

## The Application of the *Khiyar al-Tadlis* (Option of Deceit) Principle in Online Contracts and E-Consumer Rights

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### Abstract

The objective of this article is to discuss the Islamic legal mechanism which will provide an opportunity to e-consumers who have suffered losses in online transactions to revoke contracts or collect arsh (compensation). *Khiyar al-Tadlis* (option of deceit or misrepresentation) is an Islamic legal feature that is not found in any other legal system, as it originates from the Islamic law of contracts. This option exists in cases in which the disappointed party, i.e., an electronic consumer (e-consumer), can establish that his or her agreement to a contract was gained by the deceit or wilful misrepresentation of the other party (e-seller). *Khiyar* (option) means the authority to revoke the contract, and *tadlis* (misrepresentation) means to deceive the other party. This option is applied to maintain a balance in online contracts and to protect e-consumers from being deceived. This paper explores the legal protection of e-consumers' rights in online contracts through the application of the Islamic legal principle of *Khiyar al-Tadlis*. The paper scrutinises this Islamic principle by considering Iranian laws and European laws as a point of reference.

**Keywords:** e-consumer rights; *Khiyar al-tadlis*; online contracts; Islamic law; misrepresentation

### 1. Introduction

Legally, *al-khiyar* refers to the option or right of withdrawal, i.e., the right for the parties involved to terminate a legal act unilaterally (Jaafari 2011). In Western law, such as in the UK and France, this option corresponds to an act liable to a suspensory or resolutive condition, in accordance with the nature of options (AlwiHassan 2007; Mancuso 2007). In e-commerce, which is a limitless, accessible and untested virtual environment, the weaker parties, i.e., e-consumers and users, are frequently victims of unfair and unethical tactics, and they are also exposed to various threats. Muslim jurists have suggested a number of devices, such as options (*khiyarat*), to safeguard the contracting parties against hasty undertakings (Mansuri 2012, Aliabadi 2013). These devices, which are called *khiyarat* (options), a plural form of *khiyar* (option), provide parties who have signed contracts based on inadequate information and have then regretted their haste after finding some irregularities or fraud with an opportunity to contemplate their transactions and revoke the contracts (Islam 1998). These devices have been designed to maintain a balance in transactions, whether conventional or electronic, and to protect e-consumers from being harmed (AlZaagy 2007). Today, online transactions, especially the sale of goods via the Internet, have further increased the need for legal intervention in the realm of contracting, with the central goal of consumer protection (Bagheri and Hassan 2012a). It is important to reconcile the law with technology, especially in the context of ever-evolving Internet technology and in an era of virtual transactions, and to consider the welfare of society, including e-consumers' rights (Bagheri and Hassan 2012b). Buying and selling online via the Internet is hassle-free and provides a greater choice of goods and services. The phenomenon of options can be attributed to consumers' lack of confidence in and support of e-commerce, due to the inadequacy of laws to protect consumers against the risks of buying goods online (Bagheri and Hassan 2012c).

The ethico-legal attitudes and standards in commercial affairs, which form the basis of the rulings on commerce, are found in traditions from the holy Prophet of Islam, which display the spirit of his general religious teachings (AlwiHassan 2007). Islamic law discourages certain practices, such as lies and hidden facts in sales, fraudulence in trade and false swearing (Abdul-Wahab, 2010). On the contrary, Islam places great value on trustworthiness or truthfulness in

business transactions. The basic validity of options, and particularly of *khiyar al-tadlis* (option of misrepresentation), is proved by the authority of *Hadiths*, such as “the truthful merchant (is rewarded by being ranked) on the Day of Resurrection together with the Prophet, the truthful ones, the martyrs and the pious people” (Sahih Tirmidh, Hadith No. 1209) The Holy Qur’an also grants the right to such options to individuals with regard to trading, civil transactions and contract: “Whereas Allah has permitted trading and forbidden Riba” (Al- Qur’an 2:275) and further: “O you who believe! Eat not up your property among yourselves unjustly except it be trade amongst you, by mutual consent” (Al-Qur’an, 4:29). One of the legal issues that has various provisions in different legal systems and including in Islam is *tadlis* (deceit). There are few *hadiths* narrated in Sahih al-Bukhari which demonstrates the need of being honest in dealing or bargaining during sales. For example in *hadith* No. 996: narrated by Hakim bin Hizam, the Prophet SAW said, “the seller and the buyer have the right to keep or return goods as long as they have not parted or till they part; and if both the parties spoke the truth and described the defects and qualities (of the goods), then they would be blessed in their transactions, and if they told lies or hid something, then the blessings of their transactions would be lost” (M Muhsin Khan, 1996). Further in *hadith* No. 1008: narrated by Abdullah bin Umar: a person came to the Prophet SAW and told him that he was always betrayed in purchasing. The Prophet SAW told him to say at the time of buying, “no cheating” (i.e. he has the right to return it if found undesirable) (M Muhsin Khan, 1996).

The Iranian legal system for example, especially Civil Code 1936, recognises options (*khiyarat*). Article 396 of the Civil Code lists options of eleven types, but some legal scholars have argued for as many as fourteen (Naser 2011a, 2013b). Article 438 of the Iranian Civil Code refers to *khiyar tadlis* and defines *tadlis* as follows: “Trickery [*tadlis*] denotes conduct which causes the other party to the transaction to be misled”. According to this definition, *tadlis* is to conceal defects of the subject matter or to provide a complete description for something that does not really exist, after which the other party is deceived. In other words, the seller conceals the true facts to convey what, in fact, does not exist. However, as in online transactions, it is impossible for e-consumers to touch and see goods, and contracts conclude through descriptions of goods; therefore, e-consumers are more susceptible to deception. In cases in which *tadlis* causes a fundamental mistake, it renders the contract invalid. *Tadlis*, under the topic of misrepresentation in European laws, such as in the laws of the UK, has a broader dimension. According to the laws of the UK, there exist three types of misrepresentation that influence the way in which the law will be interpreted. Fraudulent misrepresentation occurs when a party is aware that he or she is providing false information to another party but does so anyway. Innocent representation occurs when a party believes that the information or representation is true when it is actually not true. Negligent misrepresentation occurs when one party does not take all factors into consideration when making a representation. This practise results in a careless representation, which induces the other party into a contract agreement.<sup>1</sup>

The objective of this study is to demonstrate that Islamic legal mechanism can provide an opportunity to e-consumers who have suffered losses in online transactions to revoke contracts or collect *arsh* (compensation). Although Islamic jurisprudence is based on ancient documents, it nevertheless can be adopted as good principles in addressing modern issues such as e-commerce. The Iranian code is an example of modern statute on e-commerce and has provisions on *khiyar al-tadlis*.

## 2. Methodology

The method used in this article is qualitative, i.e. using content analysis in discussing issues of Islamic legal mechanism as a possible tool in e-commerce transactions particularly on effects of deceit or misrepresentation. The verses of the Al-Qur’an and *Hadiths* are used to show that Islamic jurisprudence on commerce can be adopted for formulating legal framework in modern e-commerce. The Iranian code and the KK law are used as examples to describe the effects of deceit or misrepresentation in e-commerce. The method of writing this article is descriptive and to a certain extent, analytical and an acceptable approach in legal discourse.

## 3. The Concept of *Tadlis* (Misrepresentation)

*Tadlis* literally means “darkness and fraud”, and in Islamic law, it means to conceal a defect (Tebyan, Available at: <http://www.tebyan.net> Accessed on 12 July 2014). *Tadlis* is an untrue concept that one party of a contract creates in the mind of the other (Naser, 2009b; Shahidi 2013). Misrepresentation can be prosecuted as a crime, in a civil lawsuit or both. From the Islamic legal point of view, civil *tadlis* is closely related to *khiyar aib* (option of defect), and criminal *tadlis* conceptualises fraud. In Iranian and French law, *tadlis* is part of the consent’s defect, while according to UK law, *tadlis* is

<sup>1</sup> (available at: [http://www.ehow.com/info\\_8245358\\_laws-misrepresentation.htm#ixzz28410fNNI](http://www.ehow.com/info_8245358_laws-misrepresentation.htm#ixzz28410fNNI) Accessed on 1 Feb 2014).

not the consent's defect but is instead a defective factor of the contract (Owsia, 2014). In other words, in UK law, the defect of the contract exists not because of a defect of the parties' consent but rather because the misrepresenter induces the other party (e-consumer) to conclude the contract and does not truthfully represent a condition in the contract. Therefore, to prove misrepresentation according to European laws, such as those of the UK, the following criteria must be met: (UK Misrepresentation Act 1969):

- A false statement of fact was made;
- The statement was directed at the suing party; and
- The statement was intended to induce the suing party to enter a contract.

Moreover, regardless of the negligence, intention or honesty of the representer, *tadlis* is created, although the type is different. In fraudulent misrepresentation, the remedy is the collection of compensation, voiding the contract or both, which is granted to the recipient. At the same time, for innocent or negligent misrepresentation, according to section 2(2) of the UK Misrepresentation Act 1976, collecting compensation and voiding the contract are granted to the recipient. However, there is no equivalent legal term in Iranian or Islamic law for the innocent and negligent misrepresentation theory presented in UK law. In addition, European laws, such those of France and the UK, do not refer to the definition of *tadlis*, while the Iranian Civil Code provides such a definition in Article 438. According to the Iranian Civil Code definition, *tadlis* denotes conduct, but this conduct can be a false statement, an act or even an omission (intentional silence). However, the following are the characteristics of *tadlis* according to Iranian law (Boroujerdi, 2013):

- An untrue or ambiguous attribution of the goods is made;
- The e-consumer is deceived;
- The deception cannot be ignored;
- *Tadlis* must be intentional;
- *Tadlis* must have occurred before the conclusion of the contract; and

The e-consumer must have been induced by the e-seller's statement.

United States law distinguishes between intentional and unintentional misrepresentation. In terms of unintentional misrepresentation, US law entitles the victim to rescind a contract only when the misrepresentation is about fundamental and significant characteristics of the subject matter, while in the case of intentional misrepresentation, the right to cancel a contract always exists. However, both UK and US law provide that in the case of unintentional misrepresentation, the parties are restored to the statuses they were in before they entered into the contract. Iranian laws, such as the Civil Code, only recognise intentional misrepresentation.

Moreover, in US law, a party can be sued for fraudulent misrepresentation when there exist the following five factors: (i) representation; (ii) falsity; (iii) scienter; (iv) deception; and (v) injury.<sup>2</sup>

#### 4. *Tadlis* Formation Criteria in Islamic Law

A ruling of fraud or deceit (*khiyar tadlis*) can occur consequent to a contract for the sale of goods when the seller conceals any particular aspect of the goods to be sold, thus resulting in the purchaser being cheated (Billah, 2006). The application of the Islamic legal mechanism of *khiyar tadlis* gives the e-consumer the right to void a contract or collect compensation (*arsh*) to remove the unjust loss that he or she has suffered. In other words, this option provides the right to rescind the contract if the e-seller perpetrates a fraud that causes loss to the e-buyer. Among the significant examples of *tadlis* in Islamic law is *tasriyeh*. *Tasriyeh* means to abstain from milking an animal that has not been milked for a few days to increase the amount of its milk at the time of sale. According to the Islamic principle of *la zarar* (no damage or loss) or *hadith* (the Prophet's (swa) practices), Islamic scholars consider a sale to be *haram* (forbidden), or not *halal*. On the grounds of Iranian laws, such as Civil Code, torts or non-contractual agreements are based on the *la zarar* (no damage or loss) principle. This principle focuses on compensation for the injured or damaged party and states that no damage can be suffered without compensation, whether a defect is patent or hidden (Naser, 2009a). In the case of *tasriyeh*, a party, for example, the owner of a cow, (A), wants to sell the cow to (B), a buyer. Before offering the cow, the owner (A) purposely puts the cow in such a place that it produces more milk than usual, the purpose being to conceal the usual habitual yield of the cow and obtain a higher price from the buyer (B) (Billah, 2006). Hence, under Islamic law, such concealment is not permissible, and the contract in such a situation is held to be voidable at the option of the purchaser, or *khiyar tadlis*, who, after realising the concealment of the goods or item sold, is free to ratify or rescind the contract (Coulson, 2011). The exercise of the option of deceit (*khiyar tadlis*), however, is still subject to the purchaser's ability to

<sup>2</sup> (Available at: <http://law.lexisnexis.com/infopro/zimmermans/disp.aspx?z=1896> Accessed on 25 June 2014).

prove, within a amount of reasonable time, that this contract was obtained by wilful deceit or misrepresentation by the seller (Mohammad Akbar Khan, 2011). However, in *tasriyeh* in which the *mens rea* (intention) is not fraudulent, for example, if the owner forgets to milk the cow for a few days and consequently his or her intention is not fraudulent, there is no reference to such matters in *Fiq al-Islam*; as *tasriyeh* in itself is *tadlis* and has encouraged the buyer to enter into the contract, the buyer retains the right to void the contract (Owsia, 2014).

According to the Iranian Civil Code, Article 438, for the conclusion of *tadlis*, the conduct must cause the other party to the transaction to be misled. According to Article 438, the intention of the presenter is not essential for the formation of *tadlis*. Therefore, the Iranian legal system is identical to UK law on this point, in which fraud occurs based on a lack of truthful confidence, rather than to French law, in which it occurs based on the representer's intentions. Another example of concealment is an action that raises a price, even if there is no defect in the object of sale, for instance, holding the water of a mill and releasing it at the time of sale to make the mill run unusually quickly in its rotation, thus deceiving the buyer into paying more for it (Zuhayli, 2007).

*Tadlis* can occur in the form of *masheteh* (making up), as in to make up a woman who intends to marry in such a way to hide her defects with makeup to deceive the potential groom (Zein O-Din Ali, 1983). In *tadlis of masheteh*, the intention, or *mens rea*, is an essential factor in the formation of *tadlis*. Price-hiking, or *al-najash*, is another example of *tadlis* in Islamic law. This practice occurs when a third party intentionally bids up the price of an object with no intention of buying it. As this practice deceives the buyer, it is *haram* (forbidden) in Islamic law (Khan, 2011). However, in this case, if the buyer was aware of the high price but still fell prey to the trick, then he or she has no option and should blame his or her loss on his or her haste. In all of the legal systems of the world, there is a difference between conduct or advertising, which is typically used to encourage buyers to enter into contracts, i.e., trade puffs, and fraudulent conduct, which is intended to deceive the buyer. Considering the usual advertisements and trade puffs as fraudulent statements or conduct, there is no stability in concluding sales contracts in any form, online or conventional. The United States Federal Trade Commission (FTC) has defined puffery as a "term frequently used to denote the exaggerations reasonably to be expected of a seller as to the degree of quality of his product, the truth or falsity of which cannot be precisely determined".<sup>3</sup> The difference between the trade puffs and *tadlis* depends on the usage (*urf*) of the country. According to Iranian laws, such as the Civil Procedure Act Article 3 and Iranian Constitution Article 167, all cases must be adjudicated, and none can be left without adjudicating. Article 3 of the Civil Procedure Act states that: "the judge is bound to endeavour to judge each case on the basis of the codified law. In case of the absence of any such law, he has to deliver his judgment on the basis of authoritative Islamic sources and authentic *fatwa*. He, on the pretext of the silence of or deficiency of law in the matter, or its brevity or contradictory nature, cannot refrain from admitting and examining cases and delivering his judgment".

## 5. *Khiyar Tadlis*: Its Conditions and The State of Silence

The provisions of the Iranian Civil Code are ambiguous with regard to silence on the part of the seller, but it is apparent that to conceal the hidden defects of goods is considered *tadlis*, while in UK law, mere silence is not legally misrepresentation (Habibzadeh, 2011). Any intentional act or omission, which in itself is a state other than mere silence and is contrary to good faith in concluding contracts, is *tadlis*. Article 35 of the Iranian Electronic Commerce Law of 2004 refers to the consideration of good faith in online commercial transactions. However, e-consumers' self-deception or mistakes in their personal inducements, which do not influence contracts, cannot be recognised as *tadlis* (Habibzadeh, 2011).

Under UK law, which originated from the theory of *caveat emptor*, "let the buyer beware", silence cannot be considered *tadlis*. Meanwhile, under the following circumstances in terms of misrepresentation, silence can be considered by the court: (i) if representation was made during negotiations, which later was no longer true, there is a duty to make a correction; (ii) one cannot simply tell half-truths; and (iii) it is possibly misrepresentation when a person says that he or she is "unaware" of something but has, in fact, not checked and when, in contracts of insurance, which are entered into on the grounds of the utmost good faith and in which both sides are meant to disclose to each other all material information, all of the information has not provided<sup>4</sup>. Similarly, in Islamic law, there exists no liability for silent sellers except when it is essential to speak about the goods being sold (Aliabadi, 2013). The *actus reus* of *tadlis*, which can be represented as an act, a statement or the keeping of silence, is not sufficient for the formation of *tadlis* in transactions (Shahidi, 2013). Rather, *mens rea*, i.e., the intention under the influence of which the victim entered into the contract, is

<sup>3</sup> (Available at: [http://en.wikipedia.org/wiki/Contract#Contractual\\_terms](http://en.wikipedia.org/wiki/Contract#Contractual_terms) Accessed on 2 January 2014)

<sup>4</sup> (Available at: [http://www.ehow.com/info\\_8542087\\_elements-fraudulent-misrepresentation.html](http://www.ehow.com/info_8542087_elements-fraudulent-misrepresentation.html), accessed on 2 January 2014)

necessary for the formation of *tadlis*. Therefore, two factors are significant:

- a. the intention to deceive exists and is acted upon; and
- b. the victim has been influenced as a consequence.

To enforce *khiyar tadlis* by the victim, according to Islamic law, *tadlis* must occur before or at the time of the formation of the contract, and therefore, it is different from fraud, which occurs after the conclusion of the contract. With regard to US law, silence does not mean *tadlis*. However, there is a difference between non-disclosure and concealment. Based on UK law, the *mens rea* for *tadlis* is a lack of a confidential relationship. It means that the transaction could not have been impeached if no such confidential relationships had existed (Furmston, 2006).

In contrast, in French law, the factor of intention is the will of one party to deceive another party. Therefore, the meaning of *tadlis* is much broader in UK law. For instance, in UK law, a party that consciously, without fraudulent intention and without intention of deceit, lies to another party is a misrepresentor, while in French law, he or she is not (Habibzadeh, 2011). Moreover, to establish a finding of fraudulent misrepresentation, the statement must have been factual and not an opinion. For example, a used car dealer generally will not be held liable for comments such as "This is a great car". Second, the misrepresentation must have occurred with regard to a material fact. A material fact is one that would make a difference between a reasonable person acting or not acting.<sup>5</sup>

In Islamic law, upon which all Iranian laws must be based, deception occurs in the following forms.

- (i) Deception can occur verbally, by communicating unfair prices, for example, if the (e-)seller says to the (e-)buyer, "This item is worth more, and you will never find its equal", and that statement is not true; and
- (ii) Deception can occur through action, by communicating a false description of an object of sale, for instance, if the seller or buyer fraudulently claims that the object of sale contains a characteristic that it does not. For example, if a seller places the best-quality items on the top of a display, hiding the worst at the bottom, to give the impression that the average quality is higher than it is in reality, the result is *tadlis*.

*Tadlis* cannot be concluded by a third party (Naser, 2009b). In Islamic law, the presentation of a third party, in terms of *tadlis*, can only be recognised in price-hiking or *al-najash*, a practice that occurs when a third party intentionally bids up the price of an object with no intention of buying it. In UK law, because misrepresentation must be committed by one of the parties of the contract, a third person who is not one of the parties cannot be considered a misrepresentor (Owsia, 2014). Article 439 of the Iranian Civil Code also states that *tadlis* cannot be formed by a third party, stating, "If the seller practices trickery, the purchaser will have the right to cancel the sale, and similarly with the price paid by the purchaser, if the latter practices trickery". However, *tadlis* of a third party cannot void a contract unless it is clear that there was collusion between the third party and the misrepresentor.

## 6. *Tadlis* in Online Contracts

In online contracts, the supplier or provider has complete knowledge of all of the aspects of the product, while the consumer can only evaluate the goods based on the seller's description, through the Web site or on a computer screen (Billah 2008). In other words, the e-seller is liable to the e-consumer for any lack of conformity that exists when the goods are delivered to the e-consumer. In addition, the only way for the e-consumer to become aware of the defects of the goods is through the description. Therefore, in online transactions, there is no chance to see the sample; this process can only be accomplished through pictures, descriptions or providing some information about the goods because there is no opportunity to handle the goods physically. Iranian Civil Code Article 410 grants consumers the right to nullify contracts, stating, "If a person should buy a thing from its description only without having seen it and should then find on inspection that it does not possess the description which had been made, he has the option of either canceling the sale or of accepting the object as it is". This type of consumer's right is discussed under the *khiyar aib* (option of defect) or *khiyar shart* (contractual option of stipulation) (Bagheri et al 2012). The option of deceit or misrepresentation (*khiyar tadlis*) is another Islamic legal mechanism that guarantees the rights of the consumer in terms of deception. As mentioned, *tadlis* is formed by the seller when she/he does not represent his/her goods as they are, represents them as better than they are or even hides the defects of sold goods. In online advertisements, e-sellers sometimes exaggerate the descriptions of their goods or provide dubious descriptions, which results in deceit of the e-consumer. Online deception is not reciprocal, meaning that e-consumers pay only the price of the sold goods in money, and the online consideration is not goods; therefore, *tadlis* seems to be concluded by the e-seller, unless another arrangement has been made (Gringras & Todd, 2008). In other words, when a person orders merchandise from a Web site, a bilateral contract is formed because the merchant promises to send the goods in exchange and the e-customer promises to pay.

<sup>5</sup> (Available at: [http://www.ehow.com/info\\_8542087\\_elements-fraudulent-misrepresentation.html](http://www.ehow.com/info_8542087_elements-fraudulent-misrepresentation.html), accessed on 2 January 2014).

According to the Iranian Electronic Commerce Law of 2004 Article 35 on contracts for distance selling, "the stated information and acknowledgment of stated information to the consumer shall be provided in a durable medium, clear and comprehensible manner in good time and by use of appropriate means of communication within a certain period, with due regard to good faith in commercial transactions, such as special measures for the disabled, and the children". However, if because of an attractive advertisement on a Web site, an e-consumer is encouraged to enter into an online contract, it cannot be recognised as *tadlis*, unless the owner of the Web site advertises some untrue characteristics of the goods. For example, suppose the Internet and Technology Communication Web site advertises a telephone and Internet line with powerful speed, and an online consumer enters into a contract because of the speed of the connection. After receiving the pack, the e-consumer finds that the speed of package is not high but is a normal-speed package. Because the speed of the package is a fundamental characteristic of this contract, *tadlis* has occurred. In Iranian law, because of the fundamentality of the unreal characteristics, the contract is void, and *khiyar tadlis* is not applicable for the e-buyer in the case of the online purchase of the Internet line. In UK and US law, the victim has the right to rescind the contract, and the parties are restored to the statuses they were in before they entered into the contract. This condition is especially favourable for the victim, as he or she leaves the contract without incurring liability for not meeting the terms of the contract.

A court can issue an order of rescission to restore the parties to their previous statuses before a contract.<sup>6</sup> In the case of online insurance for passengers, an insurer must provide adequate information such that the passenger would not have entered into such a contract if this information had not been presented. The contract must be concluded with the utmost good faith; otherwise, the insured will have the right to apply *khiyar tadlis*. For example, in cases in which a passenger has some valuable items, such as jewellery, and insurance for those things is very important to him to the extent that without insurance he would cancel his flight, if the insurer does not offer complete information about that insurance, then such a contract is void.

In online contracts, drawing a certain line between *tadlis* and a mistake is very difficult. For instance, in an online contract, an e-consumer might order goods, but after delivery he might realise that the goods do not correspond with his order. He can either accept the excuse that at the time of the online purchase he had mistakenly clicked on the wrong goods, or he can claim that the goods do not match the characteristics mentioned on the Web site. In the first case, a mistake has occurred, while in the second instance, the contract is questionable because of the formation of *tadlis*. Under Iranian law, the verdict for both situations is the same. If the e-consumer has been induced by any fundamentally untrue online statement of fact or mistake, the contract is null. Meanwhile, if the mistake or *tadlis* occurs in the subsidiary characteristics of the goods, the e-consumer has the right to apply *khiyar tadlis* or rescind the contract. At the same time, under the laws, other countries, such as the UK, misrepresentation (*tadlis*) and mistakes have different meanings with different verdicts. According to UK law, a contract can be voided in the case of a mistake if:

- (i) The mistake was fundamental;
- (ii) The mistake itself induced the contract; and
- (iii) The mistake was operative in terms of the contract (Chissick & Kelman, 2002).

However, misrepresentation can occur in the form of fraudulence, negligence or innocence, which differ from mistakes. If a mistake is fundamental, then it can negate one party's consent to the agreement of a contract, as when the mistake induces the e-consumer to enter into the contract. For instance, suppose a consumer particularly wants to purchase a product from a famous dealer because of its reputation and its name, and in this case, the customer has mistaken the company's name for another name, thus being induced into entering into the contract. In addition, to be considered operative, the mistake must meet three criteria: (a) a reasonable person could not infer the intentions of the parties involved in the transaction; (b) one party knew of the other's mistake; and (c) where one party negligently, directly or indirectly, induced the other's mistake (Chissick & Kelman, 2002).

In case of option of defect (*khiyar aib*) in transactions, the Iranian Civil Code in Article 436 recognises exemption clauses that a seller can put into a contract, stating, "If the seller accepts no liability for the defect in such way that he can establish the fact that he was not responsible therefore, or if he sells the object with all its defects, the purchaser will have no right to recourse against the seller when a defect appears; and if the seller makes reservations against one particular defect, he will be relieved of liability only in respect of that particular defect". However, inserting exemption clauses, confining the scope of the liability of Web sites in their sales windows, and announcing their innocence of damages because of misrepresentation (*tadlis*) will limit the application of *khiyar tadlis*, which would be unfair and unjust (Dayani, 2010).

<sup>6</sup> (Available at: Laws about Misrepresentation eHow.com [http://www.ehow.com/info\\_8245358\\_laws-misrepresentation.html#ixzz284JVslWt](http://www.ehow.com/info_8245358_laws-misrepresentation.html#ixzz284JVslWt). Accessed on 5 Jan 2014).

## 7. Conclusion

The application of the Islamic legal mechanism of option of deceit or misrepresentation (*khiyar tadlis*) guarantees to some extent the e-consumer's rights and helps maintain the balance between the e-seller and e-consumer in online transactions. The scope of *tadlis* in European laws, such as those of the UK, is broader than in Iranian law. While *tadlis* must be intentional under Iranian law, in UK and US law, *tadlis* can be unintentional or negligent. Consequently, the legal effects of *tadlis* will be different among these systems. According to Iranian law, when intentional *tadlis* is related to the fundamental characteristic of the contract, the contract, whether conventional or electronic, will be null. Meanwhile, based on European laws, such as those of the UK, the victim can rescind the contract or collect compensation. Moreover, under European laws, such as those of France, in the interest of the e-consumers' rights, the insertion of exemption clauses that are against the public order is forbidden, while Iranian law (Civil Code Article 436) implicitly recognises that the seller can establish that he or she is not responsible for the defects of sold goods; therefore, the application of the *khiyar tadlis* will be questionable. However, although the application of *khiyar tadlis* in online contracts is an Islamic legal mechanism to protect e-consumers' rights, Iranian law, which is based on Islamic provisions, must be revised to meet the needs of consumers.

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