal offence: in general meaning is any act or omission that according to criminal acts be accompanied by the prescribed penalty.

Civil offense: named any act that makes some losses to another without right and oblige agent to compensate. In other words civil offences are any adverse

actions based on fault even don't be located for especial subject.

Article 1 civil law provided in 07.02.1339 state whoever intentionally without legal authorization or the result of carelessness on the life or health or property or freedom or dignity or business reputation, or any other right which created by law make physical or spiritual loss is responsible for damages caused by their action. In this regard we can say that crimes against the rights of consumers are act or omission which include article 12 of electronic trade and for offenses committed in the area of electronic trade, there is not systematic and integrated approach.

In most legal systems in compliance the principle of legality of crime and punishment with make changes in existing laws or new offense considered acts that violate the rights and value of the business.

In electronic trade law of Iran approved at 1382, crimes been headlined and declared with the protection aim from consumer right and organizing, advertizing and marketing in electronic trade environment, although the context of criminalizing offences is different with Islamic one, but in general it's possible to say:

The approach taken in most civil offense rather than criminal offences, moreover the cases that have been crime in this law according to that consumer will protect in cyberspace.

First: Lake of information

Under article 33 of electronic trade act, product retailers and service providers should give effective information in consumer decision for buy or acceptance the term of contract in comfortable time before time of contract in authority of consumers.

Minimum data base includes:

Technical and functional features of supplier identification of goods and

services, brand name which under that name are engaged and her email address, phone number, or any method that the client can communicate with Seller, All costs will be the customer's responsibility to purchase goods; the offer is valid for a period of time.

Terms of contract includes payment and delivery of order or termination, services, no further confirm preliminary date ,no sending data related to accurate commercial staffing, how-knowing guarantee and services and terms of contract termination that emphasized in article 34 of electronic trade law.

The Actus Reus is lake of information which means omission and the offence is absolute and is not prerequisite and is not the fulfillment of the condition of offences and failure to provide any useful information for consumer decision-making is alone violating of consumer right.

Second: offering information illegally

According to article 35 and 36 of trade electronic law the lake of legal procedures in time of providing information is offence that the terms are listed in article 35 trough interface such durable computer hard disk But the observance of good faith is not on the third trades, Mental condition of the person who makes the mistake of attempting to law action and imaging that his/her action is not legal, it was better that legislature presented a definition of good faith in contracts or at least provided more instance when non-compliance in good faith and have Criminal consequences then it's necessary to define range and scope of liability, Punishment is given for these Crime of ten million to fifty million IRR.

Third: Infringement of termination rights

Unconditional right to cancel and return the goods with consumer price without any additional cost is one of consumer right and merchant obliges to reimburse the consumer funds, failure to observe this right is offence. In all commercial transactions the merchant is obliged to consider at least seven working days time for consumer to acceptance without any penalty or compensation, actus reus realized with omission.

Failures to truth comply and unconditional withdrawal and conditional withdrawal of funds to the consumer is criminalized.

Fourth: Non-refundable transaction fee in case of failure to fulfill obligations

Under Article 39 if the supplier at the time of transaction due to inventory be unable to perform its obligations or fails to perform services must return the amount immediately unless when it is not possible to overall sales or pledges and audience be prepared for wait for delivering goods or performing commitments but if it be obvious that supplier knew impossibility of fulfillment its commitments from the first in addition to In addition to appropriate restitution amount will be sentenced to the maximum penalty prescribed. Inability to fulfill contract obligation is civil discussion and in civil law issues detailed discussion related to that like having to fulfill obligation or treatment the transaction.

Five: illegal advertising

Rules of marketing and non-compliance of these rules are associated with criminal sanctions, merchant must be left any act or omission that cause audience misleading or deceptive or endangers health of audience and give

accurate information to consumer through advertising and refrain to hide trade identify and legal residence sending unsolicited commercial messages. In trade law if Iran 7 article (50-57) express special rule for advertising and in some cases face criminal reaction such as deceptive advertising, vaguely advertising that disturb health.

Need for freely decision of consumer in cases that commercial message in non electronic form send to consumer are also include to criminal respond, requirement contained in law based on providing condition by goods supplier that recipient can express unwillingness to receive it.

Law enforcement cracks by considering the requirement for optional advertising Is subject to criminal prosecution.

Sixth: violation of intellectual property rights

Since the exchange and trading operations on the books, publications and electronic trading signals and trade secrets that are produce, process and distribute in cases without consent of copyright holder will be considered by legislature and has been associated by criminal enforcement is called under violation of property right or crime against secret and trade symbols in domain of electronic domain.

Intellectual property is rights resulting from intellectual innovation and talents of individuals that divided to copyright and industrial property rights, all considered in copyright law, authors, and artists, approved at 1348 and also law of signs and Patents confirmed at 1310 and supporting the creators of computer software approved 1379 as mentioned in the context of electronic trading, production, distribution or storage and processing profits, as mentioned in context of electronic

trading, production, distribution or storage and processing profits has been supported in trade law approved in 1382 and has been crime according to Article 62 of law.

Seventh: Violation of trade secrets

Article 62 and 64 of Electronic trade law, violation of trade secrets in the context of electronic transactions is one of division of intellectual property law violation.

Violation of trade secrets in the context of electronic transactions is violation of intellectual property law and has been identify as an independent crime which according to Article 57 has been associated with criminal Code. Protecting of trade secret is one of the most important initiatives in this law.

According to article 75 electronic trade law everyone in the context of electronic exchange for compete, gain, or in damage to businesses, Industrial, financial and service with employment contracts that violate rights of non-disclosure of business secrets or provide illegal access to trade secrets or disclose it for third party will sentence to imprisonment for six to 2.5 year and condemn equivalent to fifty million Rials fines.

Actus Reus of these crimes can be achieved by disturbing material that is the gaining trade secrets or disclose it to third parties by breaching contract, non-disclosure of business secrets or unauthorized access to trade secrets.

Eighth: The Role of Trademarks (Brand)

In Article 66 of the Trademark law there is no definition for trademarks thus by referring to patents law adopted in 1310 determined the range and scope according to the provisions of Article 1 of registration marks and patents, the trademark is any kind of signal, image,

figure, letter, word, stamps, wrapping. Protection of trademarks in electronic sphere declared for preventing of dubious authenticity merchants and legislature aim to protect consumer rights.

In accordance with Article 66 of ET law in order to protect the rights of consumers and encourage legitimate competition in the electronic trading platform of trademarks such name, domain name, or any kind of online trademark show that Cause fraud or misrepresent the origin of goods and services should be banned, offenders in terms of Article 66 which refers to article 76, sentence one to three years in prison and fine of twenty million Rials to one hundred million Rials.

Of course, there are other rules in General Conditions of country; that committing it in real space and also virtually are crime but with no relation to consumer rights that are mentioned before.

1-gambling that Article 654 of the Civil law was not unheard claims relating to gambling and article 705 of the criminal law provides that: gambling ban with any instrument and its perpetrators sentence to jail for 6 months and up to 74 lashes. However in most countries is not legal act but gambling includes a part of crimes in as a legitimate field of electronic trade.

2- Pornographic images: Trade of pornographic images and pornography are prohibited in Iranian law according to Article 640 of the Islamic Penal Code, perpetrators are sentenced to fines and lashes and Supreme Court of the United States also prohibited track electronic transmissions containing pornographic images and in British law, obscene publications, has announced it as crime and therefore has expressed concern over the world.

3-Travel: the tenure of land or water or air transport in any way that according to paragraph 2 of Article 2 of the trade law commercial has been known as a transaction. Providing electronic tickets while saving time is reduced costs which protection of users in this scope always concerned responsible people in most countries.

4 - Insult and defamation: is contempt, ridicule and humiliate someone in public in addition to the criminal aspect of this area also includes civil liability and Article 608 of the Islamic criminal law known pressing it as a mass.

It is important to note Islamic view to cyberspace and e-commerce law and if work in this area is prohibited or no? And do Muslim consumers of electronic trade are protected by their own faith and religion?

Islamic law and the protection of consumer rights in electronic trade:

Every researcher who has studied Islamic law is immediately noticeable complex an aspect of commercial law dealing varies greatly with the Western approach to commercial law. This is mainly due to different sources of Islamic Law and the West. Prophet Mohammad (god upon him) himself was a businessman that expressly prohibit some business and consider others legitimate. There are some of these traditions in the Quran. Thus all courses as divine commandments are binding while others just are in tradition of the Prophet Mohammad. Thus, many of Islamic commercial law principle are God's commandments with limitation concerning interpretation.

Therefore, the possibility of Islamic commercial law in the modern business transactions without an adequate understanding of issues that were mentioned above is difficult.

Even if the trade rights and customs procedures be complex, it should not prevent study scope of Islamic law of using the new technologies to the marketplace, so the question is whether the various business transactions that are generated by the necessity of electronic trade, is compatible with Islam?

Islamic law is strongly recommended to research and learning. Examples of these recommendations may see in several verses of the Qur'an (for example, verses 1-5 Sura Alagh or verse 28 of Sura fater), such a matter is clearly harvested from some famous sayings of Holy Prophet of Islam.

In one hadith, Prophet Muhammad (SAW) has said: "Anyone who is seeking knowledge, Allah will lead him to Paradise; the angels take him under his wing" and in another hadith states: "A person who is seeking knowledge of how to reach your target or not successful, both deserving of reward and the reward is spiritual."

The verses and hadith clearly shows the importance of education and the right use of knowledge. Thus, in Islamic Shariah, principally there is nothing to prevent the acquisition and use of new technologies for the benefit of humanity, advanced science. Islam does not make any distinction between different types of technology and accepts all of them, including e-commerce transactions; on the other hand, electronic communication technology does not violate Shariah commands.

At the result: relying on the Holy Quran and the Sunnah of the Prophet Muhammad "principle of lawful", one of the main principles of Islamic law and jurisprudence is acknowledged the dynamicity of Shariah. In accordance with this fundamental principle, any

activity is legitimate unless it is expressly prohibited.

Also Attempts to think in terms of concepts that developed by human progress has been made in the Holy Quran and Sunnah, Such thinking is starting point for law concept of electronic trade in compliance with Islamic Shariah and use of e-commerce in the specific issues must be dealt in accordance with the principles and rules of Islamic jurisprudence.

The problem is whether the legal instruments used to manage e-commerce transactions inconsistent with the principles and rules of Islamic jurisprudence or not?

In order to examine this issue in Islamic jurisprudence, it is necessary to consider at national level and international level, whether traditional Islamic jurisprudence requires written and Signed for the validity of contract? In Islamic jurisprudence there are no rules of western institution such as public entity's obligations.

Contract in Islamic jurisprudence is based on the intersection of the positive suggestion (offer) from one side of parties (offerer) the acceptance by the other party (accepter) so is signed on a legitimate effect on the agreement. Confluence of offer and acceptance constitutes a contract.

In general, Islamic law does not allow freedom of contract and limited freedom of contract then Movable or immovable property transaction is as a sales contract.

It is necessary to say that any religious teachings of Islam, don't consider essentiality of official formalities such as writing or signing trading document for validity of contract and it based on agreement. Contract will deal with the intersection of two sides of the contract, as well as when it is determined that a statement indicates the intention of the

other party's actions (like a mark, or a written acceptance). According to Islamic law, sale contract is Simple (complete), gratuitous and purchase.

By considering books of religious jurists (Sunni and Shia), we realize the difference between them, but none of them don't realize essential sharp writing and signing of the contract like trade contracts.

Therefore, all Islamic schools is indicated and considered reliable any agreement that satisfied both parties for example, use of document for express will of the parties.

And the simple exchange of goods between two people without any written document or signature or verbal exchange offer and acceptance is sufficed for contract. Even silence in circumstances that "silence" is, can be considered sign of his implied consent as a valid instrument for expressing the will of parties.

Thus the dynamics of Islamic jurisprudence barrier to cover specific topics such as responsibilities both e-commerce and internet service providers (ISP), so there is no support for the weak and innocent of third parties which provides legitimate grounds for such an expansion of e-commerce.

To achieve this goal, lawmakers can legally based "principle of lawful"; The absence of a barrier to the Islamic Jurisprudence "easy interests" as one of the sources of Islamic Jurisprudence which law with regard to human needs and interests is permitted, provided when its not contradict the Quran, Sunnah and other Islamic law resources

Additionally, reputable and honorable customs and habits are also applicable to the Islamic Law. Particularly sect of Hanafi and Maliki "good practices" in case of non discrepancies with the

Quran, Sunnah, and other Islamic source know valid as a source, of course to the extent that does not sanction such Islamic customary rules and practices of Muslim jurisprudence.

About consumer protection, it should be noted that Islamic jurisprudence, right to revoke means right to terminate the contract unilaterally at determined time, in the absence of such right, agreement is required.

It should also be added that the Quran repeatedly refers to the need of protecting people in Islamic community. Tremendous respect for the rights of the Muslim community to support private life against unauthorized interference is allowed.

In contract law, Islamic law allows sales from long way; Uploaded condition that required reaching the other side and on time as the definitive answer.

On the other hand, sales did not meet the required offer and acceptance and sales that subject and its execution time is unknown, according to Islamic jurisprudence is prohibited.

However, some countries such as United Arab Emirates, which is still about a particular law like the e-business transaction has not rules, are included in the materials on electronic fraud and other countries such as Iran and Tunisia have adopted or plan to adopt specific rules.

Electronic trade morals in relation with consumer rights:

“Ethics” is the plural form of temperament that means form and face which see every human by his own eyes and Ibn Miskawayh in his book **”Tahzib alakhlagh va Tathir Alaragh”** says temperament in sensual mood which invites people to do things without need to think and reflect so it divided to 2 part: temperaments that are source for good works which called

premier Ethics and those that are source for bad works called rogue ethics or bad ethics.

The morality is as much is important that Prophet Mohammad recognize his main mission to complete ethics and decently comfort in this world and next achieve in shadow of good moral and he expressed in another hadith: “ جعل ا... ” “سبحانه مكارم الاخلاق صلّه بينه و بين عباده” that means good ethics is relation between good and his servants and this ethic can be relation with God, self, others and environment but in relation with other one of the most important duties of individuals is relation with society and its surroundings and forgiveness, generosity, honesty include the duties of a person's relationship with the community and when we talk about trade as an important human connections with other we realize the importance of this issue meanwhile, today the moral and social relations, discussion of professional ethics as a set of ethical actions and reactions are carried out by a working group, that base on: 1 - honesty and truthfulness 2 - fairness and equality 3-Trust 4-loyalty and 5-feelings of social responsibility is to consider the following applications.

1 – success derives of professional ethics.

2 - Professional Ethics is created by creation of the trust.

3 - Creating confidence is crated in the prediction of behavior.

4 - Predicting the behavior arises of continuous and laws arises of liability.

5 - Continuous and laws arises of the liability.

6 - Responsibility is formed of law create by individual beliefs.

And so the observance of ethics in business world and in relation to consumer rights at Cyberspace can result in successful outcomes especially because in this space is just trust which

therefore is important that institute of consumer rights provided a charter include 10 article and it is accepted in many countries that the main aim of the Charter be trust, we mention it as follow:

Consumer Bill of Rights

- 1 - Every consumer has the right to earn accurate information about the profile, How to use, Time, and mode of delivery, Price of goods and other information about the product, and services purchased;
- 2- Every consumer has the right to have courteous and respectful behavior and integrity of all members of organization that provides goods and services;
- 3- Consumers have the right to be fulfill his expectations about quality, quality, Price and after-sales service and delivery, as it has been stated during agreement;
- 4- Every consumer has the right to informed immediately and fully and claims that obligations of the seller and the provider's have not been played;
- 5- Every consumer has the right to complain and claim damages. Should hearing and considering his clime expeditiously and compensate his losses;
- 6- Every consumer has the right that if happened accident at consumption time; appropriate measures should be made on behalf of the seller;
- 7- Every consumer has the right to consider integrity, honesty and accuracy at all levels of seller institution and be sure that all legal requirements have been considered in the field of goods and services;
- 8- Each consumer has expectations from collective work and responsibility of vendor organization, should not excuse his failure to communicate the work or responsibility without appropriate assistance;

9- Consumer regards to purchases in the past and his attention to goods of seller organization is entitled to appreciation by seller.

Surely someone who wants to enter the business world should learn necessary expertise and also consider professional ethics for success, is quoted of Imam Ali which are stated: to group of traders first learn trade issues then get traded, and in various religious books the business is divided to three types: Haram, Makruh, Mobah

Moreover, in all cases, the rights of individuals and consumers have been emphasized moreover, in all cases, the rights of individuals and consumers have been emphasized, The Prophet is quoted to said: The best traders is someone who be well-paid and the worst is that traders who seek evil and is bad-paid or in another place said: *يامعشر التجار ان ... باعثكم يوم القيامة فجارا الامن صدق. و ادي الامانه* To businessmen group, God in judgment day bring you malfeasance unless you say truth and have trustee, which all of these orders are for providing and increasing confidence to trader which can ensure success and confident by professional ethics and religious orders especially in cyberspace that has close relation with consideration ethics and legislature adopted it completely and there has to be trust and complete trait honesty and can be severely punished for violating it.

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