

The Role of Offer and Acceptance in Building the Contract in Iranian Law

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Abstract

What is needed in terms of transactions, particularly in the conclusion of contract is declaration of determination of the parties and any method which commonly leads to conduct the composition can be used simply as declaration of determination in transactions. Also, according to the principle of "sovereignty of determination", intention of the parties to the transaction composition makes the contract in the world of credit; but some conditions are necessary for its effect. Offer and acceptance indicate the intention of the parties and in turn leads the composition of contract.

Key words: offer, acceptance, contracts, obligations

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Introduction

To conclude any contracts, it is required the parties of that contract have the determination and intention of building contract. In addition, the expression of this determination and intention is required to determine whether the person is going to conclude the transaction. The intention declared and expressed to conclude the contract is called outward determination and inward determination is against it which is the same inner and actual determination and intention to carry out a transaction or it is called external determination or declaration of determination. Something that indicates the intention and determination of the parties of the contract is called offer and acceptance. Therefore, any contract is concluded by offer and acceptance. Establisher of the contract is the composition determination nor the declaration of determination; however, this determination is not absolutely the establisher of contract and only the intention of composition within the mind is not effective, but the symmetry of determination with its indicator is necessary for its creativity. Each of two determinations with its indicator which ensures the meaning of initiative and needs to be issued primarily is called offer and another is acceptance.

The definitions of offer in different sources in Iranian statute law

In vocabulary, offer is the origin of "Efal" from the root of "Vajaba" meant to "necessitate", "realize" and "prove". Offer means to the declaration of determination of one person to the other to conclude the contract. In fact, offer is offer to conduct a transaction to someone else. Person declared this proposal is called "incentive". Civil law has not provided a definition of the offer, but it can be said that cooperation between the two parties is required for the formation of contract. The basic condition of the cooperation is the knowledge of two parties about intention of each other and the contract will not be achieved if the intention is not to express. According to Article 191 of the Civil Code, the inner intention of individuals must be expressed with something. Therefore, it has been said that "offer includes the first intention of composition issued from one side (incentive) to another person and it is so perfect that if other party does not accept it, "the parties will adhere to its provisions" without the need for further action. Shahidi in his book "Formation of contracts and obligations" has described about the offer that contract is achieved with the cooperation and determination of two parties. Since the activity of determination in the composition of contract is a mental and internal movement and its realization is not inherently external appearance; thus when the activity of determination of one of the parties is not expressed by a means, knowledge about it for other party in order to cooperation and its proof would not be possible normally. Therefore, declaration of the composition determination is outside of condition for the effect of composition determination and its statement has been placed outside of condition for the effect of the determination and creativity. For this reason, Article 191 of the Civil Code provides that "contract is achieved with the intention of composition provided its competence to something implies the intention. "Studying how to adjust the phrases of this article clears that contract establisher is the composition determination nor is the declaration of determination, but this determination is not absolutely establisher of contract, and only the intention of composition within the mind is not effective, but the symmetry of determination with its indicator is necessary for its creativity. Each of two determinations with its indicator which ensures the meaning of initiative and traditionally needs to be issued primarily is called offer and another is acceptance. We know that inward determination has legal influence only if it is somehow declared and appears in the external world, so offer is a proposal for the transaction; in fact it is the declaration of determination by a person who invites someone to conclude the contract on the basis of certain conditions. In this case, the contract will be concluded if his proposal is accepted by the other person and both adhere to its provisions. The call may be addressed to a specific person or the general public.

Difference between offer and invitation to negotiate in Iranian law and international conventions

The invitation to negotiate is different from offer. For offer, the person has a definite intention on doing the transaction and the contract is concluded if the counterpart accepts the offer, while for the invitation to negotiate, the person offers for dialogue and negotiation to the other side and there is no obligation to the transaction.

In some cases, it is very difficult to distinguish whether a proposal is offer or invitation or negotiation. When a conflict is created in this case, the court in terms of circumstances finds that offered proposal has been offer or just a negotiation to the transaction. The determination of individuals about offer and acceptance should be

considered to better understand the difference between offer and negotiation. Lexical meaning of the determination is demand, intention and chooses and has also some definitions idiomatically. To define determination, the theology scientists say that "determination is an attribute which requires superiority of one of two possible affairs over the other". Some of philosophers consider the determination as a state which comes followed by craze. But most philosophers believe that the determination belongs to category of sensual pleasure and emphatic craze emerged from a gentle affair compatible with the nature of the human soul. This emphatic craze or determination seeks acknowledgment and acceptance of the benefit emerged in the human soul in doing or leaving an act and its acquisition causes that act or omission situated in the possibility phase compared with the science and authority of the agent is preferred and indispensable. However, the quality determination is sensual and it will be origin of effect if associated with external expression in the rights world. In legal term, the determination has been defined as move of the soul toward a given work after thought and recognition of its benefit. Some lawyers consider determination as asking for something, and also divide it into two categories: actual determination and composition determination. The question raised about determination in this debate is that whether internal determination is sufficient for the formation of the contract or is required for external explorer? Dr. Shahidi in his book "formation of contracts and obligations in terms of difference between offer and promise of contract" says: offer is actual composition with expressed determination, while the promise of contract is nothing but a customary promise for contract in the future. Article 14 of the 1980 Convention on the International Sale followed by separation of proposal for concluding a contract from the offer and with emphasis on the issue that incentive should have the intention to conclude the contract, has provided that "suggestion for concluding the contract to one or more specific persons is considered as the offer if it is sufficiently definite and indicates the intention of obligation by bidder when the other party accepts (Article 14 of the convention 1980).

Offer requirements

The provisions of offer should be clear, that is the type and issue of the contract should not be ambiguous because both sides need to know what type and issue of transaction they do; otherwise there will be no agreement to conclude the transaction. For example, it should be known whether the type of contract is sale or lease or donation and also it must be obvious about what issue is the contract. Also, offer should be explicit and clear in which the conditions necessary for the transaction are mentioned; otherwise the offered proposal is not considered as the offer. For example, offer for sale a property without its specifications and price is not considered as offer. Furthermore, it is not necessary that offer is certainly toward a certain person, but also it may be necessary to all people. In some cases where offer is not related to a certain person, anyone can accept this offer and the contract will be concluded followed by acceptance. As if, a person advertises own property by setting its price, specifications and other conditions for the sale in the newspaper. In this way, everyone can accept this transaction and demand that property. However, in some contracts in which the character of the other party in the transaction is important, the incentive can reject the acceptance according to the character of acceptor. For instance, if a person advertises to sell own car in the newspaper; if the acceptor is the poor person and does not have ability to pay the price of the car, the incentive can reject his/her acceptance.

Obligatory offer

The offer with the legal conditions can be combined with the acceptance and make the legal nature of the contract. But what is important to study the effect of offer understands whether offer makes the incentive adhere to its provisions. This means that whether the incentive or offer will be committed remains bound to it until issuance the acceptance or expiration a given period after which the offer loses the capability to survive and build the contract and respects its provisions. Taking into account the principles and with the help of this analysis, it seems that any commitment cannot be considered for incentive about the provisions of offer after annexation of acceptance. Because, if any commitment is not imaginable for the incentive, it must be voluntary and caused by intention of the incentive and there is no reason for obligation determination to the provisions of offer from the incentive. What is understood from the offer is not more than the incentive under the cadence of own offer has the determination of cooperation in creating the legal nature of the contract by combination with the acceptance of party and adherence to the provisions of the contract if it is realized and not unilateral adherence until issuance the acceptance. In some cases, it is possible that offer with the commitment to hold it are accepted until a certain time or issuance time. Also, in this way the offer is referable, because even if the incentive has the determination of commitment to the offer, again a constant commitment cannot be considered for him, since the unilateral commitment has not any credit. Although the determination of human is able to composition the legal nature, religion and commitment are the nature dependent and linked to both parties which their realization in the rights world needs to at least two sides. In some cases, it is possible that only determination of the person waives a commitment from obligation of his owed. As he cans indebt itself against another or vice versa indirectly or it is possible that he enters a property into another ownership. As the buyer terminates the deal by virtue of one of the options in which case, he returns the object of sale to the ownership of seller and indebts itself to its price or substitute against the seller which it is also precedent to the preceding contract. Apart from these cases with stipulation of the law, no one can owe to the other with his determination and also cannot enter a property into his ownership without his acceptance. It is possible that incentive commitments that he is committed to compensation to the offer party if he deviates from the offer (because it is possible that offer party attempts to borrow money for a contract or refuses to do another bargain hoping to do the transaction with the incentive and becomes suffered in this respect, in this case the offer is also referable and the incentive would have to compensate for damage caused to the respondent in which he is responsible for compensation of damage from the agreement of parties determination not damage from only incentive determination.

Qualifications of the incentive

Qualification in the sense of competence and in terms of rights means personal competence for the owner of the property or seizure of own property, thus qualification includes two types: enjoyment qualification and vindication qualification. The enjoyment qualification includes the competence for acquiring the rights. Each zombie will have the enjoyment qualification. The enjoyment qualification is also named enjoyment right. Vindication qualification is competence for the implementation of civil rights. It should be noted that the mean of qualification by the legislator in the second chapter is the vindication competence. According Article 958 of civil rights, every human being will benefit from the civil rights, but no one can apply and run own rights unless he has the legal competence for it. It should be noted that every law has an absolute capacity, vindication competence, unless symmetry exists on its contrary. According to Article 210 of the civil Code, for validity of the transaction its parties should have competence. According to Article 211 of the Civil Code, the competence will be achieved if the person is mature, wise and brave. According to Article 958 of the Civil Code that is mentioned above, generally all individuals have the enjoyment competence, however this provision should not be considered as a sentence without allocation although its exceptions are very limited. In exceptional cases, legislator has not considered the enjoyment competence for some individuals. Some following examples are mentioned in this regard:

A. Deprivation of foreigners from some civil rights according to article 961 of Civil Code. This Article has canceled some civil rights for foreigners. Article 961 says that : foreigners will enjoy the civil rights, except in the following cases:

- 1.About rights that law has limited to Iranian citizens or has denied it explicitly from foreign nationals.
- 2.About rights related to personal status which law has not accepted it for foreign nationals.
- 3.About special rights created solely from the point of view of Iranian society.

B. Lack of inheritance of infidel from Muslim- infidel has no enjoyment competence toward inheritance from Muslim and the wand of Muslims dead will not be transferred to infidel relatives and when there is a Muslim among the heirs of the infidel dead, he will not inherited from the infidel heirs, although he has a priority in terms of grade and class.

C. Lack of ward competence for free transferring own property- ward has no any right to free give own properties, that is not only himself can attempt to free transport his possessions, but also his legal represent cannot transfer his properties to another.It is possible that a person who has given offer, losses his competence. If before this offer is accepted, incentive becomes insane or dies, his offer will no longer valid, because the determination of incentive is gone and so the agreement required for the conclusion of contract will not be formed.

6. The period of offer validity and analytical detection of time and place of offer and acceptance

A. The period of offer validity

Since the incentive creates offer, determining the period of validity of offer and acceptance of the other person is on his own responsibility. This duration can be specified by three ways:

1.Sometimes incentive has identified certain time for the survival of his offer and announcing acceptance. In this case, acceptance must be announced at the same time and otherwise the acceptance will be ineffective.. If offer is in writing and in accordance with letter, the contract will be concluded if the letter reaches the incentive at the same time. For example, I sold my house about 100 million, you should reply until 6 month. Here offer is valid until the expiry of the deadline.

2.Sometimes the incentive declared in its offer that the acceptance must be declared immediately otherwise its offer will be lost. In these cases, the diagnosis that the acceptance has been declared immediately or with delay is within functions of customs and in different cases is variant. For example, if the parties are present together in one place, the acceptance must be declared at the same location, but if incentive gives its offer by letter to the opposite party, the time in which the acceptance should be announced is the first chance that he can send the acceptance letter to the incentive. For example, a person says I sold my house about 100 million, give my answer immediately; here the offer is valid until the expiry of the common urgency.

3. If the incentive does not determine a specified period for offer, it should be referred to the custom for determination of the term when the acceptance can be attached to this offer and the custom will determine this term according to circumstances. For example, in commercial transactions, the term for accepting offer is shorter.

B. Analytical detection of date and place of contract

Shahidi in his book "Formation of contract and commitments" has been said some statements in terms of Analytical detection of date and place of contract that are stated here. In usual transactions which parties attempt to form the contract in the presence of each other, determining the time and place of formation of the contract does not provide the basis for important debates, since the offer and acceptance of parties is issued at the same place and the same time for parties. But, for some transactions concluded between two parties in two different places, determining what time and place the contract is concluded has been discussed in several important discussions and has carried some important comments. In this issue, four comments have been expressed which is interpreted as the quad systems. 1- Declaration theory 2- send theory 3- collection theory 4- information theory which I would review them by an example on the follow: For example, a German businessman composites the sale of some produced textile by a letter for an Iranian businessman and then puts the letter in the mailbox. The opposite writes his own acceptance in that letter and then sends it for the German businessman through post and he becomes informed from the acceptance of Iranian businessman. In this example and based on the declaration theory, the contract is concluded in the place and time in which the letter included acceptance is written. According to the send theory, the contract is concluded in the place and time in which the letter included

acceptance is placed into the mailbox. According to the collection theory, the contract is concluded in the place and time in which the letter included acceptance receives the incentive. Finally, according to the inform theory, the place and time for building the contract is when the German businessman becomes informed about provisions of the letter and acceptance of Iranian businessman. In the rights of foreign countries exists disagreement over this issue. In Iranian legal system, among four mentioned theories, the send theory is defensible and consistent with the regulations and legal rules and principles of our legal system, because what has been introduced as a factor of the formation of the contract is not something more than the intention to composition with a means for expressing it. Article 191 of the Civil Code provides that: "the contract is achieved with the intention of composition provided that being affordable for something that implies the intention.

Conclusion:

For offer, it can be describe two semantic meanings, one is "create" (infinitive meaning) and another is "created credit nature" (past participle meaning) which in addition to acceptance credit nature, will create the contract nature in the world of credit. Each contract consists of two elements: offer and acceptance. A party who is going to conclude the contract, performs the offer of the contract. And another party accepts it which both of them are included some terms that imply the offer and acceptance. The offer should be complete and also specified, that is the type of contract and the issue of agreement is not ambiguous and the offer should be definitive, that is declaration of determination for the purpose of the contract and make a commitment to implement the provisions. In the vocabulary, acceptance means adoption and adopt. Colloquially, acceptance is the satisfaction to incentive for concluding the contract. Acceptance should be absolute and unconditional. In addition, it should be exist a sequence between them. In some transactions, such as a transaction between two parties in two different places by correspondence, determining what time and place the contract is concluded has been discussed in several important discussions and has carried some important comments. In this way, determining the date and place of contract are accompanied by another. In this issue which is interpreted as quad systems, four comments have been expressed which is interpreted as the quad systems. 1- Declaration theory 2- sends theory 3- collection theory 4- information theory. In Iranian law, the send theory is adopted by a majority of lawyers.

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