



# The Role and Value of Written and Electronic Documents in the Legal System Iran

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## ABSTRACT

One of the important evidence proving the claims in legal document. The document has been providing various definitions in the sciences and in other words, this concept is considered from the perspective of different sciences. In law as well as the traditional concept of document ins 1284 of the Civil Code defines which means any written document that is referred to as the fight or disposal. This concept is true in the case of written documents. But with the development of communications technology and the development of e-commerce transactions and Internet Treaties, the concept store documents for a new phenomena Evidence was introduced. Special documents to electronic documents in the system is evidence of the important issues of law. Especially with the adoption of e-commerce law and the position of the law, raising these issues is crucial.

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## Introduction

In the legal system, to prove the truth in the case, a series of arguments that legislators have taken. This means the order of Evidence are the means through which it can be proved right. Evidence main benefit is that if the right in fact and in the evidence available but it cannot be proved by evidence, the findings cannot be proved. So Evidence and the ruling on the claims in the legal system is of great importance. Evidence exists of the different legal systems in the countries. The legal arguments and moral reasons for the mixed evidence as to address the claims and the education system because the legal systems are divided into two categories: Charge systems and audit system. The first of these systems, the judge in testing not only because of the reasons already contained in the Act. But the inquisitorial system the judge can refer to any reason. Based on the evidence of the three categories of legal arguments, the moral arguments and evidence system is divided complex. The system for legal reasons, arguments about the validity of any specific legislator and the judge is obliged to accept the reasons, though he has not moral persuasion. In this system counted only reasons not attributable to another cause. But if the concept of taking advantage of anything that makes knowledge and certainty of the fact of the matter is that we have given to moral reasoning system. In the complex procedure, in some cases for reasons of legal and other nationals are free to follow the evidence. This theory tries to prove that the free and consistent legal proof and the judge has wide powers to reach the truth. (Zolfaghari, 2012, p. 34). Determining the legal system of our country in terms of the classification criteria above is important because if

the legal system governing the legal system to recognize evidence, the judge will have discretion in the study. In particular, there seems to be a discussion electronic documents to determine the regime is much more important reasons. One of Evidence which has been recognized by the legislator in the Civil Code, the document. Article 1286 of the normal divided into two types of documents and materials next to each of these documents, there are different probative value. Electronic documents in legal systems are also one of the new evidence that has been considered vital in the field of e-commerce. There are many legal challenges on the documents no longer the undisputed acceptance of these documents is accepted by lawyers. Electronic documents are documents that are produced by computers, have been detained. These documents may be created from the start in an electronic form or in electronic form will come later from its original form, such as the scanning of paper records. (Zarrin Kalaki, 2007, p. 103). Another definition of electronic documents such as: Electronic documents are documents produced by a computer, have been detained. They may be in an electronic form have been produced in its original form or in electronic form. (Sadrazadeh, 1980, p. 61). In our country the law of e-commerce in 2004, the legal aspects of electronic documents. According to written documents and electronic identification position in the legal system of our country is of special importance. In this study we examine this important issue.

## 1- Theoretical Foundations

In this section we define the basic concepts of this study.

### 1-1 Document

Document involved a word of Arabic. In summary it can be said that the Arabic word Al-Sanad Ban used the following means:

"That part of the mountain that is placed in front of the person and the longer the hillside. Pillows, backrest, as Yemeni clothing line, any legal commitment which is based on a joint contract, document and statement. (Azizi, 2011, p. 151). In Dehkhoda dictionary to document what is seen following meanings:

"Fulcrum, what he left behind, pillows, leaning, they are behind him, leaning, office, long thing, rather long in the desert, the mountains, the mountains, at the Ahl al-Hadith phrase through and including those and through news stories and narratives to document the scholars say that confidence in the accuracy and weakness in its tradition. Documents such as contracts and equipment commonly used in legal acts such as sale, lease, marriage, divorce, annulment and accept written but may also be written in the application of physical and legal events as birth and death is written in official documents by registry offices. However, by the rule, if it can be attributed to the term document that such signature, fingerprint or personal stamp that document attributed to him. (Mohseni, 2012, p. 31). Then the document can be written features and functionality inherent assignment is and what is not written document cannot be document.

### 1-2 Official Document

Real Estate Registration Office documents or notaries public or to other officials within their jurisdiction and in accordance with legal regulations are set, is official. From the definition of official documents (Article 1278 BC) turns out to be the official document, there are three key factors:

1- Set the document to the official agent; 2- the authority in charge of regulating the document; 3 - comply with the relevant provisions of the document set. (Doctor Katouzian)

### 1-3 Normal document

Each script that is invoked as a defense or fighting ability and not as an official document, the document is normal. Normal document normally set by individuals and subject to certain formalities. (Madani: 2005, p. 112). All documents are normal in relations between the parties is valid provided that the First: It is not against the law, and (ii) are not contrary to public order and morality as well. The scope and content of the documents to the parties effective. (Hayati, 2011, p. 117). Except in some exceptional cases set common document does not ceremonial. People can document in any language and with any means who wish to set. Texts should be noted that the most common documents signed by its main pillars. (Katouzian, 2007, p. 112).

### 1-4 Electronic documents

E-commerce law in Iran, does not provide a definition of electronic documents and only in paragraph A of Article 2 on the definition of the message data, it provides: "The symbol of the event, information or concepts with electronics, optical information technology, generated, sent, received, stored or processed. It is worth recalling that the law of e-commerce has always been the safety and reliability of the information systems and computer speak. It can be read electronic documents and records that have retained many traditional features documents and

electronically as specified regular production, storage and distribution, and in addition search capabilities, the recovery of, retrieve, and print have the correct form, fast and precise multiple users. (Sadeghian, 2007, p. 28). Electronic documents are documents produced by a computer, have been detained. They may be produced in electronic form or electronic form from its original form to be taken. (Sadrzadeh., 1980, p. 61). Electronic documents are documents that are produced by computers, have been detained. (Shiravi et al., 2008, p. 14). According to the above definitions of electronic documents can be the most important feature they considered them non-material benefits, such as documents written in a way that is not directly visible, but in other ways they can be out in written documents.

### 2- Probative value of documents

The probative value of the documents, the ability to create satisfaction among judges. In other words, it is the legislator to how much of the value is considered to documents. This discussion is particularly important in the case of electronic documents to their new terms.

#### 2-1 Probative value of written documents

The official document to prove legal effect in proceedings is to ensure that the person who invoked its own claims. (Shams, 2011, p. 132). In some cases, the legislator proof of claims and rights through a written document considers possible. We continue to reckon these cases.

#### 2-1-1 Transfer of goodwill

Businessman in business know-how and capital and the type of work that does more than his moral character is important. The owner of a home business customers may not like it but because they wish that the institution they trust the brand name. On this basis, it was thought that a right that its merchant customers should be regarded as financial rights. Businessman right to possess it and to the other. (Katouzian, 2012: 223).

Goodwill in the context of jurisprudence and legal

The amount that the owner at the beginning of the lease and the tenant's leasehold apart from the empty place in her rent. (Doctor Langroodi) as well as the money that the first tenant to the owner or tenant of the second to the former tenant when the lease transfer is called goodwill call (Abdi Poorfard, 2005, p. 94). Author goodwill legitimate right to know and understand it salable. (Hosseingholi, 1956, p. 12). Right to acquire a profession or trade, business or profession by continuing to do business or leading to commercial reputation and increase customer for the business unit will be created. (Abbasi Dakani, 2010, p. 91). Article 6 of the Law of Landlord and Tenant Act 1997 states that: "If the owner of commercial property to lease the tenant can receive a fee as goodwill. During the rental period the tenant can also exercise their right to transfer money from the landlord or tenant to receive as goodwill unless the lease contract, he denied the right to transfer to other "he said. Under the provisions of civil law relating to the lease, the tenant during the term of the lease, but lease the beneficial owner and the owner is entitled, like any other move its own interests and not the consent of the owner, unless the lease contract rent a clear stipulation of the lease transfer to non-prohibited. This transfer must be done through the document to be recognized. If the normal document or

formal lease, but lease fees and absolutely no time limit granted to the lessee. In fact, money from the landlord for the conclusion of the contract, the tenant receives the right to acquire a trade or business expense and also includes the price concessions granted to tenants and the absolute given him the right to transfer the lease to other and tenant under the condition of the body right next owner's consent and without payment of rent to non-transfer. Offices official documents regarding the condition in the official document of rent until the lease is in force are required to document the transfer of the lease without the consent of the non-transfer products. Obviously, if the refusal is in violation of this duty notary.

#### **2-1-2 Transfer the right to acquire and trade**

Landlord and Tenant Relations Act 1977 requires the creation of special rights for trade shops and businesses that the tenant after the tenant on the lease allowed the survival of the company. Such a prescription is incompatible with the rights owners and is not in line with their interests. According to Article 19 of this law, if the place of business or trade or business tenant under the lease, shall be transferable, can be used for the same or similar job, with benefits of a formal document to the other. By law, if the tenant businesses, craft and trade under the lease, have the right to transfer to other, can be the same or similar job with the interests of the official document to the other. If the lease right transfer or lease of other deprived the owner consented to the transfer, except there is no need to drain the lease, the tenant to pay business or profession or trade, otherwise the tenant can be adjusted for document transfer in office or bureau near the property issue regulator former lease document and copy it to the post office and declare the matter to the landlord. New tenant in every respect to all former tenant lease terms will vice president within six months from the date of notification of the definitive ruling about the interests of the official document transferred to the new tenant does not, the sentence will be repealed acting.

#### **2-1-3 Transfer its share in the limited liability companies**

One of the businesses based on commercial law company with limited liability. Transfer its share in the limited liability company that is subject to a special legal regime with individual companies and the companies are different. According to Article 103 of the Commercial Code "transfer its share shall be made except in accordance with an official document." Why legislator on the transfer of its share partner in the limited liability company has stressed that this transfer must be pursuant to an official document? It is certain that the legislature had the right to establish its share transfer in writing demand as a right that can be transported in a quest, not a given yet. So, for the company and other partners will be able to transfer their confidence about it and decide it is necessary that this transfer is in the form of a written contract between the transferor and the transferee. However, the legislator is asked to transfer its share to the official document cannot be understood. The issue that arises is whether the legislature to transfer its share in the limited liability company as it is stipulated in the Article 103, requested the transfer accuracy of the official document is subject to adjustment. Looks set formal document conveying the basic elements of the transmission conditions as stipulated in Article 190 of the Civil Code the substantive

conditions. In fact, Article 103, transfer its share does not realize until after the formal document setting. (Skini, 2009, p. 255)

#### **2-1-4 Transfer recorded property**

The Iranian lawmaker: "Once the property was registered in the office of civil law state that only one property in his name registered or whose property has been transferred to him, and the transfer of property registered in the office or the official said that the property owner must be reached through inheritance to his owner's knowledge. (Article 22 BC) If the transfer to the ordinary document and records management did not transfer your transaction, if there is a protest, petition the transferee in accordance with the regulations and if time expired, can be transferred to the application layer to transfer warning shall, if the aforesaid transaction within 10 days from the date of notification of the property in the name of the transferee's acknowledged record or property registered in the name of the transferor and the transferee in accordance with Article 105 and 114 can pursue transmitter. (Article 43 AH) "Given these conditions, we can say that, according to Article 105 and 114 if the transfer is a normal document, and the procedure prescribed in this article do not adhere to the transferor is guilty of fraud. In fact, the transfer of the official document for both sides will be more in confidence.

#### **Use of facilities approved by the Landlord and Tenant Relations Act 1997**

According to Article 1 of the Law of Landlord and Tenant Act 1997, "the date of entry into force of this law of all places, including residential, commercial, local businesses, educational facilities, student dormitories and public buildings, and so the contract normal is signed or official regulations of the Civil Code and the provisions of this Act and provisions will be between landlord and tenant. "The law stipulates that the rent should be in the form of an official document or a normal document. Contracts that have been concluded orally also outside the scope of the provisions of the law, because, according to Article 1 of the places where the contract is signed or the normal function of the law. This under paragraph 3 of Article 2 of the Executive Regulations are unfamiliar with this phrase: "Captured by oral compromise with the landlord as rent." As stated above, according to unwritten rents outside the scope of this law and the law also does not specify what those leases may be in the relationship of two theories: One is that the leases could not benefit from the support unwritten expressed in terms of the provisions of this new law but subject to civil law and provisions will be between landlord and tenant. Another opinion is that this type of rent not covered by the new law and shall be subject to the provisions of previous legislation in 1977 or 1983 will be the landlord and tenant relationships. Given that philosophy and goal-setting the new law and civil law and legal regulations back to avoid interference in private entities of the first theory is further strengthened because the lease for the official document cannot be supported or not normal prescribed in the new law will benefit. But the appearance of a second opinion because the issue in accordance with the new law of that after entry into force of this law has been signed official document or normal. So as the leases that have been signed before the entry into force of this law,

including the requirements and shall be subject to the provisions of their own out. (Shiravi, 2000, p. 12)

### 3- Probative value of electronic documents

In the case of electronic probative value must be said, this issue will be determined by comparison with traditional instruments. In the case of electronic documents in electronic commerce Law legislator has separated the two types of document. The message data and message data normally divided or uncertain about the message. For sure, at first glance appears to be a conflict between the provisions of the e-commerce can be seen. Because Article 15 says: "All the messages that have been through the creation and maintenance of contents and signatures as set forth in the commitments of the parties or the party that commitment, and all the people who are their legal successors, and other works implementation of the ruling valid and credible judicial and legal documents. Article 15 reads: "The message given to the electronic records and electronic signatures sure not heard the denial and doubt can only be claimed or proved false data into the message that the message given to ways of respects has legal validity. "Compare this material Article 1292 of the Civil Code which states:" In the face of official documents or documents that are valid official documents, denial and doubt can be heard and the allegations of fraud in relation to these documents or stability that the documents in respect of the legal aspects of credit has fallen." It can be assumed that the legislator wants to make the data message and electronic document to the probative value of official documents make clear, however, is not pointed out and merely constitutes a valid and reliable instruments for the use of electronic documents that the use of this phrase is ambiguous with respect to the criticized. Apparently, the legislator did not want to make electronic documents in all official documents take into account the effects of the draft law which stipulates the "tantamount to official documents" had been changed. If the legislature had intended to refer only to the courts accept electronic documents have made clear that denial and doubt. So with regard to the initial conflict with Articles 14 and 15 of Article 13 EC on the one hand and Articles 14 and 15 and Article 1292 of the Civil Code by comparing the other hand, the question arises. The first is that if the legislator in Article 13 of the probative value of the message in general to the use of safe and reliable safety procedures in Articles 14 and 15 immediately transferred because the probative value of the message is sure to have exactly? Secondly, the legislator how and with what legal backing to have probative value of official documents is intended to make the message? That is how the law without regard to the conditions of Article 1287 of the Civil Code longer on the official document the document type is known as to the validity of each other? We should answer any one of these forms have not arrived. Compare with articles 14 and 15 of the Law because Article 13 EC can say: "Article 13 of paragraph 2 of Article 9 of the law of e-commerce has been adapted and can prove that the probative value of the message says:" The information in the message is of probative value. In assessing the probative value of a data message to the reliability of the method through which the message was generated, stored or posted notice. Reliability is also a way in which integrity was maintained and the way

through which the identity of the sender is determined to be due to other relevant factors." According to the provision of electronic signature exactly determine the probative value of the message and not given the matter due to the conditions put by the judge. But the difference of the data and the official document regarding the probative value of certain messages although the granting of such an effect to electronic signatures and data to make the message seem exaggerated precision electronic signature feature in Article 10 of the Constitution to make the recognition of this impact is quite justified. (Mazaheri, Nazem, 2008, p. 39). Given the uncertain message, simple or unsigned considered such a separation should also be said that in our legal system and layout. According to Article 9 of the UNCITRAL Model Law of Electronic Commerce in 1996 on the one hand provides that an electronic signature, whether simple or reliable because the data messages should not be ruled again by simple electronic signature and make sure the power proof is based on the ability to make a signature method of creating, storing and sending messages, maintain the integrity of information, the identity of the sender and other cases to be assessed. Although some argue that Article 7 cannot give a simple electronic signature and e-commerce law according to Article 10, Article 7 merely electronic signature is considered reliable. But there is no reason to justify this discrimination as simple as signing an electronic signature can be used manually in normal documents. In other words do not need to use an electronic communication, but also to make sure electronic signature electronic signature as simple as following a person's name in an e-mail or an electronic signature is scanned in a document the probative value of the. Signature of the probative value of this type of electronic signature unlike the material that is expressly dedicated to this issue in e-commerce there is no law. But the application of Article 13 of the Law on electronic commerce can be concluded that the probative value depends on the type of signature used to ensure safety procedures with regard to the importance of this issue and to exchange message. (Rezai, 2007, p. 110).

### Result

The concept of electronic documents and written documents is among the most important issues in Evidence. In principle, the formation of the phenomenon of electronic documents by increasing international trade is conducted through cyberspace. In fact, there is such a concept as the main vehicle for admission in today's world is electronic documents. Among the traditional arguments in written documents that are proof of claim documents are a new phenomenon and due to age and history of these two concepts are adapted more written documents and in the silence of the legislator usually rules the written documents referred. The main field of e-commerce is such an issue. The concept of electronic evidence, such as issues of foreign law into the legal literature of our country and legislators with e-commerce law has recognized it. In terms of international law and the UNCITRAL rules and procedures of the institution in the field of electronic documents is significant. One important thing that should be considered in the case of electronic documents, communicate these documents with modern day technology. The role of internet in the preparation and development of such documents can

be imagined that forged documents in the more dangerous and more negative consequences. It should be noted that if the documents are accepted as proof we have the expertise necessary to authenticate the documents exist in the judiciary. Another point that needs to be considered, the importance of privacy of electronic documents in virtual spaces. This is especially important in the context of the misuse of these documents. But written documents in civil law and in the third book as evidences about observes legislator is located. These two laws are far from each other when the need for mobility issues, especially in the field of e-commerce requires, in case of conflict, the law governing the new premier and a new legislator who will know why that happened to coincide with the necessities of modern life is preferred and preferred to know. The written documents that can be divided into regular and formal documentation, legal literature of our country is rich enough but it should be said in the case of electronic documents, check e-commerce law shows, the law is faced with uncertainty. In fact, the majority of which related to electronic documents and the probative value of its domestic law, the legal interpretations of the law have offered. But with the adoption of the law on e-commerce, the need for electronic acceptance is accepted. Article 12 of this law as an expression of this principle says: "Documents and evidence may have been a message in any court or government agency cannot be based on the rules of evidence, probative value simply because the message data or mold rejected it. According to the new phenomenon of electronic documents in civil rights, it seems, not much case law of the richness of our country so that we can refer to it in some cases, to demystify. Finally, the probative value of electronic documents and data messages in the message type normal, and normal is determined by comparison with official documents. In the case of the message data, the legislator stipulated in the law of e-commerce on its probative value, but given the probative value of certain messages legislator is silent with regard to the comparison of this document with ordinary document can be valid at a normal document it was prescribed.

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