Reclamation Right in Electronic Contracts in Iran Law and Thing to International Rules

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Abstract

Law with justice purpose increases individual’s security in social. So itsupported consumers and don’t ignore investors, business man effective and their effect in investment filed. Buyer in electronic space in one dividing includes monetary materials, digital materials, monetary materials and digital services. Cumbers can easily get their materials with paying money in this space. Consumers can demand their money during deliver money from Z years according to 38 rd article. It seems rule- maker support of consumer and it seems it is not to benefit seller. And it is the time that buyer receive digital good from buyer or other tools in electronic space. And it is possible that we can reclaim it for 7 years according to 38 rd article. And it is unavoidable for misused it. On the other hand it's for cible to apply theserules and even attach to technical method cannot solve this problem or they are not cost- effective duct to high cost. But they don't pay attention to it according to D part of 38 rd article and this want rule maker try to support on part of contract don't violate the other side light. So we should think to realize justice.

Keywords: Good reclaim, Electronic contract, Consumer, Contract cancellation, Illegal requirement.
Introduction
Global business organization defined electronic business as: ((production, distribution, marketing, sell or delivered goods and services by electronic tools)). (Rezayi, 2008). So electronic contracts in law definitions include business or non-business actions unless electronic acceptance and they include different aspects of electronic contracts. (Maghaminia, 2010).
They are different commitments for it or one party and their subjects include property transmission or do certain work. (Katoozian 2010, 131 page). There is no significant difference between electronic space and tradition space. And space is contraction case and sell contract and Saman is money pay to different forms include good transmission or provide goods. Our discussion is concentrated on buyer. Also it is unavoidable to digitalization in today world and digital goods and services are in this group. And we handled with 4 group material, service, Digital goods and digital services.
Since consumers in business contracts are weak relative to goods and services provides and sellers and give them return right to consumers. So we investigated international rules and their expectation and digital goods specifications and study reclaimed right in this goods.

Electronic contract concept
Conclude means contract in present Persian (Jafari Langroodi 2001, 532). It is one Arabic word and means fastening. And in one legal terms means ((its committed one or 2 persons against one or some persons and all accept them)).
Their similar aspect is their world aspect and emergence between 2 legal relation people. And related these 2 persons (Emami, 2010).
Every 2 requirements are necessity for conclude ((Conclude due to 2 or more willing accepts and it means their willing is most important factor for right.

Contract mean is making commitment and parties should apply its commitment
We need to 2 special and public requirements for contract. Public requirement should be present n every contract and special requirements is different in every conclusion unless this conclusion is not valid. According to 190 rd article of Iran civilian law we need to 3 basic requirement.

1- Party’s intentions and their acceptance.
2- Certain issue for contract.
3- Parties want.
4- Legality for contract.
Lack of below situation lead to conclude void and lack of some lead to not penetrability of them. (Shahidi, 2010, 28). And these requirements are:

1- Acceptance
2- Legal requirements between realization and acceptance
3- It's contract and it's submission.
(216 rd article of Iran civilian law) (Jafari langroodi, 2012, 82)
There is no clear definition of electrical contract. Electronic basic principles noted in contracts public principles, since major identity of contract don't change in electronic space and only their willing state tools changes.
In the other hand one contract conclude by acceptance of parties bound to contract. But contract acceptance in electronic contacts is not with writing or point and made by one new system in the virtual and non-obvious space (Mohamadi 2015, 26).
Contract in virtual world is similar to its conclusion in real world and since lawyer inhibited provide separate definition for electronic contacts. There are certain situations for these contracts in 190 rd article.

Certainly there should below noted
Requirements in electronic contracts and its legality (Rezayi 1990, 28,30).
Generally phase of one electronic contract is similar to traditional contract and its credit is certain. There are no reason for contract inhabitation by electronic post by one button click in the internet or by digital signature. (Noori, Nakhjavani, 2012, 122)
This electrical contract conclusion can be like one of below methods:
1- Contract conclusion by telegram, Telex, Telecopy or fax.
2- Contract conclusion by data base.

Electronic contracts have special features due to them are remove and they are assign to domain of making electronic contracts:
A) Contracts from far from.
B) Delete paper documents.
C) Business aspect of electronic contracts.
D) Electronic contract internalization.
E) New approve in electronic contracts.
F) Contract electronic parts.
G) Electronic payments.
H) Special correlation right.
I) Automatically contract conclusion.

Contract case in electronic contracts
Goods and services
There are different commitments for 2 or one of parties and these commitments is transmitted property or doing a work. (kattoziyan 2010, 131) and contract case is committed property for submission it like commitment to certain book submission. (Emami, 2010, 257). Property traditional concept is material good about contract and is valuable. Property world in present law has extensive concept and includes right on innovation and activities. (katooziyan, 2010, 132).
1- It should be transmission.
2- It should be certain.
3- It thanks to power on submission.
4- It should be debt property.
5- It should be present to conclusion.
And it should contracted due to property contract requirement or its submission.
But contract case there is nosignificant difference in virtual space and it mean is buy conclusion. And Saman is money pay to different shapes. And it is include good transmission or provide services. But some work digitalization is inviolable due to digitalization. Although some authors pointed to 3 groups material goods, services and digital services.
2-1 good means tool (Amid, 2009). According to part 1 of 61 rd article of good international convention is: ((All private material unless work and money)). (2009, 96) good according to definition in western and English law: ((All personal properties unless money)). (NooriNakhJavani, 2010)
According to convention, our mean of good is un-transmission good and it can be ((General property)). According to this definition property is special case of product and is present in significant value and in one shape or provable from different sources like coffee and crude oil. Material goods buy in electronic space are tangible goods. In this kind of contracts is out of any usual space and conclude in internet. But good delivering is out of electronic space and seller act base on contract, good kind or contract and it's delivering kind and usually research to customer by post like buying one book.

**Services**

It is possible that contract case is one committers should planned for it. (Emami, 2009, 257). In addition to clearing which is a correct requirement for all commitment they should have below requirement:

1- It should be possible
2- It should be legal
3- It should rational benefit for creditor (Kattoziyan, 2010, 136).

Services concluded by electronic tools and applying them are out of network and they are like contract for buying material goods and good deliver out of space. Like material buy and contractual negotiations and make this situation. As an example a person committed to printed B good advertisement in special magazine. In this example all agreement is in electronic space but contract apply is out of this space.

**Digital Goods**

Internet provide opportunity for digitalization some affairs. Some goods don't deliver to buyer in material copy like music book, magazine and these products provided digitalization and internet and finally lead to caring time and money. But tangible transmission from traditional view is buy. But digital information has ability for transmission, distributed and they research and maintained.

So they followed buy public regulations. (Noori, nakhjavani, 1990) in this kind of contract we have acceptance in virtual space. And seller provide opportunity for digital good receive after received contract money. For example good posted to buyer electronic address or provide opportunity for downloaded good in computer. So no other foreign factor is not involve in this buy. Goods are transmissible or not transmissible since something is in buy transmitted they are individual and intellectual achievement. And they include spiritual rights and since these rights like write right and industrial ownership are transmittable business and their owners can use human mind achievement. So they are in transmittable group. (Habib Zadeh, 2010, 67)

**Digital Services**

Feature of these contracts is not only internet is one communication tool but also provide other services (Mohammadi, 2015, 45) like online banking. Good not transmitted by digital or material shape but its subjectis practical contract. As an example A committed to established one software from remove or internet mediate in Bsystem and A established software in B computer. This establishment action is service that is digitalized. But in this kind of services provider technical and buyer present on internet network is inviolable. (Mohammadi, 2014).
Transaction case distinction aspect in electronic contracts

Europe union distinct between contracts apply place about goods and services for new regulation verification. They believed since services show themselves that contract identity determine apply kind of contract. The issue is completely clear and for example computer planning is include programs we should play attention to this issue that transactions dividing is important due to contract case, since they distanced between good and services and there should be different conduction between this case, services or rules.

There is no difference between material goods and services with material goods and services in traditional space. (Judiciary force education and researches 2016). And apply commitment (whether good submission or services are in outside world). But there is difference between digital goods and services from electronic business point of view, since they are difference quality services on them and sometimes this difference don't show themselves very clearly.

We can referred to Advent systems company fire about advent systems of Unisys company that. Computer programs are product of mental process but while they recorded, they extensively distribute between computers owners. And we can comprised them with tape or disc. Music is a product of musician and we can say it is not good, but if it transmit to lazier disk, it is transmissible good. Also since university master speech, it is not good but since it recorded on the book it considered as material. Although this court pointed to spiritual ownership in tangible formlike book, disk, we have not reason to that this kind of ownership is not good. In addition digital data have some specifications are similar to tangible materials. They are transmittable, distributed, and recorded. Another view us that they are not services, since they don't make unique transaction relationship and they don't depend on apply skills of work and so they should considered as work. (Noori, Nakhjavani, 2013)

So we should pay attention to the point that what are our purpose while we pay money or downloaded one file in the internet. (As we can see we want to play it's cost for buy this special music or distributed it in the computer or not buy license for enter to that screen. So this music on the disc considered as material. So this music should considered as digital material in one file or by download it. Services is an action. This action is depend on person but its tool is electronic tool and its place is electronic space and the person can apply commitment with present in this space.

Consumer Rights

The word most frequently used words in the rights of consumers and suppliers of e-commerce. Article 2, paragraph (g) of the Electronic Commerce Act, adopted in 2003, reads: "Consumer: any person other than business or career to take action." and the Consumer Protection Act 2009 in Section A consumer is defined as "any natural or legal person who buys the product or service."

The most comprehensive and most complete definition of consumer's rights provided in the Regulations is Article 48 of the Electronic Commerce Act referred to as "consumer: Whether any person or entity for the purpose of trade or career other than to purchase goods and services through the " . (Feizi, Chekab, 2015, 72)

In paragraph as Article 2 Q.t.al "Supplier: the person who, according to business capacity, trade or professional activities". In international law, of different terms such as business, seller, suppliers and trading partners with the consumer to the person who placed, is used.
(Ibid 2015, 76). Because consumers in commercial transactions, compared with suppliers and sellers of goods and services, are considered weak as to why, both domestically and internationally in order to support consumer regulations adopted (ibid, 2015, 68).

Article 33 to 49 of the third chapter of the first season of the Electronic Commerce Act to protect the rights of the consumer's country. Consumer Protection in Electronic Commerce Iranian law is based on three pillars: 1) to provide full information; 2) the right to withdraw; 3) protection of consumers against unfair contractual terms (Izadifard, Kavyar, Hassanjani, 2009, 169).

Iran's right to cancel the law before the adoption of the Electronic Commerce Act had no record. In Article 37 and 38 Q.t.al the right for consumers anticipated that the Parliament and the European Council of 1-6 instructions adapted Act 1997.

Features the right to withdraw
6.1 In accordance with Article 37 Q.t.al exercise of the right of cancellation within 7 working days, and this is the Made In accordance with Article 38 paragraph beginning "in case of sale of goods, the date of submission of the product to the consumer and for the sale of services, from the day of conclusion."
6-2 to the withdrawal of international law. According to the provisions of Articles 45 and 46 Q.t.al is related to consumer rights stipulated in this law. One of the important consumer rights is the right to withdraw and the parties can not otherwise agree.
6-3 exercise of this right under any circumstances are not cases of abuse of rights, that's why the exercise of this right does not require reasons according to Article 37 "In each transaction, the consumer must be at least seven working days of the distance, time to withdrawal (right to withdraw) your acceptance without incurring penalties or have reason. The only cost will be imposed on consumer goods forwarding costs."
6-4 free right of withdrawal "in any consumer transaction must be at least seven working days from distance, time to withdrawal (right to withdraw) your acceptance without incurring penalties or have reason. The only cost imposed on consumers Price the product will be return policy. "
6.5 This right is not applicable to some goods and services. Q.t.al accordance with Article 42 and paragraph (d) of Article 38 Q.t.al, the right to cancel does not apply in the case of some goods and services.

Article 42 "Protection of the season will not be implemented in the following cases:
A) Financial services listed under regulations that will come out in Article 79 of this Law.
B) Transactions relating to the sale of immovable property or property rights of immovable property except rent.
C) The purchase of machines direct sales of goods and services.
D) Transactions using public telephone (public) done.
E) Transactions relating to the auctions."

Paragraph D of Article 38 "the right to cancel the consumer in cases where certain conditions govern the types of goods and services will not run.Cases under regulations that will come out in Article 79 of this law ".

According to paragraph A of Article 79 Q.t.al Iran, the Ministry of Commerce is responsible for the regulations referred to in paragraph (d) of Article 38 and Article 42 of the law proposed by the Ministry of Commerce, Economic Affairs and Finance, Administration and Planning and the Central Bank Islamic Republic of Iran and approved by the cabinet (BagheriAsl 2008 77).
On 29/12/2004 the aforementioned Regulations were approved as follows.
Council of Ministers by virtue of paragraph "a" of Article (79) of the proposed e-commerce and the ministry of Commerce, Economic Affairs and Finance, Management and Planning Organization and the Central Bank of the Islamic Republic of Iran, 38 and 42 of the Electronic Commerce Act passed an ordinance said:

Article 1- consumer goods and services due to special circumstances, without the right to cancel as described in paragraph "d" of Article (38) will be e-commerce law, unless the parties agree otherwise:

(A) In the case of services, with the agreement of the consumer if it is started before the end of seven working days.
(B) Services for the delivery of food or other goods that are consumed daily.
(C) The goods or services whose price is determined by the volatility of financial markets and provider is out of possession.
(D) Consumer goods made with individual characteristics that are clearly personal aspect or because of their nature cannot be returned or that the speed of the corruption and destruction.
(E) Audio and video tapes and computer software packages that are opened by the consumer.
(F) Publications such as newspapers and magazines as defined by the press law.

Note - the organization is obliged to protect consumers and producers a list of examples of goods and services listed in paragraph "c" of this article for information were prepared, and kept up to date through comprehensive trade information network and information website of the exercise to bring public awareness.

Article 2 Financial Services, paragraph "a" of article (42) of e-commerce is outside the scope of consumer protection rules.

(A) Investment services (B) Insurance services (C) Other financial institutions and credit services.

As well as amendments dated 26/02/2005 is as follows:

1- The end of paragraph (e) of paragraph one phrase: "and subscription card and a password to encrypt online the packaging is open" is added.
2- The provisions of subparagraph (f) of paragraph after the words: "Information Center organized the" words "and the official newspaper of the Islamic Republic of Iran," added the right to cancel the goods and services mentioned. Therefore, not applicable and the goods and services have been exceptions, including the right to opt out.

The right to restitution in digital goods
As we've discussed, traded on electronic contracts from the perspective of this paper is divided into four categories:
1) Material;
2) Digital goods;
3) Financial services;
4) Digital services.

On the other hand the Electronic Commerce Act in Article 37 of the consumer's right to impose fines or will refund the product without reason been appointed and the cost to send back the product will be imposed on consumer spending (Sadeqi, Aqajani, 2011, 220). Despite the clear provisions of article 45 and 46 Q.t.al, the mandatory features of article 37
and 38 Q.t.al, legislative exceptions to the right of withdrawal has arrived that were studied in detail. If the physical commodity transaction is subject to refunds within seven working days of the withdrawal right can be used and provide the same amount required to restore the reception. After apparently hurt your goods supplier and has not suffered the loss of his good position.

Services in the aforesaid Regulations, subject to exceptions that balance the rights of the consumer and the supplier is established to a certain extent. The regulation of services without indicating the name has been so absolute and services, represents the inclusion of digital services in this is exceptional.

The problem appears where the goods traded in cyberspace, digital. Digital consumer goods purchased via electronic interfaces it is delivered. According to paragraph A of article 38 of the date of submission of goods by the supplier, the consumer can seven working days, in any way possible, digital products and claim refunds of the right to be withdrawn.

In this case, however, may also be taken advantage of, such as when someone is a book that is presented in the form of an application, make a note of its content! Or the text on the computer screen of the resulting photograph, and then print photos taken! Or if the application contains music, you can play at once, or if it is recording music video content with external tools, the content of the video screen (Habibzadeh, 2012, footnote 71). Consumer about the use of content achieves its goal and the other side of your right to cancel and digital products in a manner that is refunded, by law, the supplier must comply with the opt-out. Certainly placed at risk of violations of the right supplier, Because in fact somehow lost product and has opened the way for the consumer to use it and according to the consumer and to the exercise of the right of withdrawal, should receive the same amount of the refund. This reduces the incentive supplier in activity in this direction and makes, the seller is not willing to offer and sell digital goods. According to the forty Q.a: "No one can exercise his rights in a way injurious to others or detrimental to public interests". But if the cancellation was right over one of the features that exercise of this right does not apply to the abuse of the right to be because according to Article 37 Q.t.al consumer is not required to provide reasons for Returns.

Technical measures to solve this problem may seem easy at first, the way that Microsoft uses to sell some of their products. This means that for each 25-character product key has defined that product sale along with the goods to the buyer at the time of the surrender. If the buyer will see, in this case, Microsoft will be the key to invalidate it and other consumer computer system to be usable. Of course, to do computer buyer must be connected to the Internet, Monthly use of codes for each product and put them in the hands of consumers is difficult and costly. Any method other technical defects which completely shuts the abuse (ibid, 2011, 72). The best solution according to discussions in a legal way must be found the support of a party to the contract at the price of weakening the other hand, not all and the ultimate purpose of legislation is to be achieved balance and fairness.

Conclusion and Suggestion
There is no difference between casesin electronic space with traditional space. Also it is unavoidable to digitalize some affairdueto being in electronic some affair due to being in electronic space and digitalized good and services place in this category.

And we have generally 4 category:
Monetary goods, services goods, digital goods and digital goods. Since consumers in business translation is weak they received effective support of others.
They practical this law for consumers in 37 & 38 rd article. And according to them consumer can demand paying money for good during Z days from good submission. Rule- Maker considered some expectation for reclaim right according to clarity in 45 & 46 rd article. This rule- maker support opera misused trend. And especially the material will be digital. For example buy software has music and can recorded its content and consumer obtain his opinion and on the other hand use of his reclamation right and reclaim this good. And provider should submitted it. So this law is forcible and mean cannot violate it. And cannot cover this issue about attach to technical ways. Or it is not cost effective due to high cost. And ever they don't pay attention to them with respect to D part of 38 rd article. It seems legal solution is the best solution for this problem and business organization can complaint about this issue and again modified them and added some article to this treaty.
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