

## Study on Electronic Business in View of Islamic Jurisprudence

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### Abstract

Considering technology development in all fields, nowadays human societies have been changed principally. These changes shall be adapted with the field of Islamic rules, regulations and also Islamic jurisprudence regarding its dynamicity to analyze new issues within their frames. Developing various technologies, particularly internet emergence and generalization, business has been changed severely. There are several rules concerning the business and deals and Islamic jurisprudents have described their various dimensions during many centuries. Therefore, as it was said internet has formed special type of business under title of electronic business. Due to the dynamicity, Islamic jurisprudents should analyze subject of E-Business in the field. In light of proposed discussions, this paper is intended to explain this subject how to interpret E-Business or cyber business in respect of Islamic jurisprudence. In this paper it is assumed that E-Business is analyzable based on Islamic jurisprudence as well as other domains of business. E-Business concept has been studied to reply the question and then various elements of this type of business would be analyzed regarding Islamic jurisprudence standards.

**Keywords:** Electronic Business, Islamic Jurisprudence, Electronic Offer, Electronic Sale, Electronic Acceptance

### Introduction

Global internet network has made opportunities and concerns for human society and Islamic societies. Electronic business is one of the global network achievements, having made new religious legal-jurisprudential issues that require to appropriate replies by religious Jurisprudents and Jurist. Shiite Islamic jurisprudents have proposed deals and specified contracts, options and jurisprudential rules in traditional structure of religious Jurisprudence concerning transaction. One of the jurisprudential innovations in our time is electronic business. In other words, the most evident specification of present world is necessity of communications and coexistence in the shadow of human new technology and it has differentiated present world in relation to the old world. Human evolution specially present century technological progress in various fields, including management, communications and transportations, have transformed our great world to interrelated and small world. Electronic transactions have faced with wide reception during recent years. Nowadays, a few people may be found, not acquainted with electronic deals. Magazines publish and radio and TV broadcast matters concerning E-Business daily and people and experts study this category from different point of view. Companies and institutes, active in presenting goods and/or services, are striving to change their organizational logic and physical structure in line with global movement development in the field of e-business.

Now, considering E-Business fast development in global scale, unavoidability in use and its role to preserve, reinforce and develop competitive situation of Islamic countries in international and global level and regarding economy arisen from executing this form of business, what is Islamic jurisprudence position with respect to legitimacy and type of using these facilities and its development? Studying all jurisprudential aspects of E-Business is beyond the scope of this paper,

therefore it has been tried to consider jurisprudential rules governing electronic contracts. Transactions have several classifications. According to one classification, commerce is arranged as domestic commerce and overseas commerce and according to other classification; arranged as traditional commerce and electronic commerce. But these classifications depend on other issues and they are different in accordance with opinion by the classifier. In first step, Islamic jurisprudence considers electronic transactions as means of earning income that is liable to a general series of rules governing all transaction. According to mentioned view, all transaction are regarded equal whether it is domestic or overseas, with Muslim or with non-Muslim and whether electronic or traditional, so similar rules should be observed for all of them which are lack of compelling circumstances for contracts, parties' satisfaction, deal legitimacy and its necessity etc. that are discussed in contracts generalities, thus, this paper studies jurisprudential rules governing electronic contracts, not considering unchallenging areas.

### **Electronic Business**

#### ***Definition of Electronic Business***

Electronic business is an expression which has been made at the end of 1990s and it is applied on all business aspects on which information addresses technique are effective. Generally, electronic or cyber business indicates on form of deals in which internet technology is used in order to improve trade process and promote level of services for customers (Ahani, 2003). There are various definitions for electronic business that most of them relied on past experiences in using E-Business. European Commission defined E-Business in 1997 as this form: E-Business is based on process and transferring data electronically including text, audio and video. E-Business comprise different activities including electronic trade of goods and services, immediate delivery of digital claims, electronic payments transfer, stock electronic exchange, electronic bill of lading, commercial plans, direct marketing and after-sales services (Nuri, Nakhjavani,2011).

There is another definition of internet business that E-business is defined as any deal which is done by internet or by internet assistance (Nuri, Nakhjavani,2011). Japan's Ministry of International Trade and Industry defined the category as follows:

E-Business that was restricted by some specified companies, is entering into new area in which many consumers participate in network, further, its content exceeds area of exchanges for data as for ordering or order acceptance and it covers commercial general activities including advertisements, propagandas, negotiations, contracts and settlements.” Also it could be said that E-Business is a paperless trade. In short, it is said that; E-Business is purchase, sale and exchange of goods, services and information through computer networks such as internet (Naghshineh, 2008) .

#### ***E-Business History***

In the early years of the 1970s, the word of E-Business was applied on electronic data exchange to consign commercial documents such as purchase order or electronic statement, later developing this industry leads the word of E-Business to be applied on commerce through worldwide web network in order to purchase goods and services. After that generalizing and recognizing of initial World Wide Web network made it prevalent in 1994; many researchers predicted that this form of business i.e. business based on web, will become important part in global economy in the near future. E-Business date back to the time that internet has not been invented, but it was using merely by large commercial companies and economic institutes such as banks and governmental organizations due to high costs. Globalization and generalization of internet and using facilities made this opportunity for all the people to use this field. Therefore, its exclusivity for a certain group was finished and E-Business was developed day by day (Halabian, 2010) .

The first electronic business records are observed for 1998 among some reputable businesses in USA and Western Europe. These businesses were formed by launching initial websites and then they developed. E-Business was promoted and succeeded in most cities of USA, Europe and Eastern Asia rapidly in 2005 (Halabian, 2010). Popularization of internet in societies expanded E-business development in our country as well as other countries so far as legislators enacted E-Business Law in 2003. Thus, it is clear that increasing the number of Internet users developed E-Business all over the world.

### ***Methods of Electronic Contracts Formation***

#### ***Contracts Formation through E-Mail***

E-Mail mechanism is like as traditional mails but there is a difference that mails are not sent physically as they were being sent in traditional posts but they are sent within frame of electronic packages. Hence, messages transfer is done quickly and they would be received by the receiver as soon as sending by the sender.

#### ***Contracts Formation through Website***

Goods and services producers and suppliers may create special websites easily in order to introduce and supply goods and products in internet environment. General conditions of purchase & sale are presented usually in these websites. Regularly, there are arranged forms which the customers fill them out and select the desired goods while prices would be paid by credit cards. Regarding legal and jurisprudential view, these conditions may be considered as stores window that are invitation to offer.

#### ***Contract Formation through Data Electronic Exchange***

Companies and traders that usually are in constant barter with each other, conclude an mutual agreement before deals and exchanges through E-Business in order to protect messages security etc. Type of identifying and authenticity of messages to the parties will be determined in such contracts. The parties to the contract may send and receive message for data electronic exchange themselves and/or by smart programs and application software.

### **Examining Electronic Sale**

Islamic jurists have proposed many discussions in relation to sale rules. Now the question is, should cyber deals considered as normal sale contracts? If so, what is sale type of cyber deals?

Sale has no legitimate or religious definition in Islamic jurisprudence and actually definitions stated in jurisprudential books are explanation of common truth. Sheykh Ansari acknowledged that word of sale in religion has its customary meaning and it has no other meaning than common meaning among people (Sheykh Ansari, 2000). Civil law defines sale as acquiring the object in place of specified payment. Therefore, as regard definition presented for cyber deals and traditional deals, cyber deals can be defined as follows: "Exchanging the object in place of payment by computer systems." But here there is an important point that all properties transacted by cyber sale are not the same type. For example, some sellers may sale software and computer programs in scope of cyber deals that are not physical objects and they are in forms of information, software and artistic creations. Therefore, these subjects will be studied in next parts.

#### ***Cyber Deals of Intellectual & Spiritual Properties***

There is disagreement in relation to present exact definition of property among Muslim mullahs' opinion. Some mullahs have not defined property and they regard property and its concept evident for which no definition is required and a few group of mullahs who define the property, add several stipulations as commentary stipulations after legal and verbal definition. Generally, anything that has value would be considered as property by four schools of Sunni and the value shall be

determined by the custom. In other words, whenever the price and interest of something was determined by the custom it is subjected to the custom rule on the condition that the property should be accepted by religion and it is not forbidden. Also general Islamic jurisprudence has not stipulated physical objectivity of the property as standard and it is the reason why property standard includes standing property, interest and rights in Islamic jurisprudence of possession and because of right substance is private concerning ownership rights, it is examined and treated as property and title of property is applied on it, Therefore, since copyright and other author's right are private too then they are considered as objective right and title of property is applied (Ayati, 1996). Islamic jurisprudents expressed ideas concerning concept of property. Some Islamic jurisprudents think the property is a concept that is extracted from the object considering the fact that it is accepted and attracted by the people essentially and it is saved for time of need and people interested in the object and have relish to receive them in place of paying or giving other interested things (Tohidi, 1994). Based on Islamic rules, some Shiite jurisprudents specify property as: "anything that is profitable and its usage is intended rationally in addition to it should be authorized to profit by religious legislator (Sadeghi, 1989)." Also it is stated by them the property is anything that is interested rationally and rational people request it and shall pay instead of acquisition (Musavi Khomeini, 1994)." According to mentioned view, in the event that a thing is profitable but it is out of reach then it is considered profitless rationally and it is not subjected to the property.

According to jurisprudential definitions and approach about property, it can be claimed that there are conditions for intellectual and spiritual properties too, by which they are considered as real meaning of property and rules governing intellectual and spiritual properties are the same as traditional rules of property. Therefore, cyber deals which belongs to subjects that are intellectual and spiritual properties is same as cases which subject of cyber deal is traditional properties and their contracts have been concluded in one form through cyberspace.

***Study on Relation between Cyber Deal and Moaatat (transaction without offer & acceptance)***

As it is said before, E-Business contracts include wide range of contracts. From this point of view, there are E-Business contracts as much as concluded contracts in parties' real mutual relations. The issue arises in this context is this question; is it possible to consider Moaatat (transaction without offer & acceptance) in E-business contracts same as concluded contracts in real space?

Moaatat is a transaction and business without specific contract. General concept of Moaatat is any deal and exchange in which there is not offer and acceptance (special formula), whether other utterance is said or is not said (Zaeinoldin, 2004). According to jurisprudential rules to form transaction, uttering words which indicate on intends expressly, the parties shall announce their obedience and loyalty to consequences associated with the deal. These words are titled as "deals or contracts formulas", in case the parties don't say these words then other type of buying and selling is performed that is Moaatat sale. Moaatat means parties' assignment. This action replaced instead of utterance and accomplished in the deal. Moaatat is possible in deals other than sale: Moaatat lease, Moaatat bailment of a capital, Moaatat deposit etc. There is disagreement among Islamic jurisprudents concerning authenticity of concluding Moaatat contract. Islamic jurisprudents have different basis about accuracy or inaccuracy of Moaatat or its consequences in each case. Some Islamic jurisprudents have said that the sale is applied on all Moaatat contracts (Sheykh Ansari, 2000). But other Islamic jurisprudents who believe offer & acceptance are conditions of contract concluding acknowledged that that Moaatat contracts are not true absolutely (Albahrani, 2010). It is well-known among Ja'fari jurisprudence (Imamieh) that Moaatat is allowance for possession and ownership is done by transferring price by one party to the other (Albahrani, 2010). To prove

Moaatat contract accuracy, there is a hadith quotes that; “the people possess their properties”. It is the reason why the possessor is authorized to have any right on his/her properties even possessory right, so the owner is possessor with or without possessory formula.

Many Islamic jurists consider Moaatat as ordinary sale and they believe that it has no difference with rules and conditions of ordinary sale (Sadr, 1999). As a result of mentioned issues, one can say that Moaatat is a true form of deal and it is effective for possession as ordinary sale. If E-business would be a kind of trade with real buying & selling and sale terms in a way that there is utterance in sale then it is considered as sale and all sale rules (including option demonstration). However, Moaatat is not allocated to sale contract as it is said and Moaatat may be used in other contracts. In the event that no utterance would be said during an E-Business and contract would be done by writing, some present Marjas (authority of religious references) writing is sufficient instead of utterance. As it has been said before, verbal offer and acceptance is not required, so it is authorized in E-Business contracts that no verbal offer and acceptance would be performed, therefore one can say that there is Moaatat in E-Business contracts. On the other hand, some Islamic jurists believe that writing is equal with utterance. Considering the fact that the only possible easy and tools in E-Business are writings and advertisement, therefore one can say Moaatat is not possible for E-Business principally. For example, when a user opens pages of a buying & selling website, watching website advertisements and phrases that indicate to selling products, the visitor became aware of seller’s intention and it signifies on offer meaning. Even in website in which there is no many advertisement, there are tips and guides for visitors that is buying icon beside the products names and shapes and it signifies on offer meaning too.

Therefore, since there are limits in E-Business ways, it could be argued that electronic contracts necessarily have a specific form of offer and they are not performed without offer, so they shall not be considered as Moaatat in any case. But it is Moaatat if there are deals that don’t consider conditions of sale contract (utterance or writing that imply on contract concluding). All the sale conditions are present in Moaatat including option demonstration.

### **Study on Electronic Contracts in Light of Islamic Jurisprudential**

E-Business may be classified in different levels. Each of three main dimensions of commerce i.e. service or exchanging product, sale process and after-sale services can be changed from physical and complete tangible forms to electronic or software (so-called virtual) forms. While all three factors are physical and tangible completely in traditional business, all three factors have electronic mode in highest level of E-Business. Various combinations of electronic and physical modes form different levels of E-Business. Some Islamic jurists consider computer and electronic equipment merely as a tool and a mean so they acknowledge this type of business true. Undoubtedly, at first step some conditions shall be provided to form a contract so the contract is deemed valid. Since cyber deals generally are performed in sale form and constituting elements of such contracts are offer and acceptance, hence cyber offer and acceptance will be studied in next part.

#### ***Electronic offer***

Several elements shall be gathered to fulfill the sale contract in jurisprudential standpoint. Offer and acceptance and giving and taking are such cases. One can say for offer definition that is serious will to conclude the contract no matter which party wills. For example, concerning sale contract, civil law states that offer and acceptance shall be declared verbal and there is no circumstance as relation to priority of parties. In fact, what is important is both parties’ satisfaction and mutual agreement. Offer is categorized as word in Makaseb book that seems this definition is problematic (Sadeghi, 1989).

Offer means announcing the will of someone who calls other one to conclude agreement, the announcement is intention to enter into contract, understanding that if other person accepts the invitation then a binding agreement come into effect (Katuzian, 2001). Offer has no specific form, it may be declared personal or by fax, post, telephone, worldwide network or E-mail. What is problematic in the field of offer is to distinguish offer from other similar issues that law does not consider them offer and obedience regarding offer is a suggestion that if it would be accepted then the offer is not authorized to withdraw. This issue is significant essentially in relation to electronic contracts particularly examining circumstances and situation in this kind of contracts is less helpful than traditional contracts. Specially, this issue is arises whether a website announcement that supplies definite goods or services is “offer” or “call to offer”? This distinction has principal significance so in the event that supply of goods & services is “offer” in mentioned website then in case of acceptance by visitors, the seller shall not be able to cancel the offer, vice versa in the event that the process is merely “invitation to offer”, the seller is authorized to accept or reject received offers. Most of rules about electronic exchanges and also E-Business Law have not mentioned explicitly to these issues. Therefore, answer of question shall be found regarding general rules governing offer by considering specific aspect of electronic contracts. Some specifications have been mentioned for offer to be identified in various legal systems; first, terms of the contract shall be stated in offer. Since the contract would be concluded by accepting offer, then it is necessary to determine axis of agreement. In other words, the offer shall be complete (Katuzian, 2001). Legal systems have stated different ideas to complete the offer. Defining the object of deal is necessary in group of countries but in other countries, it is not necessary. In latter countries, exact description of goods or services, price, date... can be undetermined and it causes no problem for offer completeness. Determined contractual terms are specified by interpreting text of the contract, referring to established trend between parties, commercial convention etc. Second condition is offer enter into contract willingly in order of obligation. Proposal of concluding contract implies on offer only the offer’s intention is to be bound to the contract in case of other party’s acceptance. Applying this standard on traditional contracts, affairs such as advertisement, exposing goods in store window... shall not be considered into offer. In order to find out true intentions of people, the law has no way other than external circumstances and appearances. Meanwhile as to advertisement and goods exposing, it seems that external circumstances shows that goods sellers or services suppliers who have restrictions in goods and opportunity of supplying services, has no offer intention and they don’t incline to enter into contract with all applicants but merely they invite others to offer.

Now, taking into account previous matters concerning offer in traditional contracts, electronic and cyber offer are discussed. Contract is fulfilled by offer and acceptance. As parties’ intention may be in writing or verbal, oral or practical or it may be in E-Mail form, e.g. offer and acceptance shall be sent to the other party’s E-Mail address by computer (Sadeghi Neshat, 2007). As explained before, the offer has no specific form; it may be done personal, through fax, telephone, World Wide Web and/or E-Mail. No matter how the offer will be done and in fact, the offer should indicate on true intentions of a party to deal. Islamic jurisprudents acknowledged that no specific word is valid and explicit for verbal offer. This subject will be problematic in electronic offers in a way that in addition to offer, there are behaviors similar to offer but they have no legal responsibility as well as offer. Offer can be distinguished from similar cases based on circumstances and situation and custom but this is not as simple as cyber contracts. For example, shall we apply offer on a website which buy and/or sell certain goods or it is just invitation to offer? By comparative study in different legal systems, it is deduced that generally, display of goods and particularly, supply of goods and services in a website is considered offer principally in case of complete supply. In laws of

Germany, England, Swiss...the procedures is done by mentioned form. However it is not performed in all cases as mentioned form but there are some cases offer is considered. For example, when a website administrator announces that; these proposals are regarded offer and the goods or services are obtainable, such as software, program(Halabian, 2010). Words and phrases which have been used in the website can be interpreted to distinguish offer from invitation to offer in electronic contracts and websites (Shahidi , 2010).

### *Acceptance*

Acceptance is will of second person versus offer to enter into contract, acceptance shall not be considered independent legal action as same as offer of the contract. Acceptance shall be in complete accordance with contents of offer, acceptor is not authorized to add or reduce anything to what has been offered at the beginning, therefore, acceptance shall be in unconditional accordance with offer, contract and announcement(Bananiyasi, 2011). Verbally, acceptance means admission and compliance. In legal texts, acceptance is satisfaction to expressed offer to enter into contract (Ansari & Taheri, 2005). The person who accepts the offer is called acceptor. In the event that the offer specifies a deadline to announce the acceptance, the acceptance shall be announced in specified time (Jafari Langarudi, 2009) . But In the event that the offerer doesn't specify a deadline to announce the acceptance, the acceptance shall be announced in a period which can be said that is ordinary period between offer and acceptance based on custom. Anyway, specifying the period that is authorized to announce the acceptance should be determined according to circumstances and situation for any case (Safaei, 2005). Furthermore, acceptance shall be absolute and unconditional, that is to say acceptor should accept only content of offer and in case of adding any stipulation and condition to acceptance, his/her acceptance doesn't lead on concluding contract but that is a new offer. Acceptance prior to offer means first indication that is stated to other party as acceptance of next indication such as the buyer says "I accepted to sell that carpet to the amount of 1,000,000 rials" and then seller says: "I sol that carpet." Some Islamic jurisprudents believe that the acceptance should be issued after offer, otherwise the contract is null due to the act that acceptance has no meaning except accepting the indication which has been expressed before and the contract is not rational without previous indication of other party to the contract.

Cooperation between wills of both parties is necessary to form the contract, although, offer is prior to acceptance habitually but no matter in form of precedence of offer toward acceptance or vice versa to fulfill the contract. Concept of acceptance is the very indication expressed by one of parties to the contract e.g. purchaser together with indication expressed by other party i.e. seller form the contract, not accepting content of indication already has been expressed (Shahidi, 2010). Therefore, one can say serious will of second party which actually is answer to the offer can be regarded as acceptance and it conclude the contract. Concerning E-Business, offer is valid in most legal systems whenever advertisement of a website is definite and determined completely, for example following message is showed: "three goods with model of 123 are sold to Mr. Zeyd to the amount of three Euros", Zeyd's obedience to this offer is the acceptance. It should be noted that; E-Mail confirmation or page confirmation simply is double reason to the fact that the acceptance has been formed regarding previous acceptance(Nuri, Nakhjavani, 2011). There are other points concerning cyber acceptance including; is it necessary to inform the offer or not? Totally it could be said that; because of the acceptance is merely implication on expressing will and intention by one party as well as offer, it is not limited to certain cases and it includes any act by party to the offer that imply on satisfaction and will. Thus, only to the reason why the acceptance has been done in cyberspace, it is wrong to assume it is invalid, but it is completely valid in case of authenticity of other conditions.

### Conclusion

It is mentioned that E-Business and cyber deals has been developed at the same the internet has been developed. Since our rules are rooted in Islamic jurisprudence and our society is Islamic society, all the new issues shall be accord with Islamic jurisprudence and issues and related subject shall be arranged and settled by dynamic religious jurisprudence. Cyber deals can be adapted with traditional deals and contracts and possibility of adaptation rues of traditional contracts on new issued should be studied and tested. Based on this adaptation it is resulted that nowadays cyber deals are performed in different ways but in general it is authorized to consider them as sale contracts. Also there are various ideas concerning application of Moaatat on these contracts but they can be regarded Moaatat sale due to lack of using words in step of offer and acceptance.

On the other hands, to discuss offer and acceptance in cyber deals and contracts, it should be noted that rules of offer and acceptance are applicable in many cases. But there is a point here, most related cases in websites and information concerning goods and services are invitation to offer, unless the intention to deal and performing a legal action would be discovered certainly and surely. Totally, it is resulted that rules and law concerning traditional sale, govern cyber deals in many cases.

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