

## Comparison of the Right to Cancellation Electronic Contracts with the Revocable Option in Sale

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**Abstract:** Simultaneously with the development of trade relations and the development of mass media, the conclusion of commercial contracts in electronic context became prevalent. Today many of person's transactions conducted via the Internet. The electronic contracts in terms of basic conditions of health and conclusion follow the regulations and the general rules of contract law and obligations but because the contract is concluded in an electronic context, in some cases has points of difference with traditional contracts. One of the differences between traditional contracts and electronic contracts in such contracts is applying the options because the conclusion of this category of contracts in electronic context has a significant impact on the implementation or the possibility of options. Of most important rules in the field of e-commerce law is that legislator in Article 37 approved in Persian date of 1382 for consumer in remote transaction has identified the right to cancel for 7 days. Among the most important issues related to this is that what's the difference between the right to cancel in the electronic contracts and the revocable option. Of achievements of this research which conducted descriptive and analytical methods is that, despite the apparent similarity between the right to cancel in electronic contracts and revocable option, they are different each other. Because this right unlike revocable option is not voidable in the case of mutual consent as well as it can't be considered as a revocable option because right to cancel unlike the revocable option isn't built of mutual consent and legislators has imposed it on all electronic transactions.

**Key words:** Option, electronic contracts, e-commerce, revocable option, right to cancel

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### INTRODUCTION

The increasing tendency of humans to establish economic ties with each other did not meet with written agreement and thus, the gift of modern world meaning e-commerce after the invention of devices such as phones, faxes and emerged from the chaotic world of trade. Simultaneously the spread this modern trade and economic globalization plan and joining different communities to this plan as well as increasing spread of Internet users, turned this modern business to an ultra modern business so that today has placed itself as inevitable in the context of human life in everywhere.

E-commerce by eliminating borders lead to decreased costs of buyer and producer, more save time, more attract, eliminating intermediaries and ultimately increased profits. Although, the governments with relevant legislation took a big step in this field but if the framework is not well explained may cause irreparable damage to the parties of contract and the subject of options on electronic contracts is one of the applied arguments used in such contracts. The existence some differences between

traditional and electronic contracts caused in this study, we examined the differences between the right to cancel in electronic contracts and the revocable option. Therefore, this study aimed at answering the question what's the difference between right to cancel in electronic contracts and the revocable option on sale?

### THE CONCEPT OF OPTIONS

The Civil Code does not provide a definition of option but legal sources in definition of that have suggested "the person's legal dominate in the collapse of the contract called option" (Langaroudi and Jafar, 1997). "Options (Khariat in Persian) an Arabic word and is the female plural of option (khiar in Persian). In the legal term, option is a right for (motebayein) or one of them that could disturb the necessary contract. Options are specific to necessary transactions and contracts because lawful contracts such as deposit, loan, attorney and so on can be revocable by itself and would not need another condition and when terminate the contract to be allowed is not more than an expression and emphasis (Mostafa, 2012).

**The concept of revocable option:** The revocable option includes the right holder's master to terminate the contract due to the provision of the option in the contract. The provision of option-meaning the authority to terminate the contract or signing up of it-in the contract lead to affirmation of the right of option for someone who has put this right for her/him (Najafi, without date; Ansar).

**The concept of electronic contracts:** Electronic contract term for first time has been used in Europe in the EU e-commerce regulations. In the scope of the regulations in the part of business transactions, the same legal status of electronic contract as other study-based contracts and traditional instruments has been mentioned and specific definition of electronic contracts has not been stipulated. Some lawyers, has defined the electronic contract in this way: "electronic contract is an agreement that thereby the parties offer and acceptance meanwhile the international telecommunications network by means of audio and video can be interchanged (Osameh, 2000). This definition only has expressed the general assemblage of the offer and acceptance and has not offered a discussion the effects associated with the exchange of offer and acceptance. Some of other lawyers have defined electronic contracts as follows.

"The agreement (contract) in which the offer and acceptance by international communications network and through electronic data interchange, as an attempt to contract obligations is concluded" (Khaled, 2005) or in a other definition the contracts where all or part of them had been signed through communication of computer networks (the internet). Therefore, electronic contracts, in inclusion of commercial or non-commercial acts as well as electronic offer and acceptance including various aspects of electronic transactions such as the supply of goods and services to the invitation to enter into contracts, electronic purchase orders, electronic invoices and electronic payment orders that each of these cases may be a manifestation of the will or the impact of it in the electronic environment. In the electronic space no change is created in the nature of the contract and only is in such a way that "expression of will" to shape the legal essence of those rights through electronic intermediaries or the electrons is done. So, the electronic contract in the infinitive is "the formation of a legal nature or through electronic intermediaries or electrons "which after its formation in cyberspace, the attributes and effects of it has no different with the traditional contracts.

Electronic Commerce Act enacted in Persian date of 17 Dey (January) 1382 has recognized and defined these type of contracts as "distance contract" and in

paragraph (p) of Article 2 of the law stipulates: "Distance contract is the offer and acceptance between supplier and consumer about the goods and services using remote devices."

And in Paragraph (d) of Article 2 of the same Act in the definition of "means of distance communication" stated that: "the means of telecommunication means any type of device without the simultaneous physical presence of the supplier and consumers which are used to sell goods and services". As we have seen, change in functional materials and some form of ritual aspects of contract such as communication with new electronic facilities, rather than paper methods, does not cause any changes in the nature of contract and provisions and effects of contracts in both cases is the same. Only way of their appearance is different.

#### **THE CONCEPT OF THE RIGHT TO CANCEL IN ELECTRONIC CONTRACTS**

In each distance transaction the consumer must be at least have 7 working days, the time for withdrawal (right to cancel) of acceptance without incurring fines or have to give a reason. Only imposed cost on consumer is the cost of returning the goods (Article 37 EC).

#### **Assess the possibility of options in electronic contract:**

In an electronic contract like a traditional contract, the right to cancel or termination of contract can be used for parties or one of them. Since the realization of some of options, such as fraud option, animal option, defect option, discrete transaction option and price delay option are not related so much with the contract method are the same in both traditional and virtual. Of course it may be the way of the emergence of some of these options due to the contract was signed in an electronic context, be otherwise or generally the realization of them isn't achievable. But if not matter that the parties attending in a meeting traditionally conclude a contract or by means of devices to conclusion of electronic contracts like the phone or the internet do offer and acceptance, because in both cases there is a possibility of the 5 types of legal options.

But about occurrence and applying other options in the case of contract conclusion in electronic form some fundamental differences can be seen. These options are house options, seeing and violation of description option, violation of condition option, fraud options and revocable option. In following we will investigate the occurrence and applying revocable option in the conventional contracts and comparison of how to apply it in the context of electronic context.

### **THE COMPARISON OF THE REVOCABLE OPTION AND SPECIFIC RIGHT TO CANCEL (WITHDRAW) OF ELECTRONIC CONTRACTS**

Here, we will examine the specific right to cancel (withdraw) of electronic contracts (stipulated in Article 37 of the Law of Electronic Commerce) and comparison of it with the revocable option (Article 399 of the Civil Code). Therefore firstly applying revocable option in the traditional contracts as well as in electronic contracts and subsequent right to cancel (withdrawal) provided in Article 37 of the e-commerce will be analyzed. People can freely undertake any obligation that is not contrary to law and public order and good morals.

The revocable option in transaction is a rational affair which acted by community and legal logic accepts it as well. Therefore, Article 399 of the Civil Code says: "In the contract of sale may be provided that in the certain period for vendor or customer or both of them or third person terminate the transaction is possible." The contract that was signed such a way and revocable option placed at it called optional contract (Mostafa, 2012). According to this article any of the dealers in their contract can provide for themselves the right to terminate the transaction which in certain time disrupt the transaction without the other party give consent of to it because this right is protected and the contract has been concluded by indicating such. For example, in sale contract you can provide that if the customer wants can terminate the contract of sale after six months from the date of sale document and receive the price. The parties of contract can also place the right to a third party who are also alienated from the contract.

The revocable option has this feature compared other options that made the mutual consent of both parties. So, that in other options including defect and fraud option, in any case, with the conditions, option would be realized, though, that has not been passed from both parties minds. But, the revocable option is caused once the two parties have decided knowingly and informed consent.

Since, the legislator in Article 30 of the e-commerce Law has also considered respectable the general rules of contracts on contracts that are signed electronically, so in the case of agreement between supplier and consumer there is no restrictions electronics on the insertion of revocable option of repeal for the parties of contract and even third party and the revocable option with all legal conditions such as fixed-term of it is applicable to electronic contracts as well.

But, another issue that may be raised in electronic contracts is the specific right to cancel of electronic contracts which due to the apparent similarities with the revocable option we study these two together.

Due to the specific nature of electronic contracts, most writers and legislators believe that this possibility must be provided which in case of customer cancellation from conclusion of electronic contract he/she could not conclude the contract or reject it. Iranian legislator also to protect the consumer for right to cancel (withdrawal) in Article 37 of the Electronic Commerce Law has spoken. This article with a few changes has been adapted from Article 1-6 of parliament and the Council of Europe guidelines on protection of consumer in distance contracts approved in 1997 (Article 6: Right of withdrawal: For any distance contract the consumer shall have a period of at least 7 working days in which to withdraw from the contract without penalty and without giving any reason. The only charge that may be made to the consumer because of the exercise of his right of withdrawal is the direct cost of returning the goods).

Article 37 of EC provides, "In each distance transaction the consumer must be at least have 7 working days, the time for withdrawal (right to cancel) of acceptance without incurring fines or have to give a reason. Only imposed cost on consumer is the cost of returning the goods (Article 37 EC). The interpretation of right to cancel from acceptance in Iran's legislative literature has been unprecedented and the legislator has used this term without offering any definition. This has led to most of authors call it a new and unprecedented rights establishment in the legal system of Iran. Some authors have introduced it as a option with specific provisions.

Others considered it right to termination with superior position of options have promised. Another author distinguishes the nature of the right to cancel (withdraw) from the right to terminate and for that has considered retrogressive effect that with his/her actions void the contract from the beginning (Skin, 1992). What is common in all these views is that all of them believe firstly legislature in Article 37 of the Law of Electronic Commerce has been in the status of establishment and enactment of the right to dissolve the contract unilaterally in favor of consumer in electronic contracts. Secondly, this right has been a novel and unprecedented in Iranian law and with none of the known causes of cancellation of contract including the option provided for in the Civil Code is adaptive.

Even with the apparent similarity between the revocable option and special right to cancel of electronic contracts, they have substantial differences with each other. Because firstly, waiving this right based on Article 46 of e-commerce law is not permissible and apparently is a legal matter and the legal obligations. Article 46 of E-commerce Law stipulates: "The use of

contrary contractual terms of this chapter as well as applying unfair provisions to the detriment of the consumer is not efficiency.” In other words, the parties can’t contrary to this 7 day right to cancel reach to an agreement and this is not match with the general rules contained in the Civil Code on which the parties of a contract may agree to waive any or all legal options.

Secondly, the specific right to cancellation of electronic contracts unlike the revocable option isn’t built of mutual consent and isn’t created knowingly by them and the legislator has imposed it on all distance transactions. The legislator to prevent ignoring this right of consumers from suppliers has also attempted to lay criminal provisions. As it has been prescribed in Article 69 of the law of e-commerce, “infringing supplier of Articles of 33-37 of this Act, will be sentenced a penalty of 10 million 10/000/000 to 50 million 50/000/000 Rials.

The infringing supplier of Article 37 shall be sentenced to the maximum punishment”. Although, some may believe that based on the principle of necessity of contracts the only factor to dissolve of contracts should consider in addition to consent and mutually agreed (annulment) and spontaneous cancellation (termination), the occurrence of ten legal options and out of these affairs there is no possibility of disrupting contracts but it seems despite being unknown of such a right in jurisprudence, the legislator to establish and enacting a new cause for cancellation of contract is not faced with any limitation and can consistent with other advanced systems in world capture in the traditional provisions of the transactions. Perhaps the question to ask at the end is that despite the provided right to cancellation in Article 37 of the law of e-commerce are still other legal cucumbers used in electronic contracts or despite this right to withdraw no need felt for other legal options?

In response to this question must be stated that the right to cancellation enters no damage to presence and applying of other legally options. And in some cases it may using other legal options have more benefits for the consumer, for example, if the product is defective, the consumer may prefer instead to opt out of the deal (transaction) and send back the goods, receive the cost from supplier. On the other hand it is possible in some cases the right to cancellation after the deadline stipulated in the contract, the consumer notices the defect in the

product and intend to disturb the conclusion (contract) that in these circumstances, despite the expiration of cancellation deadline could terminate the contract by applying the option.

## CONCLUSION

What is important regarding electronic contracts is the right to cancellation that in Article 37 of the law of e-commerce for consumers in distant transactions has been identified for 7 days. And this is also without incurring penalties or providing reason and the only imposed cost on consumer is the cost of returning the goods and despite the apparent similarity between the special right to cancellation of electronic contracts and revocable options, there is a fundamental difference with the revocable option in sale; because waiving this right is not permissible under Article 46 e-commerce law and is an order and of legal obligations and the parties can’t agree unlike this 7 days right to terminate and even in case of violation under Article 69 of e-commerce the punish has been intended supplier. While in traditional contracts the parties may agree to waive revocable option. Therefore, the special right to terminate of electronic contracts is different with the revocable because special right to cancellation unlike the revocable option isn’t built of mutual consent and consciously not caused by them and legislators has imposed it on all distant transactions.

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