



---

## **A Comparative Study of the Nature and Effects of Electronic and Traditional Evidences to Prove in Commercial Proceedings**

*Asef Jamshidian Sisakht*

*MA in Law, IRAN*

*(Corresponding author: Asef Jamshidian Sisakht)*

*(Received 01 October, 2015, Accepted 20 December, 2015)*

*(Published by Research Trend, Website: [www.researchtrend.net](http://www.researchtrend.net))*

**ABSTRACT:** New developments in e-commerce is undeniable and join to this manner which facilitates trading and accelerate trading relationships, is one of the market and business of the society's needs. Nowadays document and electronic signature is considered as one of the important issues of e-commerce in law science. The topic of this research is about the comparative study of the nature and legal effect of traditional and electronic documents for proof of claim in commercial litigation. This study in order to examine this issue, document definition, document validation, evidence to prove the claim, electronic documents and... has been extensively studied. Since the electronic documents increase rapidly, the law maker accepted it as a reason or proof and also has been predicted certain legal effect for safe electronic document, in terms of the inability to uncertainty, is as notary, Reset to clear the necessity of handling the members disputes, the new relationships equipment are alternative ways of solving the disputes instead of going to the courts and have special importance which some materials about this issue is mentioned.

**Keywords:** document, presentations, e-commerce, electronic document, digital signature, traditional proofs.

### **I. INTRODUCTION**

In general classification of rules, they are dividing into a reliability to substantive laws or determining or guaranteeing, which from the most important and most prominent of mentioned rules, we can name civil law as a determiner or substantive law and civil procedure law as a guarantee or forming law. In this division, the role and importance of vindicating lawsuits are determined which are placed in the second category of mentioned classification; because as long as there are no laws to guarantee, or in case of existence, they won't be implemented properly and fully, and substantive rules won't be important any more. As the law without an executive guaranty will not be able to compel individual to obedience and compliance merely because its' preemptory. Substantive and determiner rules won't have such strength without the existence or implementing the guarantee rules, and governments can't guarantee the civil rights of individuals without the existence or implementation of such rules. Associated with litigation and evidences to prove it, first we should mentioned that allegation which are claimed by plaintiff or sometimes have been made by the defendant in response to the claim raised by plaintiff, is based on the existence of right and sometimes shows a fall and decline in right. Therefore, it is true that plaintiffs should refer to the court regarding their claims and raised their litigation and prove their claims by providing probative evidence, but it isn't in a such way that because he was the first plaintiff, he should always provide reasons, but also the defendant if have a right to fall or decline or mutually have claim their own rights, they should prove their claim by logic reasons. So, the nature and consequences of vindicating lawsuits have a special importance.

### **II. EVIDENCE TO PROVE CLAIMS**

Evidence and means of proving claim in civil law have been enumerated as follows. According to Article 1358 of the civil code: " Evidence to prove claims are as follows: confession, written documents, testimonies, and swear. Also the legislator of civil procedure law in chapter ten have also devoted to addressing the reasons and after general matters, have referred to evidences to prove claims as follows: Confession, documents, certificates, location examination and local research, reference to the expert and swear. It should also be noted that the vindicating lawsuits of such characteristics are as follows:

**1. Being exclusivity.** Being exclusivity of claims means that just reasons prescribed by the legislator in the civil code and also civil procedure law or special laws have been approved in this regard, such as article 12 of Iranian electronic commerce act, that have predicted documents and vindicating lawsuits as a data message and provides: "Documents and evidence to prove claims may be in data message form and we can't reject the probative value of " data message " simply because its shape and form in any court or governmental body based on the available rules of evidence", then they can be used and invoked as a proof of claim.

**2. Determining the value of evidence in law.** The value of each evidence in law to prove claim and their proving power was determined by the legislator. For example, the degree of authenticity to having commercial offices in order to prove the claim is subject to the conditions that in case of compliance, it will be on benefit and detriment of the merchant and in case of non-compliance with them, always the mentioned document against the merchant will have authenticity.

Increasing growth in application of information and communication technology in the world always have been seeking a new legal rules. In order to engaging all individuals in all aspects in using this technology, establishing security and public trust, a special proceedings system have been formed about it in terms of domestic and international legal executive guarantee. Rules which have its general legal proceedings in administrative, civil and criminal cases and its evidence substantiation of claims is unique in some cases. In Iran also in order to recognize the new communicational facilities in trade matter or in other words, regarding national and international trade transactions, a law have been approved under the e-commerce law, which in that the signed contracts have recognized through electronic interfaces, documents and electronic evidence and electronic signature, and some of raised legal aspects is considered in context of e-commerce. According to mentioned topics, the present paper is seek to examine the nature and consequences of traditional and electronic evidence in commercial trials and then compare the electronic evidence with the traditional evidence and complete the research in comparative form.

### **III. E-COMMERCE: (ELECTRONIC COMMERCE)**

E-commerce is a term that can be heard in commerce articles and literature and trade and public media. This new phenomenon have different definitions in various references ideas due to its being new and having a wide array of uses and activities. Also E-commerce is a multidisciplinary phenomenon which has consistency with advanced information technology concepts on one hand and issues such as marketing and sales, financial and legal topics on the other hand. Thus there have been various interpretations of it. E-commerce is conducting all business activities with the use of computer communications networks, particularly Internet. E-commerce is a kind of trade without paper. By e-commerce, the sales information exchange and information required for transporting goods will be done with less pain and faster banking transactions. Companies have no current restrictions to communicate with each other, and the relationship between them is done more easier and faster. Vendors relationship with customers is also can be one by one with each customers. In other words, e-commerce is a generic name for range of software and systems which undertakes services such as searching for information, mobility management, assessment of credit, granting credit, payment on line, reporting and account management on Internet. These systems provide Internet-based basic infrastructure activities (Bargani, Iraj). The purpose of using e-commerce, is offering a new way of doing business. By this way, traders are able to supply their products and services to all customers around the world of full-time form independent of geographical and nationalities borders.

3. E-commerce is another method for electronic exchange of information and conducting business transactions which is created an electronic bridge between commercial centers. E-commerce deals with lower volume of information that is not necessarily the same form and is exchange between the general public. E-commerce at the beginning of its creation, wasn't more than a commercial simple notification and every one could advertise their products by using web pages on the Internet. Statistics released from 500 companies shows that about 34 percent of them in 1995 and 80 percent in 1996, have used this method to promote their products. By the end of 2010, more than 220 billion dollars financial transactions have been conducted by hundreds of commercial sites on the Internet (Bergan, ibid).

### **IV. ELECTRONIC DOCUMENT**

In accordance with paragraph 7 of Article 2 in the uniform law of electronic exchanges in USA, electronic document include document producing post, exchange or storing through electronic means by using this definition and definition suggested of the document in Civil Code of Islamic Republic of Iran that can be defined as the electronic documents. Electronic documents consists of wrote which are invocable through production, sending, receiving, or stored electronic devices in claim or defense officials. In UNCITRAL model law on e-commerce and consequently in Islamic Republic of Iran's Electronic Commerce Act, the term "data message" is used and is defined as:

Generated, sent, received or stored Information by electronic light means or similar means including electronic data interchange, electronic mail, telegram, telex or Telecopy (Mostafa Bakhtiarvand).

Generally we can consider this term as Electronic written text. It is obvious that the mentioned text can be created by human or be the resulting performance of automatic computer, such as calculations and analysis which is done by computer and thorough applying software and receiving information from other devices such as watches which have placed in them or sensors away from the computer (Chissick, Michael & Kelman).

## **V. ELECTRONIC SIGNATURE**

In early pages, the concept of traditional signatures have been expressed generally and noted that one of the basic conditions for signature is its written form. Therefore, if the parties have resort to other methods in order to introduce himself and show his final decision which haven't written form attributes, generally we couldn't named these methods as sign in traditional sense, but with the advent and development of new technologies, methods of parties communication have been changed and a massive amounts of transactions will be done through electronic systems. Obviously, it has been created in virtual space.

The result of applying these technologies, is the methods that parties can made clear their identify for other party thorough that and their announcement will be changed (Jalal Dorostkar). In fact, different mechanisms have been developed to ensure the safety of electronic transactions, and what is known as electronic signature contains these security mechanisms that because they are used widely by users of electronic networks, both closed and open systems especially traders, its necessary to be familiar first with electronic signature and then assess this point that whether the electronic signature can be replaced with traditional signatures or not? For example, when parties on a contract use electronic messages to concluded it instead of recording it on paper and thus, they use electronic signatures in order to introduce himself and show their consent over the provisions of contract, do these signatures have the same reliability of traditional signature or not?

## **VI. UNCITRAL ELECTRONIC SIGNATURE MODEL LAW**

In accordance with paragraph (a) of Article 2 in UNCITRAL electronic signature model law, electronic signature consists of electronic data contained in data message, attached to it or electronic data which are logically associated with a data message and we can prove identity of signer in line with data message by them and their approval about information contained in data message.

With precision in this definition we will find that two important applications of signature have been referred in it:

### **1. Identify the signer**

### **2. The intention of signer being bound to document provisions.**

It is clear that, in contrary to the material annexation, the essence of electronic data paper forming an electronic document is not physically mean any other parts of the document. However, data for electronic signature in case of including in document may be logically linked with the rest of it, so that the computer which reads document, could regarded all sectors of it as a single body.

In addition, the above data may be associated with document for example through indicator that is included in electronic document and computer entry in a database that is located in electronic signature.

It is clear that electronic signatures can be sent or stored separately and independently from e-mail messages as data. However, provided that a strong relationship exists between them. This subject can be compared with the civil law of Islamic Republic of Iran. According to this article, when a writing statement haven't undertaking in the signatories of the convention against reason, it is stipulated in writing form that any commitment or transaction will be concerned (Article 1304 of the Islamic Republic of Iran's Civil Code).

### **Assigning commercial documents:**

What is relevant in terms of legal is that we can attributed an action or document to a person. That is why today the electronic signature is known as one of the most important factors in determining documents validity. But it is clear that any electronic signature haven't power to validating documents and there are certain conditions about this technology that will be validate only with total of all conditions for electronic signature.

### **1. Electronic signature capabilities**

In order to avoid problems of cyber attacks and securing virtual networks, some centers have been created around the world which conduct license signature services and electronic documents. Iran's E-commerce law in this case have adopted the key principles of signer unity and the monopoly of private key and capabilities to clearly recognize the changes in data in this case. But the fact is that, there is a very weak relation among the key signer and the owner, because in many ways it is likely that the signer is not the key owner. Thus, it is very important that the signature used in document will be created by a secure software and the proof of these signature is made on the basis of a valid certificate of a certification authority.

### **1. Private key authentication**

In order to secure signatures, only ensuring that the owner is the private key of a special person is not enough, but also this would ensure that the only one who use the key is the mentioned person. This is the same rule that have been accepted in all law of universally signatures and Iran's Electronic Commerce Act refers it as being exclusive. Several factors can endanger the credibility of private key. For example, the owner of key may carelessly reveal the password for a smart person, or device which the key have been stored on it, will be robbed, or a copy of the private key will revealed. In very exceptional cases, it is possible that the software maker will produce the same private key and made it available to others or to use it themselves. In this meanwhile, the signature generation software have devoted the most important manufacturing sector for signature. These software also can be used for signature generating and also for proving signatures by parties. The purpose of validity of this software is that, it is so designed which the accuracy and security of signatures will be guaranteed during the development and use of electronic data in technical term.

## **2. Licenses validity and capabilities**

UNCITRAL model law have referred certification as an information message or any other record that approved the relationship between signer and the information which signature is created according to that. Service provider related to certification is said to one who is issued the corresponding certificates and may provide other services related to electronic signature. There is a private key associated with the certificate. Messages that were encrypted with a certificate, only can decrypt with private key and the same certificate and vice versa. Certification is not forgable, means that the holder of certification has the private key corresponding to its disposal, this is because that the signed centers is certificate which its production is impossible without access to private key. The owner of certification, shouldn't give the private key to others, but the certificate is a public document that can be revealed to all. Certificate center will issued the certification just after the verification of person's identity and under specific laws.

If the certificate holder violates the rules of its use or disclosure its private key, the certificate will be revoked by certification center. A certification must contain the following elements:

- Name of certification issuer bodies
- Personal name, which certification have been issued for them
- Kinds of certificates which shows certification restrictions for the owner
- The period of certification validity
- Certification conditions, for example, the certification can be used for a maximum issuance of commercial documents

## **B) Problems of commerce documents exchange**

Problems of e-commerce and consequently the exchange of documents is very high in cyberspace. In this discussion we have tried to raise the most obvious and most important problems.

### **1. Information theft**

The biggest problem in the exchange of electronic data is information theft or receiving unauthorized data. It is clear that this would have a great confusion in trade world and commercial and private relations of human. Many people are afraid of data exchange in this space which the basis of their fear is the leaking of personal information or their credit card numbers by computer hackers and fraud and unauthorized use of them. However today, these concerns is become lower with the advent of public key encryption method and its application in Java security and this approach is almost impossible to penetrate the exchanges.

### **2. Seductive programs**

Always establishing good codes is not mean creating good security, especially in a large commercial system, there are many critical areas that may be exploited and molested by above programs, like seductive Java. Means that a person have introduce himself as a legal server by using it and have received illegal costs from real server customers. It is quite possible unless avoiding measures have been conducted.

### **3. Special protocols**

Another problem in the exchange of business documents is the existence of protocols that each are defined the formats for messages exchange. Because professional programmers have always tried to create programs to guide e-commerce. Most of these programs costs very much in this kind of business and on the other hand these protocols are not accountable in some commercial systems effectively. For example, many firms have their own protocols to transfer business documents and credit cards and in some cases, these protocols are not compatible with the systems of other companies. However, the creation of a protocol which covered all companies is very massive and difficult to manage and is unimaginable.

## **The role of third parties in exchange of electronic trade documents**

If the signer attached it to a document, means that you have to sign that document and accepted the document contents. In this case the signer will apply his signature by selecting from a menu button or device that signing key is stored there, but an electronic signature alone is not enough to prove three reasons above. Because in the virtual world that people aren't able to see each other and there are real issues to them, applying a key id not only proves identity and not going to the other side. On the other hand documents recipients need to trusted people to guarantee the potential claims arising from documents exchange.

The necessity of legal recognizing electronic official document and credibility of this documents:

Since that with widespread use of new communication media such as the Internet and especially realization of e-government, many official will set documents electronically. Therefore, it is essential that these documents be recognized in national laws. For example, we can mention France that has opened the way by coordination of legislation on evidence related to new technologies and electronic signature of the official documents electronically: Article 1317 of the Civil Code amendment of this country says in this regard: The official document can be electronically adjusted provided that the establishment and maintenance it under conditions set by the Council of State has been made in accordance with paragraph 4 of Article 1316 of the French Civil Code and has been described by officials as an official document.

The purpose of predicting these provisions by French lawmakers was supplying this fact that the official document can be virtual and it can also have electronically signing official form (Gobert, Didier).

In our opinion in Iranian law there is the possibility of adjusting official documents electronically. This rule can be applied to Article 6 of Islamic Republic of Iran's Electronic Commerce Act which says, if the existence of message written in the law will be required, it will be data message. Unless in this article generally accepted that when law considers being written of the information as necessary, electronic documents will realize this requirement and as we have said, basically, e-government indispensable to the realization is accreditation of electronic documents, including official and normal. Since that the official documents will be set by government officials and by the provisions of law, legislator gives a certain credibility to it and not apply the accuracy of current discussions on ordinary documents. Thus, in accordance with Article 1292 of the civil code against the official documents or documents that have valid official document, denial and doubt not audile and the parties can claim to allegations of documents or prove that the mentioned documents has fallen of credit directional in the legal aspects. Also, in accordance with Article 70 of the official registration law which have been registered according to the official rules, and all contents and signatures inserted in it is valid, unless that its allegations will be proved. The result of entry into force authenticity is the contents of official documents because when the contents of document is true and it can't be denied or doubted, there won't be any obstacle to implementing this document without following up and the owner of document can put it into practice (Dr. Sadrzadeh Afshar, *ibid*). Thus, Article 92 of the Registration Act provides that signified all official documents relating to debt and other movable property without the need for a ruling from the court of Justice shall be enforceable unless ... " However, this point should not be forgotten that in a virtual environment just as we said, only electronic reliable official documents can't be denied or doubted.

## VII. CONCLUSION

Given the increasing use of modern means in communication such as the Internet it is essential that the legal issues related to this matter will be examined carefully. Occurrence of difference between citizens, especially merchants and consumers is inevitable and we know that justice is the right of every individual and it should be noted that any person claiming a right to prove it. If person gives electronic documentation to the court which is available on CD, whether the court will accept the message data as a reason or not? Therefore, it is necessary to carefully study the possibility or impossibility of it and when it concluded that electronic documents can be regarded as evidence, we should express these conditions as acceptance and positive power of electronic evidence. It should be noted that the electronic signature have different types and all signatures do not provide the same level of security, it have prompted lawmakers to considers specific types of electronic signature that provide more safety. Therefore, in addition to exploring different approaches to security issues, currently the only using digital signature can be awarded the highest degree of reliability than electronic transactions. Regarding digital signature and the way to its identification and creation, we have discussed in detailed and said that what we have called the law of e-commerce in electronic signature is reliable and it just include digital signature that is used in the production of both public and private keys.

With regard to this fact that e-commerce and in general trade in the principle of speed is one of the most important principles, it is necessary that in order to resolve the parties disputes, we use some ways that at the same time of being inexpensive and quick it will have a high efficiency.

Since that by expanding e-commerce, the major part of personal information will be maintained and exchanged electronically such as their contracts and negotiations, this question will be raised that whether the documents can be presented as proof in court or not? Obviously, now by adopting electronic commerce act of Islamic Republic of Iran, there is not an obstacle to overall acceptance and authoritative documents. However, in the absence of such a law

also there is a possibility of such a law and also there is possibility to acceptance of electronic documents even by a broad interpretation of functional concept of equivalent document and the theory. Also as electronic signatures, electronic documents have various types and according to this fact that they have signed or not and what kind of signature have been applied there, they are not considered the same legal effect. For example in the view of our legislators, a reliable electronic document regarding the inability of official documents were in denial and doubt that this is an important step to encourage people to use electronic documents. Now the safest type of signature is the digital signature, which applying them in the context of what is known as public key infrastructure will be possible. The most important public key infrastructure is certificate authorities, that in order to ensure the finding public and private key pair belongs to the people we have used this people's service.

## REFERENCES

- Skini, the booklet International Commercial Arbitration of Imam Sadiq (AS), 11382.
- Doctor Anis Ibrahim and others, Alma'jam Alvasit, Dar Al maaref, Bita. Anees Ibrahim, Alma'jam Alvasit, Dar Al maaref, Bita. Bargani, Iraj (1389). Advantages and disadvantages of e-commerce, MA thesis, Islamic Azad University Central Tehran Branch, 1389.
- Jalal Dorodstkar, the legal nature of the digital signature, *Tehran University Law Journal*, No. 47.
- Rezaei, Gholam Reza, a variety of trade, *Tehran University Law Quarterly*, 41.
- Star Zarkalam, electronic signature and its place in the Faculty of Humanities evidence in Tarbiat Modarres University, pp. 46-45, Spring 1382.
- Hassan Emami, civil rights, bookstores of Islamiyah, 1376, vol. 6.
- Sadrzadeh Mohsen Afshar, vindicating lawsuits in Iran, University Press, 1369.
- European Initiative on e-commerce.
- Ali Akbar Dehkhoda, Dictionary, under supervision of Dr. Mostafa Moin, Volume II, Institute of Tehran University Press, 1372.
- Constitution of the Islamic Republic of Iran.
- Iran Civil Procedure Law.
- Electronic Commerce Act, the Islamic Republic of Iran.
- Iran trade law.
- UNCITRAL model law on e-commerce.
- Langeroodi, Mohammad Jafar, detailed in the terminology of Volume 1, *The Treasure of Knowledge*.
- Mohammad Jafar Jafari Langeroodi, detailed in terminology rights, *Treasure of Knowledge*, 1378, Vol. 1.
- Mahmoudi, document vindicating lawsuits, Islamic Azad University, Science and Research Branch of Tehran.
- Mostafa Bakhtiarvand (Translator), within the framework of e-commerce, newsletter Informatics, No. 87.
- Mostafa Bakhtiarvand (Translator), UNCITRAL model law, electronic commerce, informatics Newsletter, No. 86.
- Moin, Mohammed, Persian Culture, vol. 1, Amir Kabir Institute publication, 1363.
- Nasser Katouzian, proof and reason for proving, emission levels, 1380, vol. 1.
- M. Bakhtiarvand (Translator), within the framework of e-commerce, newsletter Informatics, No. 87.
- Antonie, Mireille et Gobert, le directive europeenne sur la signature electronique vers la securisation des transactions sur l'internet?
- www. droitfundp. ac. be signature electronique du 13 mars 2000
- www. signelec. com
- Caide, Stephene, lapreuve et la conservation de lectrit dans la societe de linformation
- www. caprioli-avocat. com
- de lamberteri, Isabelle Etblanchette, Jean, Francois, le decret du 30 mars 2001 relatif a signature electronique, lecture creitique, tefdhnique et juridiae
- www. droitfundup. ac. de
- ensault, julien, lasignature electronique
- www. signelec. com
- Govert, Didier et Montero, Etienne, carde juridique pour les signatures electroniques et les services de certification: analyse de loi du 9 juillet 2001.
- www. droitfundp. be
- Gobert, Didier et Montero, Etienne, loverture de la prevue litterale aux ecrit sous forme
- www. doitfndp. ac. be
- Legrand, max, dictionnaire usual, de droit, libraire, larousse, 1958
- www. droit-technologie. org
- www. Mascree-heguy. com
- Williams, Amy, Kynne, dispute resolution and arbitration for electronic commerce, www. dww. com