

Electronic Sale in the Legal Systems of Iran and England

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Abstract

In this study, the author examines the concept of electronic sale within the legal frameworks of Iran and England. Electronic sale is one of the contemporary phenomena that has evolved as a result of technological advancement. Today, merchants engage in commerce through electronic communications. Since a healthy and dynamic economy is considered one of the hallmarks of a country's progress and development, understanding the laws governing electronic sales in today's world is of great significance. Moreover, if traders and their legal representatives are thoroughly familiar with the laws of their foreign trade partners, they will be in a better position to conclude valid contracts. The author explores the strengths and weaknesses of each of the legal systems of Iran and England in regard to electronic sale. The study points out that, under the Iranian legal system, the moment of dispatch of acceptance constitutes the moment of contract formation, while in the English legal system, it is the moment of receipt of acceptance that determines the formation of the contract. According to Iranian law, legitimacy is recognized under Clause 4 of Article 190 and Article 217 of the Civil Code. The principle of party autonomy is enshrined in Article 967 of the Iranian Civil Code, and the doctrine of the delayed application of the governing law in electronic sale is accepted. In contrast, under the English legal system, the law of the place of dispatch of acceptance is deemed the governing law for electronic sale. It is worth noting that England has acceded to the UNCITRAL Model Law. The UNCITRAL Model Law refers extensively to provisions related to electronic commerce in many of its articles. It is regarded as one of the most significant international instruments and has been adopted by many countries worldwide. Therefore, in this study, the author attempts, through a descriptive-analytical research method, to examine the legal provisions related to electronic sale.

Keywords: Electronic sale, England, option of session (khiyar al-majlis), acceptance, offer

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1. Introduction

Today, electronic sale encompasses a vast portion of individuals' commercial relations. Many merchants, due to the convenience, accuracy, and speed of electronic transactions, prefer to conduct their commercial contracts—especially sales—

through the internet. In the absence of precise and coherent legal frameworks, electronic sales not only lose efficiency but may also generate various complications. Therefore, the enactment of precise and codified laws for electronic sales is both necessary and essential. Electronic sale, in comparison to traditional sale, possesses distinctive characteristics that mandate the formulation of new and efficient regulations. For instance, in electronic sales, the parties are usually not present in the same location, making the traditional concept of *khiyar al-majlis* (option of session) inapplicable; however, this is not the case under English law, where *khiyar al-majlis* is recognized in electronic contracts. Similarly, the formation of offer and acceptance in electronic contracts differs from that in traditional contracts, as parties may express their offers via web pages or emails.

Under Iranian law, the option of session (*khiyar al-majlis*) has no place in electronic contracts. The moment of acceptance is considered the moment of conclusion of the electronic contract. The moment of dispatch or receipt of acceptance in electronic contracts determines the time of contract formation. According to Iranian law, the moment of dispatch of acceptance represents the acceptance of the contract by the offeree, while the moment of receipt of acceptance marks the formation of the contract. In this study, the author aims to explain the similarities and differences between electronic sale in the legal systems of England and Iran and to analyze the strengths and weaknesses of each system with regard to electronic contracts.

2. Concepts and Foundations

The term "contract" refers to a legally binding agreement, and in terms of meaning, it denotes a mutual agreement and cooperation between two or more wills to create legal effects or to establish a legal entity (Katouzian, 2001).

An electronic transaction is one that is carried out through electronic intermediaries and in cyberspace. With the advancement of modern technologies and electronic communication tools, people are inclined to perform their daily tasks with the help of advanced electronic tools. Electronic transactions refer to conducting governmental and personal commercial activities using computers and telecommunication networks.

Depending on the extent of software agents used in the process of contract formation and the degree of human involvement, contracts concluded through electronic software can be divided into three categories:

- In some cases, a natural person directly uses a computer program that they control to conduct electronic transactions.
- In other cases, a computer program is designed such that it enables the software agent to conclude transactions under specified and predetermined conditions.

In both instances, the embedded computer program and software operate based on given instructions, serving as a tool to express intent regarding contract formation.

- In certain situations, an intelligent software agent is capable of autonomously and independently concluding contracts without human intervention.

The distinguishing feature of intelligent software agents from other software lies in their ability to operate continuously and automatically in environments often populated by other electronic agents. These programs possess the capacity to execute defined planning and instructions with behavioral adaptability and intelligent response under changing environmental conditions, without the need for continuous human oversight.

Electronic agency refers to software designed to execute complex human commands. The term "electronic agent" may also be expressed by terms such as "intelligent agent" or "independent agent."

An electronic agent provides merchants and consumers with the capacity to make optimal choices based on product characteristics, country of origin, price, and post-sale services. In some electronic transactions, only the electronic agent is activated by the individual. The electronic agent makes the offer of sale, and the buyer accepts it (Akbarineh & Mahmoudzadeh, 2016).

Under English law, judicial precedents indicate that electronic agents are considered merely tools at the user's disposal, with no reference to agency rules or independent legal personality for the electronic agent.

Article 18 of the Electronic Commerce Act provides: "A data message is deemed to be attributed to the originator in the following cases:

- (a) If it was sent by the originator or by a person authorized to act on behalf of the originator.

(b) If it was sent by an information system programmed or operated automatically on behalf of the originator.” (Panahi et al., 2022)

According to the civil law of the Islamic Republic of Iran, an electronic agent is not considered a legal agent in the juridical sense. The agent is not merely a message transmitter but is regarded as a contracting party, and therefore must possess some of the features of a legal representative.

Nevertheless, comparing an electronic agent with a legally incompetent person such as a minor or a person of unsound mind is entirely untenable under Iranian law. According to Article 622 of the Civil Code, representation must pertain to a matter the principal could lawfully perform. The agent must be competent to undertake that task; legal capacity is a prerequisite for establishing representation.

In common law, the expression of intent, regardless of form, signifies the acceptance of an obligation and the intention to enter into a contract and is tied to the will of the other party. Using an electronic agent constitutes an actual expression of intent, and according to the theory of apparent authority, when a person utilizes an automated system to conclude a contract, it is perceived by the other party as a declaration of the intent to be legally bound. Thus, it may be stated that under common law, a form of will expression is accepted whereby emphasis is placed on the external manifestation of will and the reasonable perception that such a manifestation generates in the other party. In English law, if the intention of the contracting party and the software are not aligned, the actions of the automated system are attributed to the individual.

From the standpoint of Iranian legal standards, forming a contract through such technology is not problematic. According to Article 191 of the Civil Code, the formation of a contract is based on the intention to create and the external manifestation of will. This provision does not prescribe any specific mode of expressing external intent between the contracting parties. Expression of intent via electronic software is considered a form of expressing the parties' intention. Therefore, electronic software serves as a means for expressing the will of either the offeror or the offeree (Rahbari & Rezaei, 2011).

The features of electronic sale can be summarized in the following three characteristics:

- Adhesive nature of the contract
- Consensual nature of the electronic contract
- International character of electronic contracts (Akbarineh & Mahmoudzadeh, 2016)

3. Research Findings

An offer can be made in person, verbally, by telephone, through the World Wide Web, via a website, or by email, and according to Articles 339, 191, 192, and 193 of the Iranian Civil Code, it is considered valid. An electronic offer does not differ in legal nature from traditional contracts; however, it does have distinct features. One such feature is that an electronic offer constitutes a declaration of intent from a distance (Saidi Moghadam & Pouravzan, 2021). Therefore, the legislator has enacted specific laws to protect recipients of electronic offers. In English law, electronic transactions conducted through software do not impose obligations on the offeror if the other party has not confirmed acceptance. The offer made by the seller under English law is merely a proposal and not a promise, and thus it does not bind the promisor to any obligations. Furthermore, in English law, even if a party states conditions but those terms do not reach the offeror and the offer is nevertheless accepted, the accepting party cannot be held liable. This is because, if the initiator of the software makes statements within an electronic contract, the contract will not be concluded unless the other party accepts them (Bellia, 2001).

In the civil law of the Islamic Republic of Iran, the contract of sale is categorized as a nominate contract. However, sale should not be confused with barter. In English law, barter refers to the exchange of goods for goods without using money. Section 2(1) of the Sale of Goods Act defines a sale of goods contract as an agreement where the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price. Therefore, under English law, it is not necessary for the full consideration to be in cash. If part of the consideration is money and the other part is goods, the transaction may still be considered a sale. In English law, the intention of the parties is a key factor in distinguishing a sale from other types of transactions. According to Section 61 of the Sale of Goods Act, “goods” include all forms of tangible property other than money (Ghoboli Darafshan & Ghoboli Darafshan, 2012). However, this definition may appear one-sided, as it does not cover intangible items such as company shares. Intellectual property rights, including books, music, films, and software,

are often bought and sold online. While individuals may store such content on CDs or flash drives, giving it physical form, the question arises: if a person downloads music without transferring it to a CD or DVD, can this transaction still be considered a sale?

Under Iranian law, the will and intent of the parties are also fundamental elements of contract formation. If such intent is compromised, the legal effects of the contract will be nullified. Article 199 of the Iranian Civil Code states: “Consent obtained through mistake or duress does not make the transaction valid.”

Mistake and error refer to misconceptions of the parties regarding factual or legal matters. Mistake pertains to mental misunderstandings and false assumptions, whereas electronic error is associated with objective issues arising from system malfunctions, technical faults, etc. Errors in the online environment may result from software deficiencies, while mistakes are generally attributed to individuals. Mistakes during offer and acceptance apply similarly to both traditional and electronic contracts. Some errors specific to contract formation only occur in virtual settings. These include the possibility of intentional data alteration, mistakes in sending data messages, incomplete recording of data messages, delays in data transmission, and misdirected messages. Cyberattacks, such as hacking into computer systems, are types of errors and mistakes that are unique to virtual environments and electronic contracts (Payton, 2004).

One legal viewpoint compares the responsibility of the originator to the principal-agent relationship, asserting that the agent has no authority unless proven otherwise. However, this approach is not applicable to intelligent software agents. While a common belief in electronic commerce is that any action performed by a software agent should be attributed to the originator, it must be demonstrated that the software agent’s error in contract formation was due to system malfunction, virus infection, hacking, or other unforeseeable causes. In such cases, the originator bears no liability. Iranian laws, however, do not explicitly address this issue (Panahi et al., 2022).

In common law, errors and mistakes in electronic contracts are governed by four categories: mutual mistake, unilateral mistake by the buyer, unilateral mistake by the seller, and unilateral mistake by an intelligent software agent. For a mistake to invalidate a contract, it must exist at the time of agreement. For example, in the English case *Chweekinkeon v. Digilandmall.com Pte Ltd*, Amazon mistakenly listed a type of television in 2003 at a price much lower than its actual value (\$149). Within a short period, it received 6,000 purchase orders. In English law, this is considered a unilateral mistake by the website owner, rendering the contract void, as a reasonable person (seller) had made a pricing error, and such an offer has no legal effect (Panahi et al., 2022).

Mistakes by website owners often involve incorrect pricing of goods or services. A broader examination of English law indicates that material mistakes invalidate electronic contracts. However, if the mistake concerns a matter that does not substantially affect the parties’ intentions or fall within the scope of mutual agreement, or if the mistake lacks the characteristics of a material mistake and the consequences fall upon the mistaken party, the validity and enforceability of the contract remain unaffected.

English law follows the 2000 UNCITRAL Model Law on Electronic Commerce. However, upon examination, it appears that neither the UNCITRAL Model Law nor English statutory law specifies the exact moment of message dispatch. Thus, reliance must be placed on English case law. For instance, in the case of *Alson v. Trump* (1998) WLR 1404.141, the judge ruled that once an electronic document is fully received by the recipient’s system, transmission is deemed complete, and actual dispatch is not a condition.

The Iranian Electronic Commerce Law of 2003 remains silent on the timing of contract formation but provides guidelines for determining the time and place of sending and receiving data messages. Therefore, other legal provisions must be considered when determining the time of contract formation. Given that contracts are typically consensual in Iran’s legal system, the Iranian legislator considers the time of acceptance declaration to be crucial in correspondence-based contracts. In the Iranian legal system, “declaration of acceptance” is recognized. For email contracts, the contract is deemed concluded when an email containing definite acceptance is composed and signed. In electronic contracts involving “click-wrap” agreements, the contract is considered formed when the accepting party clearly expresses consent by clicking the “I agree” button (or similar phrases), regardless of whether the data is actually transmitted to the server due to internet disruptions or other issues (Abedian Kalkhoran & Nejat Zadegan, 2022).

Contracts are created by the mutual will of the contracting parties, and the parties have the right to choose the governing law. If the competent law is not explicitly designated, one must determine whether an implicit intent to choose the applicable law exists. Article 968 of the Iranian Civil Code provides: “Obligations arising from contracts are subject to the law of the place where the contract is concluded, unless the contracting parties are foreign nationals and have explicitly or implicitly subjected it to another law.” (Abdoli et al., 2022; Abedian Kalkhoran & Nejat Zadegan, 2022)

According to Section 6.20(5) of the English Civil Procedure Rules: “The claimant must bring proceedings in a jurisdiction in any of the following cases:

- (a) Where the contract was formed within the jurisdiction;
- (b) Where the contract was concluded by an agent within the relevant jurisdiction;
- (c) Where the resolution of the contract has been referred to English law;
- (d) Where the court declares its jurisdiction to hear the case.”

Based on the aforementioned legal provisions, it can be concluded that the legislator in Iranian law primarily focuses on the place of contract formation. In contrast, English law applies different criteria for determining the place of contract conclusion. However, according to the general rule, English law emphasizes the place where the contract is accepted (Payton, 2004).

Khiyar al-Majlis (option of session) exists in both Iranian and English legal systems. In Iranian law, it applies after the declaration of acceptance during contract formation, whereas in English law, it applies before the declaration of acceptance and only after the offer is made by the buyer. In Iranian law, *khiyar al-majlis* is valid as long as the buyer and seller remain in the same session; once they separate, the right is extinguished. However, in English law, the duration of *khiyar al-majlis* is customary and continues as long as the offer remains valid and continuity is preserved, even if the parties separate immediately. In Iranian law, *khiyar al-majlis* has no definite duration, but in English law, it does. In Iran, *khiyar al-majlis* leads to termination of a concluded contract, while in England, it prevents the contract from being formed in the first place (Amini & Vali, 2024).

In Iran, *khiyar al-majlis* seems meaningless in offline transactions, while in English law, even in offline environments, the right exists from the time the seller makes an offer until the buyer accepts. *Khiyar al-majlis* grants the right to terminate the contract during the session when both parties are physically or virtually present. In Iran, *khiyar al-majlis* applies after offer and acceptance—after the buyer accepts, they may exercise this right before separation. In England, once the offer is made, it remains open during the session, and the seller cannot withdraw it. The seller waits to see whether the buyer accepts; if they do, the sale is formed. In Iranian law, *khiyar al-majlis* arises after offer and acceptance. In English law, however, it applies after the offer and until the end of the session, allowing the buyer to accept or reject the offer. In Iran, this right dissolves a concluded sale; in England, it invalidates the offer. The seller cannot exercise *khiyar al-majlis*—as long as both parties are in a meeting (traditional or virtual), and have not separated, the right remains.

Article 46 of the Electronic Commerce Law of 2003 (Iran) emphasizes the ineffectiveness of unfair terms. Iranian law does not define unfair terms elsewhere. Article 3 of the same law stipulates: “In interpreting this law, international character, the need to develop harmonization between countries in its application, and good faith must always be considered.” The English legislator has addressed this issue more precisely. The Unfair Contract Terms Act 1977 was enacted in England. According to Section 11(2) of that Act, reliance on an unfair term is enforceable only if it meets reasonable and customary standards. Sometimes, a clause is deemed unfair if it creates a significant imbalance between the parties. The measure of imbalance may be calculated based on the proportional value exchanged in the contract.

Customary judgment must be considered. Additionally, courts may examine the debtor's personal, commercial, physical, and psychological capacities and economic conditions and financial pressures at the time of contract formation. Section 5(2) of the 1977 Act notes: “The opinion of the parties pertains solely to standard contracts.” The Iranian legislator recognizes the principle of freedom of contract and respects the autonomy of the contracting parties. However, Iran has not adopted special protections for the weaker party. In emergency situations, stronger parties may exploit weaker ones. The Iranian legislator has not ignored this issue, which is why Article 46 is important. If a consumer concludes a contract without awareness or participation in drafting its terms and later challenges it due to unfair conditions, such a term is only unfair if a demonstrable imbalance exists. In electronic sales, where contracts are formed via digital means, the risk of error, unawareness, and consumer harm is significant. The law must pay special attention to this.

Why has the legislator only referred to unfair terms in Article 46 of the 2003 Electronic Commerce Law? Perhaps because sellers typically know their goods and cannot claim ignorance. The legislator aimed to protect consumers' rights. The Electronic Commerce Law is a special law and applies only to its specific cases. Thus, the provisions of the Civil Code on implied terms do not apply here. Article 1 of the Electronic Commerce Law states: "This law comprises principles and rules for secure and efficient exchange of information through electronic intermediaries using new communication systems." (Abhari & Khariki, 2020)

Article 45 explains the nature of the right of withdrawal in electronic contracts, declaring: "Enforcement of consumer rights under this law shall not be suspended based on other laws offering weaker protection." Article 46 adds: "The use of contractual terms contrary to this chapter and the application of unfair terms against the consumer shall have no effect." These two articles confirm that the nature of withdrawal from an electronic contract is a mandatory provision, unlike rescission or *khiyar*, which are supplementary. Methods of withdrawal differ between goods and services (Art. 38), and physical and electronic withdrawals involve different procedures (Arts. 5, 6, 33, 38, 40, and 41). *Iqāla* (mutual rescission) refers to the dissolution of the contract by both parties, either before or after delivery. It can occur electronically or traditionally. In electronic *iqāla*, due to price volatility, if the value of the sold item has changed by the time of rescission, it appears the price at the time of *iqāla* should be the basis for determining the substitute. A jurisprudential view holds that the "day of destruction" determines the compensation. However, in electronic contexts where prices fluctuate rapidly and retrieving items takes time, payment at the time of rescission aligns better with Islamic jurisprudence and Iranian law and is more just (Ardebili, 1403; Moradi Golestan, 2022; Najafi, 1999; Tabatabai Yazdi, 1420).

In English law, contracts are categorized based on their legal effect into valid, void, voidable, illegal, and unenforceable contracts. Another classification is based on degrees of ineffectiveness: void, illegal, voidable, and unenforceable. Voidable contracts are significant and have diverse rulings. In English law, a voidable contract appears valid but may be canceled by one or both parties or by the court (Ansaripour & Sohani, 2020).

Legally, the doctrine of "frustration" refers to a contract becoming useless due to uncontrollable events post-formation, rendering performance personally or legally impossible or void due to the loss of the contract's core purpose. This doctrine signifies contract dissolution due to impossibility of performance. If a contract ends involuntarily due to circumstances beyond the parties' control, and performance is impossible, the doctrine applies. Its main pillar is "impossibility."

In English law, if both parties are aware of the impossibility at the time of formation, they must still perform. If unaware, the agreement is void. Temporary impossibility does not dissolve the contract unless the purpose of the contract is fundamentally frustrated. Partial impossibility results in partial termination; if only one party is unable to perform, they remain liable. Sometimes, an external event leads to dissolution (Ansaripour & Sohani, 2020).

Under English law, termination due to an unavoidable event is not automatically presumed. The party must fail to perform their obligation. In the first view, if the parties could have foreseen the event, the frustration doctrine does not apply. The second view holds that even foreseeable events at the time of formation preclude the doctrine. In English law, incapacity in personal service contracts results in termination. Mental or physical illness of the obligor or death of the obligee may also justify applying the frustration doctrine.

Future legal prohibitions or newly enacted laws may independently justify invoking frustration. Illegality of performance or nullification of the contract's core objective also qualifies. Frustration results in the discharge of obligations and termination with retroactive effect.

4. Conclusion

In this study, the author has examined electronic sale within the legal systems of Iran and England. Electronic sale refers to a type of sale conducted via the internet, where the declaration of intent is made electronically, in an intangible and virtual format. An electronic agent is an independent agent that operates autonomously, without human intervention, and exerts a form of control over its actions and its constituent elements. The electronic agent has no vested interest in concluding the contract. However, it cannot be considered a legal entity separate from the merchant; rather, its legal personality is dependent on the merchant. This point is evident in the case law of England. Upon analysis of the relevant laws in Iran, it becomes clear that the

electronic agent is not considered a legal representative in the traditional legal sense. It is not merely a messenger but is regarded as a party to the contract and constitutes a valid expression of will. If the intention of the counterparty does not align with that of the software, the actions of the automated system should be attributed to the originator.

Electronic sale is characterized by several features, including its adhesive nature, its electronic form, and its international scope. Since many electronic contracts are formed via websites, most electronic sales are deemed adhesive contracts. Also, because parties to an electronic contract have considerable freedom in expressing offer and acceptance, such contracts frequently possess international dimensions, allowing individuals from anywhere to engage in online sales via the internet.

In Iranian law, the definitions and characteristics of subject matter in electronic contracts mirror those in traditional transactions. Electronic offers, however, have unique features, notably being declarations of intent made from a distance. Therefore, to protect recipients of such offers, the legislator has enacted specific legal provisions. To establish the intent of parties in electronic contracts, certain conditions must be satisfied. These conditions apply to all contracts, including nominate and innominate contracts.

In electronic sales, the expression of will is essential, but the medium for declaring such intent is not limited to verbal or written form; the transmission of electronic data may constitute an offer or acceptance. Under English law, the offeror may withdraw their offer at any time before acceptance is effected. Acceptance must be communicated directly to the offeror. One of the essential pillars of contract formation is the will and intention of the parties; if this is compromised, the contract loses its legal effects. Article 199 of the Iranian Civil Code states: "Consent obtained through mistake or coercion does not render the transaction valid." In English law, if a mistake affects the mutual assent of the parties, the contract is void; however, if the mistake lacks the qualities of a material mistake, the contract remains valid.

Given the continual expansion of information technology, the legal system must increasingly legislate for electronic communications. Technological advances also create new opportunities for abuse in electronic sales. Thus, it is imperative that the legislator enacts laws to curb the actions of those who disrupt internet-based commerce.

Furthermore, the laws of both Iran and England lack precise and cohesive legal definitions for commercial electronic contracts, including electronic sale. The definition of traditional sale cannot adequately capture the nature of electronic sale. Therefore, the legislator should give more attention to establishing legal definitions of commercial contracts. By studying the advanced legal systems in electronic commerce, such as that of England, the Iranian legislator may derive innovative and up-to-date provisions regarding electronic sales.

Arbitration in electronic sale has been neglected by the legislator. Emphasizing electronic arbitration in electronic contracts—including electronic sale—is both essential and undeniable. Establishing an arbitration body to resolve disputes arising from electronic commercial contracts is of paramount importance.

Additionally, the *iqāla* (mutual rescission) of electronic contracts often results in harm to the contracting parties, especially given the long distances and time differences between them. Price fluctuations in the goods and services market are significant. Therefore, to respect the rights of the parties and uphold the principles of expediency and specialization in dispute resolution, it is necessary to establish coherent and codified rules governing electronic *iqāla*.

Attention must also be given to contract cancellation options (*khiārāt*) in electronic sale, including *khiār al-ru'yah* (option for inspection), *khiār takhalluf al-wasf* (breach of description), *khiār takhalluf al-sharṭ al-sifah* (breach of stipulated quality), *khiār ghabn* (option for fraud), and *khiār tadlīs* (option for misrepresentation). Unfortunately, the legislator has neglected these issues and has not adequately addressed them in the Electronic Commerce Law.

Establishing specialized judicial branches to handle disputes arising from electronic commerce would allow for more precise, efficient, and expert adjudication. Therefore, it is recommended that the legislator designate specific courts for handling electronic commerce disputes. Many merchants and economic actors are unaware of the legal provisions governing electronic sale. Increasing public awareness through explanation and dissemination of electronic sale laws could be highly effective in regulating personal and commercial relationships. Educational courses on electronic commercial law for merchants and economic stakeholders would be of great benefit in this regard.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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