Interdisciplinary Studies in Society, Law, and Politics 2025; 4(3): 1-19

ISSLP

Original Research

The Scope of Will in Determining the Governing Law of Electronic Contracts

Seyed Alimohammad. Hosseininasab[1*], Mohammadreza. Fallah[2], Mohammadhossein. Jafari[3]

[1] PhD Student, Department of Law, Yazd Branch, Islamic Azad University, Yazd, Iran
[2] Associate Professor, Department of Law, Shahed University, Tehran, Iran
[3] Assistant Professor, Department of Law, Yazd Branch, Islamic Azad University, Yazd, Iran

*** Corresponding author email address**: fallah@shahed.ac.ir

Received: 2025-01-02 **Revised:** 2025-03-01 **Accepted:** 2025-03-08 **Published:** 2025-07-01

The principle of the autonomy of will is considered one of the fundamental concepts and legal foundations of contracts. Article 10 of the Civil Code, along with the principle of al-'uqud taba'a li-l-maqasid (contracts follow intentions), can be regarded as manifestations of this principle. This principle has significant implications, such as contractual freedom and the ability to create new transactional models. Therefore, it has longstanding significance in both Western and Islamic legal systems. It should also be noted that electronic contracts do not inherently differ in nature from traditional contracts; however, the structure of the electronic environment introduces new characteristics and concepts to these contracts. The formal structure and technical characteristics of the electronic environment have led to profound transformations in various aspects of contract law, particularly affecting the formation of commercial contracts. Consequently, the principle of the autonomy of will in contract formation, especially in commercial contracts, facilitates and grants parties the freedom to determine the form, content, and effects of the contract. Nevertheless, the necessity of protecting public interests and justice has mandated the establishment of certain legal limitations on the absolute freedom of will. Competition law and the prevention of monopolies and discrimination, laws governing adhesion and collective contracts, regulations ensuring public order and morality, and supervisory and protective legal frameworks aimed at systematization all constitute such restrictive rules.

Keywords: *contract, will, electronic contracts, offer and acceptance.*

How to cite this article:

Hosseininasab, S. A., Fallah, M., & Jafari, M. (2025). The Scope of Will in Determining the Governing Law of Electronic Contracts. *Interdisciplinary Studies in Society, Law, and Politics, 4*(3), 1-19. https://doi.org/10.61838/kman.isslp.4.3.2

1. Introduction

Since ancient times, some have argued that the principle of the autonomy of will in creating obligations (including their modification and termination) is exclusive to nominate contracts. The proponents of this view have been a minority, and traces of such perspectives can even be found in Islamic jurisprudence. However, the overwhelming majority of jurists and the Civil Code, particularly in Articles 10 and 754, have extended the principle of autonomy of will to both nominate and innominate contracts.

In modern legal systems, since the principle of freedom of will is the foundation of contract formation, parties can agree to alter the binding nature of a contract, making a mandatory agreement revocable. Such an agreement does not prevent the formation of a contract. With the advancement of new technologies, a new generation of contracts—electronic contracts—has emerged in the commercial sphere, characterized by

electronic and intelligent execution capabilities. The use of electronic tools in contract formation dates back many years. For decades, merchants have been entering into contracts via telephone, telegram, and telex. However, the advent of computers in the twentieth century accelerated and expanded these transactions significantly. As a result, electronic commerce and the legal frameworks governing it have become a central concern for legal scholars and legislators worldwide.

In Iran, the legal system must inevitably recognize this transformation and establish appropriate legal regulations. These regulations can reflect the general principles of contract law, as the computer is merely a novel tool for contract formation, and the general rules of contracts should, in principle, remain unaffected by the medium used. Nevertheless, the nature of electronic contracts occasionally necessitates the establishment of specific legal provisions.

The computer and the global electronic communication network represent a major transformation in contemporary communication technologies. This shift, spanning all aspects of human life—including economic, commercial, and legal domains—has created the necessity of redefining and establishing new legal standards for various concepts in communication law. Consequently, it has facilitated the emergence of a new category of electronic contracts. The legislative frameworks developed in this field primarily focus on the commercial aspects of electronic transactions and aim to facilitate electronic commerce.

In the legal domain, the emergence of various legal concepts and relationships based on the diverse applications of the Internet has intensified the need to examine the different dimensions of using electronic communication tools in legal transactions. This examination is essential for balancing individual interests and ensuring the protection of rights.

Electronic commercial law, despite its limited practical experience and scarce resources, is not yet adequately recognized in Iran. Therefore, the publication of legal scholars' perspectives in descriptive, analytical, and research-oriented formats will undoubtedly play a crucial role in the expansion of electronic commerce and the formulation and implementation of appropriate legal regulations.

Electronic commercial law encompasses multiple dimensions, each requiring extensive legal research. Although domestic resources on this subject are scarce, some valuable articles addressing its descriptive and analytical aspects have been published, which deserve recognition.

Contract law consists of three distinct stages. The first stage is the formation of the contract. The second stage, which follows contract formation, involves the analysis and interpretation of contracts. Once the concepts, content, and governing principles of a contract are clarified, the final stage concerns the execution of contracts.

Given this importance, the present article aims to examine the form and nature of electronic contract formation, considering general legal principles and regulations, the adaptation of existing laws to this type of contract, and the scope of will governing their formation.

2. The Concept of Will

Linguistically, "will" (*irādah*) means wanting, requesting, and intending (Amid, 2005). In Iranian legal terminology, will can also be understood as "wanting." However, when discussing the psychological condition of the transaction or the acting party in Iranian law, an analysis of psychological states and their different stages, based on legal provisions, distinguishes two internal states for will or intent: one is *rida* (consent), and the other is *qasd* (intention), which is also referred to as *qasd al-inshā* (declaratory intention). The intent and consent of the parties, as mentioned in Article 190, Paragraph 1 of the Civil Code, indicate that will is sometimes used to mean both intent and consent together and sometimes only refers to declaratory intention.

3. The Concept of Contract

In Iranian law, the term *'aqd* (contract) is derived from a verbal noun that has two meanings. The first is a transitive meaning, "to bind something, as opposed to undoing it," and the second is an intransitive meaning, "to harden or become firm" (Al-Jawhari, 1987). The plural form *'uqud* means "binding and tying" (Bahrami Ahmadi, 2011). In Islamic jurisprudence, *'aqd* refers to an agreement or pact (Al-Raghib al-Isfahani, 1996). The Holy Qur'an, in the verse "fulfill [your] contracts" (*awfū bil-'uqūd*), mandates compliance with valid contracts and agreements.

Some jurists define a contract as "a verbal expression by both parties to an agreement, or a verbal expression by one party and an action by the other, upon which Islamic law establishes the agreed-upon legal effects" (Najafi, 1981). A challenge to this definition is that Islamic law does not always specify the legal effect of contracts; sometimes, custom and practice determine the intended legal effect of contracts.

Certain jurists have identified three meanings for *'aqd*: (1) *'aqd* as a covenant (*'ahd*), (2) *'aqd* as a firm commitment (*mithāq mu'akkad*), and (3) *'aqd* as a transaction that requires mutual declaration, sometimes referred to as transactions in the narrow sense (*mu'āmalāt bi-ma'nā al-akhaṣ*) (Al-Ghurawi al-Na'ini, 1992). In this context, *'uqud* in its narrow sense refers to non-specific contracts, whereas nominate contracts (*'uqud ma'ayyan*) include contracts such as sales, leases, agency, and partnership agreements. The term "contract" (*qarārdād*) applies to all contracts, whether nominate or innominate. However, not all contracts are obligatory or create obligations; some contracts involve the relinquishment or modification of rights and duties, whereas *'aqd* is generally intended to establish an obligation and is always associated with declaratory intention (*qasd al-inshā*) (Zanjani, 1991).

From a legal perspective, "contract" and *'aqd* are synonymous, with *'aqd* defined as "the mutual agreement and cooperation of two or more wills to create legal effects" (Katouzian, 2009) or "to establish a legal entity" (Shahidi, 2016, p. 41). In terms of scope, contract (*qarārdād*) has both a broad and a narrow meaning, just like *'aqd*. In its broad sense, contract encompasses both nominate and innominate contracts, while in its narrow sense, it includes only innominate contracts (Shahidi, 2016). In this context, the broader concept of contract is under consideration, emphasizing that what truly matters is the mutual agreement of two wills to establish a legal effect, making *'aqd* and contract indistinguishable in this sense.

Some legal scholars define *'aqd* as "the agreement of two reciprocal declarations to create a legal effect under Islamic law" (Katouzian, 2011). However, the notion of agreement or mutual consent alone cannot sufficiently define the nature of *'aqd* because declaratory intention (*qasd al-inshā*) is the essential element of a contract, and mere agreement or mutual consent is insufficient for contract formation. Hence, an agreement alone, without the declaratory intention of both parties, does not constitute a contract (Zanjani, 1991).

Article 183 of the Iranian Civil Code defines *'aqd* as "an agreement in which one or more persons undertake an obligation toward one or more others, and this obligation is accepted by them." The flaw in this definition is that the effect of a contract is not always limited to creating obligations, but it may also imply commitment and adherence. Some jurists have described *'aqd* as a "firm covenant" (*'ahd mu'akkad*) (Zanjani, 1991), arguing that its effects are not restricted solely to obligations.

Certain legal scholars equate *'aqd* with "contract" in modern law, defining a contract as "a bilateral legal act realized through the mutual agreement of the parties" (Safa'i, 2005). Others distinguish between *'aqd* and contract, considering *'aqd* as referring to nominate contracts, while "contract" (*qarārdād*) encompasses all agreements, whether nominate or innominate (Emami, 2004).

It can be argued that *'aqd* applies to contracts that create obligations, whereas agreements that eliminate obligations are referred to as contracts rather than *'aqd*. The Arabic linguistic meaning of *qarārdād*, which translates as *ittifāq* (agreement), further supports this distinction. If this distinction is accepted, then contract (*qarārdād*) is broader than *'aqd*, meaning it can be formed both to create and to extinguish obligations, whereas *'aqd* is exclusively for the creation of obligations.

Additionally, the term *'aqd* is specifically used for nominate contracts. However, given Article 10 of the Civil Code, which recognizes private contracts (Vasali Nasih, 2006), it appears that no fundamental distinction exists between *'aqd* and contract. In discussions on the autonomy of will and contractual freedom, the term "contract" (*qarārdād*) can be understood to include both nominate and innominate contracts.

Thus, in terms of scope, contract (*qarārdād*) has both broad and narrow meanings. In its broad sense, contract includes both nominate and innominate contracts, while in its narrow sense, it refers only to innominate contracts, with the broad meaning being the relevant one in this context. Ultimately, what is crucial is the existence of mutual agreement to create a legal effect, making any distinction between *'aqd* and contract unnecessary.

A contract can be defined as "a legal act that represents any agreement between two or more parties concerning a specific matter that has legal effects."

4. The Concept of Electronic Contract

As mentioned in the previous section, the term "contract" has a broad meaning, encompassing both nominate and innominate contracts, whether commercial or non-commercial. In this context, the broader definition of the contract is considered, and in general, electronic contracts, in terms of their essential conditions and the legal effects arising from them, are subject to the general rules and principles of contract law.

The word "electronic" is an adjective derived from the term "electron," and in this context, it refers to communication tools such as the Internet, telephone, telegraph, and similar means. The term "electronic contract" was first used in the European Union directive (OJ L 178, 17/07/2000). However, a comprehensive definition of an electronic contract has not been provided in legal texts, books, or articles on electronic commerce or contracts. While Internet access has become one of the most critical and determining intermediaries in society for contracts and electronic transactions on a global scale, its use to increase the speed of contract formation in all new commercial opportunities is necessary.

At present, due to the dynamic and expansive nature of electronic contracts across all fields, providing a comprehensive definition is not feasible. Some scholars argue that the nature of forming electronic contracts is not significantly different from traditional contracts. Some define an electronic contract as "an agreement between one or more persons concerning the exchange of obligations for digital goods and services" (Bajaj Dijani, 2005). A broader definition states that "an electronic contract is an agreement that is created and signed through electronic means."

After briefly defining electronic contracts, one of the most significant legal discussions in this field is the binding nature of electronic contracts. Given the remarkable developments that information technology has brought to commercial contracts, it has introduced two key features: speed and convenience. As a result, traders and buyers no longer need to be physically present in a meeting to negotiate and exchange information regarding their commercial activities and desired contracts. Instead, they can electronically send their views and proposals to their counterparts using modern electronic technologies. The counterparty can also respond electronically or propose a new offer. If a contract is concluded between parties through electronic intermediaries, it can be referred to as the "formation of a contract between absent parties" (Vasali Nasih, 2006). Thus, the term "contract between absent parties" is used in contrast to "contract between present parties." A contract between present parties does not necessarily mean that both parties must be physically in the same location but rather that they conclude the contract in a synchronous manner, regardless of whether they are in the same place or in different locations (Jafari Langroudi, 1990). For example, a contract formed over the telephone is one in which both parties are in different locations. While such a contract does not align with the definition of a contract between absent parties in terms of time, it does fit within that category in terms of location (Amiri Qa'em Maqami, 1999).

Therefore, a contract between absent parties is a contract in which the offer and acceptance occur remotely, without direct conversation or negotiation, through letters, telegraphs, email, telex, and similar means. These types of contracts, in which the parties do not conclude the contract synchronously, are also referred to as "correspondence contracts" (Jafari Langroudi, 1999b). Additionally, contracts concluded over the Internet are considered contracts between absent parties because, first, the contract is not concluded synchronously and relies on electronic intermediaries, and second, in such contracts, there may be a time gap between the offer and acceptance and a spatial gap between the contracting parties. Although Iranian civil law does not explicitly address contracts between absent parties, their validity cannot be questioned, as commercial custom has accepted them, and there is no basis for their invalidity in statutory law or Islamic jurisprudence. Moreover, in Islamic jurisprudence and law, the presumption is that transactions and contracts concluded between individuals are valid unless there is evidence in Islamic law to the contrary. Since there is no reason to declare contracts between absent parties void, they must be deemed valid. Thus, electronic contracts also fall within the category of contracts between absent parties and are

considered legally valid and binding (Vasali Nasih, 2006).

Almost all legal scholars agree that electronic contracts do not differ from ordinary contracts regarding the essential conditions for validity and that these conditions must also be present in electronic contracts (Pointon, 2004). Therefore, all contracts can generally be concluded electronically, except where expressly excluded by law. However, it should be noted that expanding the concept of contracts in electronic agreements may lead to the misconception that unilateral legal acts (*īqā'āt*) and all obligations (*'uhūd*) fall within the scope of electronic commerce. Undoubtedly, legal acts, including unilateral acts and contracts, can be executed through electronic means and intermediaries. However, it is essential not to categorize every legal and contractual act as a contract.

At one point, the emergence of postal services and their increasing use raised concerns among legal scholars about establishing the necessary legal rules for correspondence contracts. Over time, with the invention and advancement of simultaneous communication tools such as telephones and fax machines, these devices replaced letters as primary communication methods. Today, contracts are rarely concluded through traditional mail. On the other hand, the legal rules and regulations initially designed for correspondence contracts were insufficient for communication tools such as fax, telephone, and telegraph, which required their own specific legal provisions. Subsequently, new information and communication technologies introduced the Internet as a global platform for contracts and commercial transactions (Ahangaran & Ahmadi, 2021).

Many legal and economic scholars believe that the initiation and development of various types of electronic contracts and commerce coincided with the emergence of the global Internet. However, it must be acknowledged that electronic commerce, and consequently its business models, was first introduced in 1970 (Khosro Pour, 2011). Increased public access to the Internet elevated electronic commerce to a significant global position (Hadi Zadeh Moghaddam, 2008). The provision of goods and services is no longer confined to traditional and limited territorial boundaries. Instead, businesses strive to utilize electronic tools such as the Internet, telephone, and fax to their fullest potential, gradually transforming electronic contracts from a domestic phenomenon into a "borderless commerce" model.

Modern societies are profoundly intertwined with data, as data is the essence of computers, and computers cannot function without them. Annual statistics from various countries illustrate that data destruction in computer environments, particularly over the Internet, is increasing. A clear example of this phenomenon is the proliferation of destructive programs, including viruses, Trojan horses, and worms, which spread over the Internet each year, leading to the loss of substantial amounts of valuable digital information. Undoubtedly, the lack of accountability and control is a significant concern that deters reliance on the Internet as a business and transaction tool. To mitigate these concerns, exchange protocols or Internet protocols (TCP/IP) have been developed, providing a secure framework for electronic communications and transactions (Sadri, 2009).

5. Characteristics of Electronic Contracts

The electronic nature of the declaration of intent is a form of contract formation that does not contradict the fundamental principles of contract validity. Neither the Civil Code nor other specific laws have introduced special regulations for the formulation of electronic contracts. However, by interpreting and reasoning from the general principles of contract law, comparing the formation of such contracts with traditional contracts, and analyzing the nature of electronic tools and environments, the major characteristics of electronic transactions can be identified. Identifying these characteristics enables a better understanding of the legal aspects of electronic contracts and allows for a precise analysis of their legal consequences.

5.1. Adhesion Nature of Electronic Contracts

Contracts formed in online environments, particularly on web pages, are classified as adhesion contracts. This is because the seller displays their goods or services on a website along with the necessary information and general terms of the transaction. The buyer or consumer, if interested, can only accept the offer under the pre-established conditions. Generally, there is no room for negotiating new terms or bargaining with the seller. However, the seller often provides multiple options for

purchase and various payment methods, allowing the buyer to select one and submit it as an offer to purchase. In contrast, electronic contracts concluded via email offer a more open field for negotiation and modification of terms before contract formation and thus do not fall under adhesion contracts.

5.2. *Lack of Physical Presence in Electronic Contracts (Distance Contracts)*

In principle, the physical presence of the parties is not necessary for contract formation. Parties can establish contracts from any location and at any time by conveying their intent through various communication methods. Contracts in which the parties are not physically present in a face-to-face meeting during formation and where a material obstacle prevents a physical or mental connection between them are referred to as "distance contracts." A fundamental characteristic of electronic contracts is that they must be concluded through electronic means or within an electronic environment without the physical presence of both parties. Even the presence of the parties in an electronic environment does not imply actual physical presence. Thus, electronic contracts are considered a subset of distance contracts.

However, due to the high speed of information exchange on the Internet, electronic contracts may also be categorized as instantaneous contracts. The sequence of offer and acceptance in electronic contracts depends on the method of electronic communication and the degree of temporal symmetry between acceptance and offer. Nevertheless, the absence of both parties in a single setting during contract formation creates certain unique challenges, such as the lack of sufficient information about each other's identities, the inability to verify the parties' capacity and true intent, difficulties in proving the contract, and issues related to relying on electronic evidence.

5.3. *Consensual Nature of Electronic Contracts*

Under Iranian law, adherence to a specific formal procedure is not generally a requirement for contract validity. This is explicitly stated in Article 191 of the Civil Code: "A contract is concluded through declaratory intention, provided that it is accompanied by something that indicates intent." Consequently, parties are free to choose the method by which they express their intent. This principle applies equally to electronic contracts, with the distinction that electronic contract formation imposes specific technical requirements on the expression of intent due to the nature of electronic communication. The representation of intent in the form of data messages and the electronic transmission and reception of such intent arise from the technical application of electronic tools and the Internet.

The principle of consensual contracts, including electronic contracts, does not preclude parties from agreeing on a specific contractual form. According to Article 10 of the Civil Code: "Private contracts are binding upon those who have entered into them, provided that they do not explicitly violate the law." The consensual nature of contracts facilitates legal relationships and promotes good faith in transactions. However, it also creates opportunities for abuse in trusted commercial environments and poses challenges in proving declarations of intent.

This issue weakens legal protection and disrupts the balance of interests in such contracts. Consequently, legislators have, for various social and economic reasons, imposed formalities on certain contracts to protect public order, morality, and the economic balance of interests. In the international sphere, laws governing electronic contracts generally do not impose formalities that would undermine the principle of consensual contracts. For instance, Article 5 of the applicable law states: "The legal effect, validity, and enforceability of information shall not be denied merely because it is in the form of a data message."

Similarly, Article 9 of the European Union Directive instructs member states to refrain from enacting laws that hinder the formation and use of electronic contracts, provided they comply with the governing legal frameworks. It emphasizes that electronic contracts should not be rendered ineffective merely due to their electronic nature (Ahmadi Jashqani, Moshayekh, Azizian Saeedeh, & Azizian Shima, 2018, p. 9).

5.4. *International Aspect of Electronic Contracts*

Due to the inherently global nature of the Internet, electronic contracts are transnational. The Internet is an open platform accessible to all individuals, regardless of borders or geographical locations. The legislator, in interpreting electronic commerce law, has recognized the need to consider its international characteristics.

Article 3 of this law states: "In interpreting this law, due regard must always be given to its international character, the need to harmonize its application among different countries, and the principle of good faith."
Accordingly, the Iranian legislator has given special attention to the international aspect of electronic contracts in the development of electronic commerce law. The provisions of the electronic commerce law have been formulated in line with the core principles of the UNCITRAL Model Law on Electronic Commerce. However, international legal frameworks should be established to standardize various legal aspects of international electronic transactions, as domestic and national laws alone are insufficient to address the legal implications of cross-border electronic commerce.
From the perspective of cross-border electronic contracts, the potential presence of foreign elements must always be considered. The electronic environment does not impose restrictions on individuals from any part of the world. In the event of disputes arising from electronic transactions, determining the applicable law and the competent jurisdiction for dispute resolution becomes a key issue in international contracts. Therefore, parties to electronic contracts often include jurisdiction and choice-of-law clauses in their agreements to prevent future legal conflicts.

5.5. Necessity of Hardware and Software in Electronic Contract Formation

Generally, a contract is not considered electronic unless it is formed through electronic tools or within an electronic environment. Therefore, using electronic communication tools is a distinctive feature of electronic contracts. The subject matter, parties, and essential validity conditions of electronic contracts are no different from those of non-electronic contracts. The only distinction lies in the method and environment of contract formation. The use of hardware and software to create an electronic contractual setting imposes specific technical limitations and requires technological capabilities for electronic contract formation.

5.6. Commercial Nature of Electronic Contracts and Consumer Protection

Electronic contracts predominantly involve commercial transactions, particularly the sale and purchase of tangible and intangible movable property, intermediary services, and business-to-business dealings. Therefore, these contracts fall within the scope of commercial activities as defined under Article 2 of the Commercial Code.
Typically, one party in electronic contracts is a consumer. Consequently, electronic contracts are often referred to as "consumer contracts" because they are frequently concluded between merchants and consumers. As a result, electronic contracts hold a significant position in consumer protection laws. The Electronic Commerce Law includes special provisions for consumer protection, covering seller and service provider obligations, the requirement to verify information provided by suppliers, consumer rights in different electronic transaction methods, cases excluded from legal protection, enforcement of consumer rights, and the role of regulatory and civil organizations in consumer protection. To safeguard consumer rights and maintain public order, the Iranian legislator has also included regulations on electronic advertising within 11 articles of the same law.

5.7. Electronic Signatures in Electronic Contracts

The Iranian legislator has not provided a specific definition of a signature. However, Article 1310 of the Civil Code states: "A signature on a document serves as evidence against the signatory." Based on this, a signature on a document grants it relative evidentiary value. Some legal scholars define a signature as "the drawing of a specific mark or the writing of one's personal details on legal or official documents containing a transaction, obligation, acknowledgment, certification, or similar matter" (Jafari Langroudi, 1999a).
In electronic contracts, an electronic signature consists of electronic data in the form of numbers or letters that indicate final intent and verify the identity of the signatory. The Electronic Commerce Law explicitly recognizes the validity of secure electronic signatures and prescribes conditions for their reliability, including uniqueness, identification of the signer, issuance under the exclusive control of the signer, and detectability of modifications. The law also establishes certification authorities to verify the authenticity of electronic signatures, ensuring their legal enforceability.

6. Essential Conditions of Transactions in Electronic Contracts

This section examines how the intent and consent of the parties in electronic contract formation are established, how the capacity of the parties is determined, the various types of transaction subject matter in electronic contracts, and how the legitimacy of electronic contracts is ascertained.

6.1. Intent and Consent of the Parties

For a contract to be considered a valid legal act, the parties must have serious and sound intent (*qasd*) and consent (*rida*), meaning they must communicate their intent to one another and reach an agreement in their declaration. The parties to a contract must mutually assent to the same objective. This principle is emphasized in the Holy Qur'an: *"O you who have believed, do not consume one another's wealth unjustly, but only in lawful business by mutual consent" (Qur'an, 4:29).*

This verse rejects illegitimate methods of trade and affirms that no contract can be valid without the mutual consent of the parties. The accumulation of wealth through unlawful means is deemed invalid, and only contracts that are formed within the framework of legal and religious principles, with mutual assent, are enforceable. Contracts obtained through coercion, fraud, or deception are deemed void because they lack the genuine consent of the parties. The Prophet Muhammad (PBUH) stated: *"Indeed, sales are only valid by mutual consent."* (Tabataba'i, 2014). This prophetic tradition establishes that sales contracts, as a form of contract, must be accompanied by the mutual consent of the parties unless they contradict the essential conditions of contracts. This principle can also be extended to electronic contracts.

Some jurists have not explicitly defined intent and consent but have considered them as essential conditions for the parties to a contract. They have discussed, in detail, the effects and consequences of a lack of intent and consent in cases such as coercion or unauthorized agency (Al-Dusouqi, 2003). Linguistically, *qasd* (intent) has two different meanings: "moderation" and "firm determination" (Sadri, 2009). *Rida* (consent) means satisfaction and approval in general, but in legal terminology, it refers to internal acceptance and approval of a contract (Sadri, 2009, p. 50). Some jurists have referred to intent and consent as *ikhtiyar* (free will) and have classified their absence as a legal defect (Najafi, 1981).

The process of forming intent or free will involves several stages: (1) imagining the act, (2) assessing its benefits (e.g., gaining profit or avoiding loss), (3) developing an inclination toward the act, and (4) confirming a firm and dominant desire to execute the act (Shirazi, 2004, p. 290). Accordingly, *iradah* (will) is often described as a "strong and firm desire" (Mishkini, 1992, p. 28).

Intent and consent have been defined as follows: "Consent refers to the desire to establish an act, while intent refers to the actual initiation of that act" (Emami, 2004). These are distinct concepts, as intent pertains to the declaration of contract formation, whereas consent is an internal satisfaction with the agreement. Each of these elements constitutes a necessary condition for the validity of a contract (Shahidi, 2016). In legal discussions aligning the Civil Code with Islamic jurisprudence, intent and consent have been separately analyzed as components of will (Qanavati et al., 2014). According to the fundamental Islamic legal maxim *"Al-'uqud tabi'ah lil-qusud"*, meaning "contracts follow intentions" (Husayni al-Maraghi, 1997), intent is the determining factor in contract formation, including electronic contracts.

A key question arises: Is intent entirely distinct from consent? Another critical question is whether electronic contracts must meet the essential conditions of a valid contract, including intent and consent, and what the legal consequences are if intent is absent. Islamic jurisprudence distinguishes between intent and consent in various cases, recognizing that the absence of intent renders all contracts void, as contract formation depends on a declaratory intent. Therefore, the principle of *"contracts follow intentions"* is fundamental in contract law. However, the absence of consent does not necessarily void a contract; in coerced contracts, mere lack of consent does not invalidate the contract but renders it non-binding (*ghayr nafidh*) until ratified by the coerced party (Naraqi, 1996).

Some legal scholars differentiate between intent, which creates a legal act, and consent, which gives it effect. They consider mistake a defect of intent and coercion a defect of consent (Rah Peyk, 1996). Thus, intent and consent in electronic contracts are causes, not conditions, of contract formation.

The process of forming a contract involves four mental stages:

1. The person conceptualizes the contract, including all its terms and consequences.
2. They evaluate the potential benefits and losses of the contract.
3. They develop an internal willingness to enter the contract.
4. Finally, they declare their intent either verbally or through an electronic platform to formalize the contract.

In traditional contracts, which are generally concluded in the presence of the parties or their legal representatives, these issues rarely arise. However, electronic contracts, where offer and acceptance occur electronically, introduce complexity (Abu Al-Dasuqi, 2003, p. 77). If an electronic contract is concluded under conditions of external pressure or without genuine intent, it should be considered void.

6.2. Declaration and Expression of Intent

No formal procedure is required for declaring intent. However, after establishing a sound intent, the parties must express their serious intent to contract, or no contract will be formed. Merely having an internal intent is insufficient; it must be communicated through any means, including electronic methods. In Iranian law, following Islamic jurisprudence, any contract entered into with intent and consent by competent parties, with a legitimate and definite subject matter, is presumed valid.

This raises the question: Can electronic intermediaries serve as valid means of declaring intent? Islamic jurisprudence recognizes both internal and external intent (*iradah zahiriyyah* and *iradah batiniyyah*). Some scholars refer to explicit and implicit intent (*iradah muzharah* and *iradah mudhmarah*) (Khu'i, 1987, 1998). Today, commercial contracts are increasingly executed through digital communication technologies, necessitating legal adaptations (Farrell, 2003).

In electronic contracts, intent is often declared through online platforms, websites, or other electronic means. These digital expressions of intent, such as clicking an agreement button, submitting an online order, or sending an email, constitute legally recognizable declarations of intent. Iranian Civil Code Article 191 states: "A contract is concluded through declaratory intent, provided that it is accompanied by something that indicates intent." Thus, in both traditional and electronic contracts, the declaration of intent must be clear, whether verbal, written, or electronic.

According to Iranian law (Articles 191, 195, 196, 463, and 1128 of the Civil Code), contracts follow the actual intent of the parties. However, the law also prioritizes the preservation of contracts, as Article 224 of the Civil Code states that contractual terms should be interpreted based on customary meanings. If one party claims that contractual terms do not reflect their actual intent, they must prove that the terms were not used in their ordinary legal sense (Katouzian, 2011).

Additionally, Article 6 of the Electronic Commerce Law states: "Whenever a written document is legally required, an electronic data message shall be deemed equivalent to a written document." Therefore, in electronic contracts, intent is expressed through data messages, which legally convey contractual intent unless explicitly excluded by law.

6.3. Capacity of the Parties

Capacity (*ahliyyah*) in a general sense refers to a person's legal competence to hold and exercise rights and duties (Safai, 2003, p. 178). The capacity to hold rights (*ahliyyah tamattu'*) is referenced in Articles 956, 957, and 959 of the Civil Code. This capacity applies to all individuals from birth and is universally recognized. However, the capacity to exercise rights (*ahliyyah isti'fa'*) refers to a person's ability to act on their legal rights (Emami, 2004). While all individuals possess the capacity to hold rights, their ability to exercise those rights may be restricted, such as in the case of minors.

7. The Importance of Determining the Governing Law in Electronic Contracts

The proper and logical conduct of economic activities, particularly at the international level, depends on the ability to predict and plan effectively. This is only possible if the parties can foresee their rights and obligations arising from the contract with certainty. Selecting the governing law of the contract enables the parties to anticipate the legal consequences of their agreement more reliably and avoid unexpected and undesirable outcomes (Shiravi, 2010).

The determination of the governing law in electronic contracts is significant for several reasons. First, the applicable law establishes whether a binding contract has been concluded between the parties. Second, specific issues related to electronic contracts, such as proving their formation or determining the time and place of their conclusion, may be subject to different legal interpretations across jurisdictions, directly impacting the validity or existence of the contract (Al-San, 2006).

It should be noted that the principles of *technological neutrality* and *functional equivalence* do not allow technological developments to influence the fundamental legal principles governing electronic contracts, including the applicable law (Matulionyte, 2011).

In Iranian law, the conflict of laws rule regarding contracts is stipulated in Article 968 of the Civil Code. However, the wording of this article creates certain ambiguities. The most significant ambiguity concerns whether this provision allows for the principle of party autonomy in selecting the governing law. Addressing this question is essential to understanding its implications for electronic contracts.

7.1. Acceptance or Rejection of Party Autonomy in Electronic Contracts

Given the absence of a specific provision regarding party autonomy in determining the governing law of electronic commercial contracts, reference must be made to the general rules of the Civil Code. The principle of party autonomy in selecting the governing law of a contract is mentioned in Article 968 of the Civil Code, which states: *"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 the contract to another law."*

An analysis of Iranian legal scholarship reveals two opposing views regarding this article. One group interprets the first part of Article 968 as mandatory, requiring Iranian law to apply to all contracts concluded in Iran (Katouzian, 2009). Another group considers the first part of the article discretionary, meaning that in the absence of an explicit or implicit choice of law by the parties, the default rule applies; however, if the parties express a contrary intention, their choice prevails over the default rule in Article 968 (Nasiri, 2004).

A detailed analysis of these viewpoints requires extensive discussion. However, in summary, Article 968 should be interpreted as a discretionary conflict of laws rule for both traditional and electronic contracts. Otherwise, several legal challenges may arise:

1. The conflict of laws rule would only apply to contracts concluded in Iran.
2. Iranian nationals abroad would automatically be subject to the law of the place of contract conclusion, preventing them from choosing Iranian law as the governing law for their contracts.
3. In international commercial contracts involving Iranian businesses, foreign parties would not be compelled to accept the applicability of Iranian law. Consequently, parties may resort to legal formalities that create artificial legal scenarios, such as signing the contract outside Iran after conducting negotiations within Iran. This could result in the Iranian party being left vulnerable to the unilateral discretion of the foreign party regarding contract enforcement (Nasiri, 2004).

Furthermore, supporting the discretionary interpretation of Article 968 is logical. The mandatory or discretionary nature of a conflict of laws rule should align with the substantive law it governs. For instance, since Iranian laws concerning contractual obligations are primarily discretionary, the conflict of laws rule governing contractual obligations should also be discretionary. This allows contracting parties to choose Iranian law as the governing law even if the contract is concluded outside Iran (Almasi, 2003).

Some scholars justify the discretionary interpretation of Article 968 on rational and fundamental legal grounds. They argue that just as legislators cannot abolish fundamental legal principles such as *pacta sunt servanda* (the obligation to honor agreements), the duty to return entrusted property, or the principle of compensation for harm, they also cannot negate the principle of party autonomy in contract law. Consequently, Article 968 should not be interpreted in a way that contradicts foundational legal norms (Bahrami Ahmadi, 2011).

Iranian judicial practice and legislative trends further support this interpretation. For example, Article 27 of the International Commercial Arbitration Law (1997) explicitly recognizes the right of parties to choose the governing law of their contractual obligations,

reinforcing the discretionary nature of Article 968 (Amirmoezi, 2012).

7.2. *Explicit Choice of Law*

As discussed, Article 968 of the Civil Code is not a mandatory rule that invalidates a contractual choice of law. Furthermore, since 1997, Iranian law has explicitly recognized the right of Iranian parties to choose the governing law of their contracts. Under the principle of party autonomy, contracting parties are free to select the law applicable to their contractual relations.

Currently, Article 968 can be reconciled with Article 27 of the International Commercial Arbitration Law. Article 27 fills a gap in Article 968 and confirms the validity of an explicit choice of law through a broad interpretation of party autonomy under Article 10 of the Civil Code (Amirmoezi, 2012).

7.3. *Implicit Choice of Law*

If the parties do not explicitly choose the governing law, their implicit choice must be inferred from the circumstances of the contract. Legal systems that recognize implicit choice of law generally require clear indications of the parties' intent, even if the contract does not contain an explicit choice of law clause (Nikbakht, 1997).

Although Article 968 is silent on implicit choice of law, Article 27 of the International Commercial Arbitration Law embraces the concept of *lex causae* (the most appropriate law). If the parties remain silent on the governing law, all surrounding circumstances are considered to determine the most suitable applicable law. Clause 2 of Article 27 states: *"In the absence of a choice of law by the parties, the arbitrator shall determine the applicable law based on the conflict of laws rules."* Additionally, Clause 4 requires the arbitrator to consider the terms of the contract and relevant commercial customs.

7.4. *Hypothetical Choice of Law*

If neither an explicit nor an implicit choice of law can be inferred from the contract, a hypothetical choice of law must be attributed to the parties. Hypothetical choice can be determined through either:

1. A flexible method granting discretion to the court, or
2. An inflexible method based on predetermined legal rules.

Iranian law leans toward the inflexible approach (Nikbakht, 1997). According to Article 968, if the parties have not chosen a governing law, the contract is subject to the law of the place where it was concluded (Nasiri, 2004).

Determining the place of conclusion in internet contracts is complex. Courts must apply the lex fori (law of the forum) to define the contract's location, as this determination affects the applicable law (Almasi, 2003, p. 208). The dominant legal view holds that a contract is formed where valid acceptance occurs. In distance contracts, four theories exist for identifying this location: (1) declaration of acceptance, (2) dispatch of acceptance, (3) receipt of acceptance, and (4) knowledge of acceptance.

The dispatch theory (or *mailbox rule*) aligns with Iranian legal principles and international trade requirements. Under this rule, the place of contract formation is where acceptance is dispatched, meaning the governing law is the law of the sender's residence unless a consumer protection exception applies (Articles 26-30 of the Electronic Commerce Law).

7.5. *Business-to-Consumer (B2C) Contracts*

Unlike the European Union, Iranian legislation has not adequately addressed consumer protection in international private law and choice of law in electronic contracts. However, Article 54 of the Electronic Commerce Law states that consumer rights under this law cannot be waived in favor of less protective laws. Thus, if the chosen law offers weaker consumer protection than Iranian law, the protections in Article 45 of the Electronic Commerce Law prevail (Mafi & Kaviar, 2013).

Iranian law could align with the EU's Rome I Regulation by ensuring that consumer protection laws remain applicable in B2C contracts, even when a foreign law is chosen (Mafi & Kaviar, 2013).

8. Typology of Electronic Contracts

In general, the establishment of legal relationships in the Internet environment, particularly contract formation, follows the principle of party autonomy and freedom of contract. Unless explicitly stipulated otherwise by law or

the parties' agreement, no specific formal requirements govern contract formation. This means that electronic contracts are typically consensual, allowing individuals to conclude any type of contract within the framework of the law solely based on their mutual intent.

However, for contracts requiring a written or formal structure under the law, the electronic environment presents structural and security obstacles due to the absence or impracticality of fulfilling these formalities, such as obtaining an official signature from competent authorities or registering the contract in an official registry. This challenge is particularly evident in contracts for the sale of immovable property. Overcoming these obstacles and enabling the formation of such contracts in an electronic environment depends on establishing special legal regulations and infrastructure, which necessitates active government involvement. The establishment of certification authorities for verifying electronic signatures and legal institutions for authenticating electronic transactions requires technical mechanisms and legal regulations to support them.

Regarding the written form of contracts, under Iranian law and the laws of many other jurisdictions, parties may validate their electronic contracts by obtaining a certified electronic signature from a recognized certification authority. However, at present, no technical or legal framework exists for formal contracts, such as real estate sale contracts, to be concluded electronically. Given the diversity of electronic communication technologies, electronic contract formation is not uniform. However, the main methods of concluding electronic contracts can be categorized into four distinct types.

8.1. Contract Formation via Websites

A website serves as a virtual display of images, text, and other multimedia content, allowing for printing, copying, and transmission. Generally, the owner of a website acts as a supplier of goods or services, using the website for advertising, providing information, or conducting electronic transactions. Therefore, in electronic contracts formed through websites, one of the parties is typically a trader or business operator.

Today, thousands of websites function as virtual commercial platforms on the Internet. Customers can access these sites using their web addresses. A customer can indicate acceptance or offer consent by clicking options such as "I accept" or "Agree," thereby expressing intent to enter into an electronic contract. However, the contractual effect of such actions depends on established practices concerning the alignment and sequence of offer and acceptance.

If the terms and conditions presented on a website constitute an *invitation to treat*, the customer must submit an electronic offer to purchase goods or request services. The distinction between an offer and an invitation to treat is determined by trade customs and the parties' prior expectations. Although differentiating an offer from an invitation to treat can be complex, professional merchants in commercial transactions generally do not face difficulties in making this distinction. Providing detailed product descriptions, dedicating a webpage to sales, and including transactional terms typically indicate the seller's serious intention to make an offer. Therefore, whether an online listing constitutes an offer or an invitation to treat must be assessed on a case-by-case basis.

8.2. Contract Formation via Email

Email serves as the electronic counterpart to traditional postal communication. Unlike instant messaging, email-based communication is not always immediate or simultaneous. Therefore, electronic contracts concluded via email are considered *correspondence contracts* and are subject to the legal rules governing such contracts. Contracts formed via email, like traditional distance contracts, fall under the category of agreements concluded between non-present parties. As a result, legal scholars generally do not distinguish between electronic contracts concluded via email and those formed through fax, traditional postal mail, or telex.

8.3. Contract Formation via Data Exchange

In this type of contract, human intervention in the technical execution of contract formation is minimal or nonexistent. The parties predefine the terms of communication and electronic contract formation and configure computer systems to execute transactions automatically. This includes automated processes for placing orders, accepting terms, processing payments, and fulfilling contractual obligations.

Thus, based on pre-programmed data, the parties' computer systems autonomously generate and exchange offers and acceptances according to predefined terms and conditions, resulting in the formation of a contract. In essence, electronic contracts executed exclusively between the parties' computer systems through automated data exchange are governed by a *master agreement* that pre-establishes all necessary conditions for subsequent electronic transactions (Ahmadi Jashfaqani et al., 2018).

8.4. Contract Formation via Virtual Presence in Online Chat Rooms

In indirect contracts, such as correspondence contracts, the parties neither have a physical presence nor establish direct psychological interaction, meaning their personalities do not influence each other. However, in contracts where direct communication—whether auditory, visual, or intellectual—occurs despite the lack of physical presence, the interaction closely resembles a face-to-face meeting.

Such real-time online interactions create a virtual contractual setting similar to a traditional contractual meeting, allowing for the potential application of doctrines that typically govern physical contract negotiations. The general principle in contract law is that agreements are based on mutual commitment and adherence to contract terms. The *option of withdrawal before contract finalization* (*khiyar al-majlis*), which permits contract rescission within a meeting, is an exception to this rule. If the applicability of *khiyar al-majlis* in electronic contracts is uncertain, the presumption is that it does not apply (Katouzian, 1985). Thus, *khiyar al-majlis* does not typically extend to electronic contracts unless explicitly provided for by law. However, if the law explicitly recognizes a particular withdrawal right for electronic transactions, such provisions will govern the contract.

9. Modern Methods of Expressing Intent in Electronic Contracts

The rapid advancements in technology in our era have significantly transformed traditional norms, reshaping many social, economic, and political frameworks. Legal norms, particularly in contract law, have not remained immune to these changes. The increasing frequency and scope of electronic communications further affirm this transformation. This section provides a detailed analysis of modern and postmodern methods of expressing intent in electronic contracts.

9.1. Modern Methods

The technological renaissance of our time has introduced innovative tools that enable faster, more precise, and more accessible communication among individuals. These communication tools began emerging in the late 19th century and continue to be used today. Postal services, telegraphs, telephones, and telex communications are among these methods, each of which is examined separately below.

9.1.1. Contract Formation via Postal Services

In Iranian law, the postal system has long been used by humans, but its use as a means of expressing intent and forming commercial contracts is relatively recent. The law has acknowledged this development and established regulations to ensure legal certainty in postal communications used for contract formation.

When offer and acceptance occur in the physical presence of both parties, there is no significant legal issue regarding the expression of intent or the time and place of contract formation. However, problems arise when parties are not physically present together and intend to form a contract from a distance using communication tools. The need for remote contract formation is particularly evident in cross-border transactions involving parties of different nationalities.

One of the most common communication tools in such cases is a letter, delivered through a postal service. In this method, the parties use written correspondence to express their intent, facilitated by a postal delivery system.

Although the issue of correspondence contracts has not been independently discussed in Islamic jurisprudence, the prevailing view among Imami jurists is that a contract is formed upon the mutual consent of the parties (*principle of consensuality in legal acts*) (Khu'i, 1987), without any additional formal requirements. Furthermore, Islamic jurisprudence does not consider the recipient's awareness of acceptance or the irrevocability of acceptance as prerequisites for contract formation. This suggests that Imami jurisprudence aligns with the *declaration theory* of acceptance among the four

existing legal theories, particularly given that it prioritizes internal intent (*subjective intent*) over expressed intent (*objective intent*). Thus, if a conflict arises between internal and expressed intent, internal intent prevails (Najafi, 1981).

In Iranian legal doctrine and statutory law, the analysis of postal contract formation aligns with Article 191 of the Civil Code, which states, "…provided that intent is accompanied by something that indicates it." Legal scholars who interpret this provision accept the *declaration theory* in general but more specifically adhere to the *dispatch theory* of acceptance, based on the following arguments (Shahidi, 2016):

First, merely writing a letter of acceptance does not indicate an intent to conclude the transaction, as the letter remains within the sender's control. Therefore, a letter that has not been sent cannot serve as an expression of intent (Shahidi, 2016).

Second, when a person mails a letter, knowing it will be delivered by the postal service to the offeror, the act of mailing the letter is customarily understood as an expression of acceptance (Katouzian, 1998).

Third, if mailing the letter itself signifies the intent to conclude the contract, then additional factors such as receipt of the letter by the offeror or the offeror's awareness of the acceptance are unnecessary. This aligns with Article 191 of the Civil Code, which states that intent must be accompanied by something indicative of it, even if the indication becomes apparent to the offeror later. Further legal support for this view can be found in Article 376 of the Commercial Code and Articles 196, 339, and 1149 of the Civil Code.

9.1.2. Contract Formation via Telegram and Telex

Using telegrams and telexes, individuals can send written messages over long distances. Due to the relatively recent development of these technologies, no independent jurisprudential theory specifically addresses them. However, based on contemporary Islamic jurists' views on the consensuality of contracts, these communication methods can be regarded as instruments for expressing intent through writing.

Iranian legal doctrine has rarely analyzed telegrams and telexes separately. However, most scholars, citing the broad interpretation of Articles 191 and 193 of the Civil Code, argue that contracts can be concluded using any means of communication that clearly expresses internal intent (Shahidi, 2016).

Two distinct scenarios can arise regarding contract formation via telegram or telex:

First scenario: If the acceptance transmitted via telegram or telex is received by the offeror immediately upon being sent, creating an *instantaneous exchange* of offer and acceptance, then contract formation occurs at the moment of acceptance. This scenario is most relevant to telex communications, where the lack of a significant time gap between offer and acceptance means the contract is deemed concluded at the time and place of acceptance (Katouzian, 1998).

Second scenario: If the acceptance is sent via telegram or telex but is not immediately received by the offeror, contract formation raises more complex issues regarding the timing and location of the agreement. In this case, since offer and acceptance do not occur simultaneously, the contract is classified as one concluded between *absent parties*. Different legal theories—*declaration*, *dispatch*, *receipt*, and *cognition* theories—offer varying perspectives on when a contract is formed. International legal practice generally follows the *receipt theory*, which holds that a contract is concluded upon the offeror's receipt of the acceptance (Sadeghi Nashat, 2000). However, Iranian law, consistent with its stance on postal contracts, supports the *dispatch theory*, meaning that a contract is deemed concluded when the acceptance is sent (Katouzian, 1998).

9.1.3. Contract Formation via Telephone

The telephone enables the transmission of verbal messages between distant parties. In telephone contracts, the spoken word serves as the primary means of contract formation, with the telephone merely acting as a transmission device. Unlike other communication methods, telephone conversations leave no written record, relying solely on spoken exchanges between the contracting parties.

Islamic jurisprudence, statutory law, and judicial precedent do not provide specific guidance on contracts formed via telephone. However, Iranian legal scholars who have analyzed the issue conclude that, since offer and acceptance occur simultaneously over the telephone, such contracts should be treated as *face-to-face agreements* in terms of timing. Consequently, a contract is deemed concluded the moment acceptance

occurs. However, because the parties are not physically co-present, telephone contracts should be classified as *agreements between absent parties* in terms of location. If the parties have not explicitly or implicitly agreed on the place of contract formation, the contract is considered concluded where acceptance is declared (Katouzian, 1998).

9.2. *Postmodern Methods*

This section examines the legal aspects of expressing intent in postmodern contract formation methods.

9.2.1. *Contract Formation via Facsimile (Fax)*

The absence of explicit jurisprudential and statutory provisions regarding contract formation through facsimile in Iranian law is a well-established fact. The only official legal document indicating the Iranian legislature's and legal-economic system's acceptance of fax as a means of expressing intent remotely and concluding contracts is the Draft Bill on Electronic Commerce of the Islamic Republic of Iran. This bill defines *data* as "any representation of fact, information, or concept that is produced, transmitted, received, stored, and processed using electronic means or new information technologies that may emerge in the future, including computer systems, telegrams, telex, and facsimile."

A fax machine transmits images of written documents or drawings over long distances. Its primary distinction from telegrams and telexes lies in the transmission method. While telegrams and telexes convey the actual message in written form, a fax merely sends a visual representation of previously written text. For this reason, faxed documents may not possess the same legal credibility as telex or telegram messages, nor do they necessarily involve instantaneous transmission, as there may be a time lapse between the drafting of the offer or acceptance and its transmission. Despite this, some legal literature does not differentiate between telephone, telegram, and fax communications, treating all three as contracts between present parties (Katouzian, 1998).

However, even if fax transmission is accepted as a direct means of expressing intent, placing it on equal footing with telex and telephone, the legal reliability of faxed documents remains questionable, as they are merely scanned images rather than original written records. Nevertheless, given Iran's adoption of the *dispatch theory* of acceptance, if a faxed document is received instantaneously by the recipient, the contract may be deemed concluded at the moment of transmission, and the place of formation would be the location from which the acceptance was sent. Conversely, if the recipient does not immediately receive the fax but is informed of it at a later time, the contract should be classified as one formed between *absent parties*. In such cases, Iran's legal framework allows for the determination of the time and place of contract formation based on the *dispatch theory* (Rafi'i Moghaddam, 2011).

9.2.2. *Contract Formation via Computer Networks*

The advent of computers and, more significantly, the interconnection of computers through small- and large-scale networks has revolutionized communication. This transformation has had a profound impact on legal relations, particularly contract formation, giving rise to new contractual frameworks and specific legal implications.

The legislative history of contract formation through computer networks can be traced back to the drafting and enactment of Iran's Electronic Commerce Act on January 14, 2004. Despite the existence of legal frameworks governing electronic contracts in various countries, Iran lacked any formal legal provisions in this regard. In response, the Council of Ministers, in a session on May 19, 2002, based on a proposal submitted on November 7, 2001, by the Secretariat of the Supreme Council of Informatics, and pursuant to Article 138 of the Constitution of the Islamic Republic of Iran, adopted a resolution titled "Electronic Commerce Policy of the Islamic Republic of Iran."

This resolution pursued two primary objectives:

1. Establishing the necessary legal, regulatory, and infrastructure framework for the implementation of electronic commerce.
2. Expanding the use of the Internet for electronic commerce in Iran while implementing measures to ensure the integrity and security of its content.

The resolution, which effectively served as Iran's entry into the digital era and the global information society, led to the drafting and eventual passage of the Electronic Commerce Act in late 2003 (Rafi'i Moghaddam, 2011).

This Act, structured into five main sections, attempts to comprehensively regulate the technical, legal, and commercial aspects of electronic communications. However, the legal aspects appear to have been overshadowed by commercial and technical considerations. As a result, the interpretation and application of rules concerning the expression of intent through computer networks largely rely on general principles of contract law and established legal doctrines. In other words, the legal provisions contained within the Electronic Commerce Act are insufficient to address the full spectrum of legal challenges posed by electronic contracts.

The following discussion specifically examines the legal status of expressing intent and contract formation through computers and the Internet.

9.2.2.1 Offer via the Internet

Internet-based offers, like traditional offers, must satisfy two fundamental criteria: definiteness and specificity.

Definiteness refers to the requirement that an offer must express the offeror's firm intent to be legally bound by the contract, meaning that acceptance should immediately result in a concluded contract. In some cases, distinguishing between advertisements, promotional messages, and preliminary negotiations on websites or via email from actual offers is highly challenging.

Generally, if an announcement (Annonce) does not grant users the right to immediately accept an offer—such as by clicking a button to confirm acceptance—then it merely constitutes an advertisement, promotional message, or an invitation to negotiate rather than a legally binding offer. Other determining factors include the limited availability of the goods or services and whether the offeror retains discretion in selecting or approving acceptances.

Specificity in an offer is observed in two ways:

1. The type of contract being formed must be clearly stated by the offeror. The offer must specify whether the proposed agreement involves a trial period, a gratuitous contract, or a binding transaction.
2. The essential terms of the contract, including the subject matter and price, must be clearly defined (Katouzian, 1997). For example, in a contract for the sale of goods, the type, quantity, and quality of the goods must be specified so that they can be properly distinguished from other products. Furthermore, the required level of detail depends on whether the object of sale is a specific item, a generic item of a specified class, or a debt-based obligation (Katouzian, 1997).

Iran's Electronic Commerce Act supports this framework. Article 2(a) defines a *data message* as any representation of fact, information, or concept transmitted, received, stored, or processed using electronic, optical, or new information technologies. Article 2(f) defines a computer system as any hardware-software infrastructure that autonomously processes data messages. Moreover, Article 2(j) defines an electronic signature as an identifier attached to a data message that authenticates the sender's identity.

These provisions confirm that Iranian law recognizes computer-based data transmission as a legitimate and regulated method for expressing intent and concluding contracts.

9.2.2.2 Acceptance via the Internet

Acceptance via computer networks must be unequivocal and unconditional; otherwise, it constitutes a counteroffer rather than acceptance. Implicit acceptance is not possible in electronic contracts, as computers cannot infer an implied intent to contract.

Acceptance methods vary and may include:

- Clicking on a confirmation button (e.g., "I Agree");
- Double-clicking, a common method used to prevent accidental confirmations;
- Filling out an electronic form and submitting it;
- Sending an acceptance via email, telephone, fax, or telex—provided the original offer specified these methods.

Iran's Electronic Commerce Act implicitly recognizes these forms of acceptance. Article 30 states that the legal effects of an electronically transmitted message are subject to general contract law principles.

9.2.2.3 Challenges and Barriers to Electronic Contracts

Several challenges and barriers impact the effectiveness of electronic contract formation, including:

- Errors and Fraud: Errors may be human (internal) or technical (external), arising from

environmental factors (e.g., temperature, humidity, electromagnetic interference) or malfunctions in electronic systems (Hayy ibn Yaqzan, 1986, p. 3). Fraudulent online activities, particularly involving cybercriminals, pose a major risk. Iran's Electronic Commerce Act dedicates an entire chapter to cybercrimes and penalties.

- Authentication Issues: In international online transactions, verifying the true identity of parties is a major concern. Digital signatures and authentication mechanisms address this issue. Articles 10–16 of Iran's Electronic Commerce Act regulate electronic signatures to enhance security.
- Restrictions on Freedom of Contract: Many online contracts, especially clickwrap and browsewrap agreements, contain one-sided, non-negotiable terms hidden within lengthy documents, effectively limiting consumers' freedom to negotiate.
- Formal Requirements: Some contracts require written documentation, which electronic contracts cannot fulfill. In Iran, contracts such as real estate transfers and leasehold rights assignments must be executed in writing and registered (Article 42, Electronic Commerce Act).

10. Conclusion

Electronic contracts concluded via the Internet are subject to the general principles and rules governing contracts. The compatibility and alignment of linguistic and customary concepts of general contract law with the technical aspects of the electronic environment, the limitation of rights and obligations of parties to protect their interests and maintain balance in electronically concluded contracts, and the governing rules on multiple methods of contract execution via the Internet are among the issues that have raised doubts and considerations regarding electronic contract formation. The primary reason for this uncertainty is that many of the concepts and regulations within electronic commerce law governing electronic contracts lack historical precedent in customary practice, social, or economic needs in Iran. As a result, the legal concepts of electronic contracts are relatively unfamiliar in the country's legal sources. Although the Electronic Commerce Act does not explicitly conflict with the general rules of civil and commercial law, it lacks coherence with the formal and technical provisions of civil and commercial legal sources. Consequently, the adaptation of general contract rules to the legal issues arising from electronic commerce is rather limited.

The following conclusions can be drawn from the discussion: The principle of consensualism and freedom of contract in choosing how to express intent imply that there is no legal obstacle to the validity of expressing intent electronically and the enforceability of electronic contracts. Electronic commerce laws affirm this principle. Since a data message is neither a written document nor a handwritten signature, electronic commerce laws have equated data messages with written documents and handwritten signatures in contracts requiring formalities. The formation of an electronic contract occurs through the exchange of electronic messages in the form of offer and acceptance. Therefore, the nature of electronic contracts necessitates that the statements published on a seller's or service provider's website be considered invitations to treat rather than offers.

Based on the findings of this study, the following recommendations are proposed:

1. Recognizing the developments in electronic commerce and online sales, identifying disputes and challenges, and seeking solutions for resolving contractual issues and overcoming related crises are essential tasks for the legal community. Achieving this goal requires a comprehensive and precise understanding of the components and structures of electronic commerce. Examining international conventions, treaties, and the legal frameworks of pioneering countries in this field is necessary.
2. The formulation of electronic commerce regulations should be based on international legal frameworks, incorporating the perspectives of legal scholars, economists, and commercial law experts. It is essential to ensure that laws governing electronic commerce and online sales are both expedient and precise to uphold legal certainty.

3. A major issue regarding the formation, recognition, and validity of electronic transactions is that information systems facilitate the transmission and receipt of offers and acceptances while automatically recording the process and providing evidentiary documentation. However, determining the place and time of contract formation remains ambiguous under Iran's domestic legal framework, necessitating further legal clarification.
4. Given that many substantive and procedural aspects of civil contracts are equally applicable to commercial contracts in the electronic environment, the legal framework governing electronic contracts should be comprehensive and inclusive. However, regulating these matters exclusively under the Electronic Commerce Act has led to conceptual inconsistencies and limitations in the application of legal principles to electronic contracts. Therefore, it is recommended that all aspects related to electronic commerce and transactions be incorporated into a dedicated chapter of the new Commercial Code. Additionally, comprehensive legislation should be enacted to address the distinctive features of electronic commerce, thereby resolving existing challenges and legal uncertainties in this area.

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.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

Acknowledgments

We would like to express our gratitude to all individuals helped us to do the project.

Declaration of Interest

The authors report no conflict of interest.

Funding

According to the authors, this article has no financial support.

Ethical Considerations

In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

References

Ahangaran, M. R., & Ahmadi, A. (2021). *Electronic Contracts: Formation to Termination (Comparative Study in Islamic Jurisprudence, Iranian Law, and the 2005 Geneva Convention)*. Majd Publications.

Ahmadi Jashfaqani, H. A., Mashayekh, R., Azizian, S., & Azizian, S. (2018). Nature, Characteristics, and Principles of Electronic Contract Formation (Case Study: Laws of the Islamic Republic of Iran). National Conference on New Ideas and Creativity in Management, Accounting, Legal, and Social Studies, Tehran.

Al-Dusouqi, I. A. (2003). *Legal Aspects of Electronic Transactions*. Kuwait University Publications.

Al-Ghurawi al-Na'ini, M. H. (1992). *Al-Makasib wa al-Bay'*. Islamic Publications Institute.

Al-Jawhari, I. b. H. (1987). *Al-Sahah Taj al-Lughah wa al-Sahah al-Arabiyah*. Dar al-Ilm lil-Malayin.

Al-Raghib al-Isfahani. (1996). *Al-Mufradat fi Gharib al-Quran*. Dhawi al-Qurba.

Al-San, M. (2006). Determining the Governing Law of Electronic Contracts. *Journal of Law and Politics*, *19*.

Almasi, N. (2003). *Conflict of Laws*. University Publishing Center.

Amid, H. (2005). *Persian Dictionary (Pocket Edition)*. Amir Kabir Publications.

Amiri Qa'em Maqami, A. (1999). *Contractual Obligations*. Mizan Publications.

Amirmoezi, A. (2012). *Rules for Resolving Conflicts in the Governing Law of Contractual Obligations*. Dadgostar Publications.

Bahrami Ahmadi, H. (2011). *Contractual Obligations and Contracts*. Imam Sadiq University Publications.

Bajaj Dijani, N. (2005). *From Electronic Information Exchange to Electronic Commerce*. Business Studies and Research Institute Publications.

Emami, H. (2004). *Civil Law*. Islamic Publications.

Farrell, H. (2003). *Constructing the International Foundations of E-Commerce-The EU- U.S. Safe Harbor Arrangement* (Vol. 57).

Hadi Zadeh Moghaddam, A. (2008). Marketing and Electronic Commerce: How to Market in the Electronic Commerce Environment. *Journal of Advertising Knowledge*, *27*.

Husayni al-Maraghi, S. M. A. (1997). *Al-Anawin al-Fiqhiyah*. Islamic Publications Institute.

Jafari Langroudi, M. J. (1990). *Civil Law Course*. University of Tehran Publications.

Jafari Langroudi, M. J. (1999a). *Mabsut in Legal Terminology*. Ganj Danesh Publications.
Jafari Langroudi, M. J. (1999b). *Mabsut in Terminology*. Ganj Danesh Publications.
Katouzian, N. (1985). *Civil Law - General Rules of Contracts*. Mizan Publications.
Katouzian, N. (1997). *Preliminary Course in Civil Law - Legal Acts*. Samt Publications.
Katouzian, N. (1998). *Civil Law in the Current Legal Order*. Dadgostar Publications.
Katouzian, N. (2009). *General Rules of Contracts*. Sahami Publications.
Katouzian, N. (2011). *Civil Law (General Rules of Contracts)*. Sahami Publications.
Khosro Pour, H. (2011). *Formation of Electronic Contracts* Tarbiat Moallem University]. Tehran.
Khu'i, A. Q. (1987). *Kitab al-Nikah*. Dar al-Hadi Publications.
Khu'i, A. Q. (1998). *Misbah al-Fiqhah fi al-Mu'amalat*. Al-Hadi Publications.
Mafi, H., & Kaviar, H. (2013). Comparative Study of the Governing Law of Electronic Contracts Concluded in the Internet Environment from the Perspective of American, European, and Iranian Legal Systems. *Journal of Comparative Law Studies*, *4*(1).
Matulionyte, R. (2011). *Law Applicable to Copyright*. Edward Elgar Publishing Limited. https://doi.org/10.1017/S0020818303572022
Najafi, M. H. (1981). *Jawahir al-Kalam*. Dar al-Ihya al-Turath al-Arabi.
Naraqi, A. b. M. M. (1996). *Awaid al-Ayyam fi Bayan Qawa'id al-Ahkam*. Islamic Propagation Office.
Nasiri, M. (2004). *International Trade Law in the Iranian Legal System*. Amir Kabir Publications.
Nikbakht, H. R. (1997). Determining the Governing Law of Contractual Obligations. *Journal of Legal Research*, *21*.
Pointon, L. (2004). *Developments in Electronic Contract Laws*.
Qanavati, J., Vahdati Shabiri, H., Abdipour, E., & Mohaqeq Damad, S. M. (2014). *Contract Law in Imami Jurisprudence*. Samt Publications.
Rafi'i Moghaddam, A. (2011). *The Principle of Consent in Legal Acts (Comparative Study in Imami Jurisprudence, Iranian Law, and French Law)*. Imam Sadiq University Publications.
Rah Peyk, H. (1996). Defects of Will and Consent: Error in Contracts. *Journal of Legal Views*, *2*.
Sadeghi Nashat, A. (2000). Electronic Commerce Law. *Journal of the Bar Association*, *170*.
Sadri, S. M. (2009). *Electronic Transactions (Foundations, Nature, Legitimacy)*. Andisheh-ye Hoquqi Publications.
Safa'i, S. H. (2005). *General Rules of Contracts*. Mizan Publications.
Shahidi, M. (2016). *Civil Law (Obligations)*. Majd Publications.
Shiravi, A. H. (2010). *International Trade Law*. Samt Publications.
Tabataba'i, S. M. H. (2014). *Al-Mizan fi Tafsir al-Quran*. Al-A'lami Publications.
Vasali Nasih, M. (2006). Electronic Contracts and Their Basis of Validity. *Journal of the Bar Association*, *66*.
Zanjani, A. (1991). International Contractual Obligations in Islamic Jurisprudence and Law. *Journal of International Law*, *14*.