

Legal and Juridical Aspects of Virtual Games: An Overview of Islamic and Iran's Law

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Abstract

Today, cyberspace provided the ground for a new generation of computer games referred to as Virtual Games, where because of their special features, they have gone beyond a game and besides fun and entertainment, play other roles for peoples. Since these kinds of games are played through the web and in the online form, they are often known as Virtual Games. This virtual context has turned them to popular and global games. Universality and seriousness of the virtual games have provided opportunities and threats for policy and decision makers in different areas, such as social, economic, cultural and legal areas. Although, computer games, as a part of the entertainment industry, mainly interact with economic and cultural fields, the specific features of the games, including the possibility of buying and selling Virtual Items during the game, have raised new juridical and legal challenges. The most important juridical and legal aspects of the virtual games include, first their legitimacy, and second the legal status of trading online items during the game which is known as In-Game Transactions. This paper tries to show juridical-legal analysis on the challenges mentioned above.

Keywords: Cyberspace; Computer games; Virtual games; Virtual items; In-games transactions

Introduction

The Game is considered as an interdisciplinary issue, which, from different perspectives, has attracted the attention of the scholars in various fields of science, such as social, communication, electronics sciences, and even the humanities. So, like all other interdisciplinary subjects, studying all aspects of gaming is in need for a systemic discipline, referred to as Gaming Studies [1]. Meanwhile, the juridical and legal sciences take the humanities approach toward games.

Although, in the humanities, gaming has most attracted the attention of behavioral sciences, sociology, psychology, theology and philosophy and jurisprudence and law (especially in Iran) have paid little attention to this topic. Gaming and entertainment industry, especially in computer games, thanks to IT development, has experienced significant quantitative and qualitative developments and has turned into an interdisciplinary field that demands a stronger presence of law sciences. Cyberspace through introducing a new generation of video games referred to as virtual games has caused dramatic improvements in the entertainment industry and has created works more than fun and entertainment. Online games take place in an online environment and thus turn to universal games; they go beyond merely fun and entertainment and adopt a seriousness feature. In other words, virtual games are not mere games, rather they are serious. The features of being serious and universal, meets policy makers and decision makers, in various cultural, social, economic, and legal fields, with new opportunities and threats.

In the present-day, computer games especially virtual games have important role in developing trade and economic capacities in electronic business. What has turned virtual games to an important issue in economy and trade and thus has involved the law science in this field. Most of the virtual economy is conducted through in-game transactions in the virtual worlds. In contrast to the real-world economy, virtual economy refers to that part of an economy which is based on in-game transactions and online gaming conducted through the exchange of virtual currency or in-game currency with real currency [2]. The video games industry has introduced a new online business in the e-commerce arena in which the possibility of trading during online gaming is provided sales of virtual goods and items.

With a juridical-legal approach to trading in virtual games, as an immersing phenomenon with no precedent, the first question that arises is What is the position of such trading with the legal permissibility or impermissibility and juridical validity or invalidity? The origin of this question lies in what is bought and sold. Since everything happens in the cyberspace, the question may be: About the juridical and legal perspective, is it correct to buy or sell something which is not physical and tangible and its role and value will be showed only during the game and only for players of the game? Analyzing transactions in online games needs settling legitimacy and Legality of online games. So, the study also finds out the juridical and legal aspects of online games, first about legitimacy and legality of online games and then validity or invalidity of In-Game Transactions.

Cyberspace as a New Platform for Game Industry

The term cyberspace has become a conventional means to describe anything associated with the internet. Cyberspace was able to represent the many new ideas and phenomena were emerging [3]. The virtual

Games can be one of those new emerging phenomena which because of their special features and modern gaming platform have gained much popularity over the past decades. Although, the virtual games have not been paid attention to in the legislation, judicature and the academic field, but in practice, they are on a rapid rise.

Virtual games

The term game literally refers to entertainment, avocation, sport, hobby, childish and non-serious behavior or every activity which is a source of entertainment. The term game in Arabic language equals la'eb and sometimes lahv-o-laeb (here means game), which includes all kinds of motions, movements or exercises conducted with the aim of entertainment, recreation, or sport [4]. Game is an English word bearing the same aforementioned meaning [5].

In common term, several definitions provided for the word game, each of which is based on a specific approach to the Game. According to some definitions, game is a series of moves and physical and mental activities which leads to happiness, vitality, enjoyment, and communication with others [6]. Or the term game refers to any entertainment conducted intentionally to fun and entertainment that follow no specific profit, result, or outcome [7]. At last, the term game refers to any voluntary actions which are done for fun, and joy, regardless of its result [8].

As the definitions imply, leisure or entertainment is an integral and inseparable part of the games; but they can have other values and roles, such as educational purposes. So, a more comprehensive definition of the game can be presented. We can say that: "Game is a fun and optional activity which includes one or more players and follows a specific purpose. To gain the predetermined goal, the players have to follow some laws and regulations." Then, Virtual or online game can be defined as "a specialized application or technology, which connects players through the Internet or in cyberspace" [9]. Or it is "a physical or mental contest, played according to specific rules, with the goal of amusing or rewarding the participant".¹So, Virtual or online game is a specialized application or technology, which connects players through the Internet or in cyberspace.

Distinctive features of virtual games

Higher speed Internet networks connections encouraged developing games industry so that now virtual online games as a new market are becoming the dominant discourse of e-business [10].

Virtuality

The Virtuality in computer Science relates to the Virtual Reality and means Computers Created, simulated, or carried on by a computer or computer network [11].

Here, in gaming context refers to the spatial nature of online multi-players gaming. Virtual Reality is a persistent, simulated and immersive environment, helped by networked computers, providing several users with avatars and communication tools with which to act and interact in-world and in real-time [12]. This feature of virtual games which is provided by the cyberspace technology, allows many of game players to play the same game together. For this, the virtual games are called massively Multiplayer Online Games (MMOGs) in which players interact within a Virtual World. Here, Virtual World as a general term is the virtual environment of Internet which supports a verity of play and gaming.

Seriousness

The virtual games are also described as Serious Games [13]. The Seriousness of online games refers to a content that may well be used as something rather than entertainment or it is better to say something plus entertaining. So, Serious Games is "Games that do not have entertainment, enjoyment or fun as their primary purpose".

As the entertainment is an inseparable part of the games; then it is better to define serious games as "any piece of software that merges a non-entertaining purpose (serious) with a video game structure (game)" [14].

The serious adjective is prepended to refer to products used by industries like defense, education, scientific exploration, health care, emergency management, city planning, engineering, and business. The function or non-entertaining objects of virtual games which attracted legal study and cause rule of law on the virtual world is trading and commerce. As in the real world, there are also buying and selling in the virtual world games in which, some goods and products are traded online between game players [15]. So, the Virtual Games can be considered as a new market for transactions and developments of commercial law in cyberspace. For this, there is a growing trend in virtual world commercial transactions [15].

The Place of Game in Law and Jurisprudence

From a juridical and legal perspective, perhaps the first issue which should be considered about an emerging phenomenon is its legitimacy or legality because there is no precedent about it and legislators have access to no legislative and regulatory actions for them. The same is true for online games largely; therefore, the primary question about online games is that: What Legal and religious commandments about them? In Iranian jurisprudence and law, no separate heading or position is devoted to gaming generally and online video games particularly. But, the rules and regulations of the game addressed under the heading gamble or gambling. So, explaining the legal and judicial position of the games, especially online games, as a new phenomenon, should be studied under the Islamic juridical and the legal regulations of gamble and gambling. Thus, first theoretical principles and position of the games should be investigated according to law and jurisprudence to identify the legal and judicial status of online games accordingly.

Gaming in jurisprudence: legitimacy and its diagnostic criteria

Although there is no separate discussion about the game in judicial resources, there are some legal and religious commandments about games in different occasions and fields. Game has mainly been addressed by jurists under the heading of gambling. The judicial position of online games, given that these kinds of video games are also a subset of games, is considered in jurisprudence. The legitimacy or illegitimacy of all games in jurisprudence will be assessed by two clear and unambiguous criteria, i.e. type of game tools and instruments and betting (win/lose contract). From this perspective, jurists have classified Games into four groups [16]:

- A) Playing by gambling instruments with win/lose contract;
- B) Playing by gambling instruments without a win/lose contract;
- C) Playing by other non-gambling instruments with win/lose contract;

D) Playing by other non-gambling instruments with no win/lose contract.

In this regard, prohibiting the first group of games which contain both types of prohibition conditions, i.e. playing by gambling instruments and having win/lose contract, and the permissibility of the fourth group which lack two aforementioned provisions among all jurists. About the second and third categories of games, each of which meets one of the conditions of prohibition, however, there is no such consensus and some prohibited these games because of gambling instruments or betting [17]. But, most jurists prohibited these two categories of games. As a result, it can be said that two factors lead to gambling and therefore prohibiting the game in jurisprudence. The first is to use gambling instruments and the second is to bet [18]. Jurists have not referred to some types of game and have tried to provide some regulations to determine lawfulness and unlawfulness of all kinds of gaming or entertainment [19].

Gaming in law: Legality and its statutory basis

Similar to jurisprudence, the Game and especially online video games have no separate heading in Iranian law and the rules and regulations governing the game should be studied under gambling and betting titles. Articles 705 to 711 of the Islamic Penal Code of Iran have addressed the subject of gambling and the regulations governing it. In the Penal Code, gambling refers to the games conducted with specific gambling instruments and considers them as crime. As a result, the main condition for a game to be criminal and gambling is to use gambling instruments and tools or any forbidden instrument. So, legislator has considered only one of the two needed conditions for lawfulness and unlawfulness of the games in the Iranian penal law.

Also, gambling and betting are prohibited according to civil law. According to the Article 654 of the Civil Code, wagering and gambling are considered invalid transactions; therefore, the claims about them will not be heard and any transaction in this regard will be illegal and invalid. According to the mentioned rules, gambling is an unlawful crime and no explanation presented about the type or form of gambling (for example, online gambling). This suggests that there is no difference in this respect between gambling with traditional methods (in real-world) and gambling in the era of computer technology and the Internet (in cyberspace). So, if any of the online games is played by gambling or betting instruments, it will be subject to these regulations.

The Legal and Juridical Status of Virtual Games

Legality and legitimacy of virtual games

Based on what was stated above, on the judicial and legal position of the games and especially the online or virtual games, it should be said that, from judicial perspective, unlawfulness of the games is subject to at least one of the two requirements: using gambling instruments or win or lose contract. According to Iran's law unlawfulness of a game and illegality of related transactions, it is only subject to using common gambling instruments. As a result, those online games that do not have these two conditions are legally permissible and lawful. For example, all sorts of strategic online games (like Clash of Clans) will have no legal prohibition from this perspective since they use no gambling instrument or lose/win contract, but, the main aim of the players is to adopt a right strategy to overcome the opponents to improve their positions in the game [20].

Legal and juridical validity of in-games transactions

One of the main factor that provide a high economic capacity for online games and turns them to a new model of e-commerce in the electronic business, is the possibility of trading during the online games which takes place in virtual goods and items. Since the game and the transactions are fully done over the Net, the bought or sold items do not exist in the real world and are not tangible or physical. But, the transaction is real and the involved parties pay real money in exchange of the traded item. So, the legal-juridical position of transactions in online games, for being valid or invalid, depends on observing basic terms of transactions according to jurisprudence and law.

In Iran civil law, which is derived from Imamiyah jurisprudence and based on the jurists' famous opinions, the main prerequisites for validity of a transaction are mentioned in Article 190 of Civil Code. According to the Article: For the validity of a contract the following conditions are essential:

- 1) The intention and mutual consent of parties to the contract.
- 2) The competence of parties.
- 3) There must be a thing which forms the subject-matter of the contract.
- 4) The cause of the transaction must be lawful.

Given three first conditions for in-game transactions which are outside the scope of this article, the fourth condition, i.e. named subject for transaction should be analyzed for the virtual items. In legal literature, what is bought or sold is called Object of the Transaction, and as it was mentioned earlier, it is one of the conditions for validity of a transaction. The subject-matter of the contract should enjoy the features determined by law. The legal terms and condition for the validity of the object of contracts are mentioned by the Articles 214-2165, and 3486 in Iran's Civil Code. So, what can be legally traded which has the following conditions:

- a) To be property;
- b) Comprise rational benefits;
- c) Have legitimate benefits;
- d) Its delivery is possible;
- e) Not be obscure and unknown; and
- f) Be specified.

What may challenge the validity of in-game transactions refer to the object matter of transactions, Therefore, if the virtual objects and goods traded during an online game comply with all conditions prescribed in section 3 of Article 190 and the requirements of the object of sale stipulated in Articles 214-216, and 348 in Iran's Civil Code, then the in-game transactions will be valid from the view of Iranian Jurisprudence and Law.

What may challenge the validity of virtual items as lawful objects; refer to two challenging features of such items. In other words, the legality and legitimacy of in-game transactions depends on the solving the following two controversial characteristics of virtual objects: First, to be a property (al-mal) and second, nonphysical and immaterial feature of virtual objects and goods. So if these two challenging issues are resolved, then there is no doubt about the validity of selling and

buying in the online games form view of Iranian Jurisprudence and Law.

Virtual items as property

The term property in this article used to denote the meaning of mal in Persian and al-mal in Arabic language. In other words, the closest English meaning of the word mal and al-mal, is property. Property and the criteria for the diagnosis of proprietary worth have various definitions in Law and Jurisprudence; however, there is not observed one definition for property accepted by consensus of jurists and lawyers. This may be of the customary attitudes of Jurists and lawyers, which caused it somehow needless of a definition.

Although, there is no well-defined and integrated property definition in the legal texts, but in summary, in some definitions the beneficial nature of the object considered as a key criterion of property. From this view property is "anything that has a beneficial nature" [21] or "what is normally desired and can be stored up for the time of meeting the needs" [22]. From criterion of acquisition and possession, property refers to something that could be possessed by one or more persons. To sum up, property is defined as "something that has economic value" [23]. The difference in approach has led to several different definitions on property and the attributes of profitability, meeting the needs, tradable, the willingness and wish of the wise, the ability to be captured and possessed and the like are repeated in different terms while defining property. We can sum all the characters expressed for property in two conditions.

Summing-up the various definitions of property in jurisprudence and law sources, property is something which notes two basic conditions: a) being useful and being able to meet human needs (whether material or spiritual). B) It can be assigned to a specific person(s). It seems these two criteria provide a good basis for defining property that can encompass all the above definitions. So, we can say two key criteria are needed to recognize something as a property: usefulness and exclusivity [24]. As a result, to be a property, virtual objects must meet these two conditions. If virtual goods and objects traded in online games have two features of usefulness and exclusivity, they will be considered as properties view of law and juridical terms. So, the virtual objects and goods should be studied through these two conditions.

Usefulness of the virtual object

Usefulness or profitability means to be useful and profitable to meet the people needs. So, from view of public, property has economical and exchange values. In new theories of contemporary jurisprudence and law, deviating from traditional theories on property, the legal and judicial concept of property does not refer to objects anymore and it refers to human relationships on objects; in other words, objects are regarded as property because of their value in individuals' relationships. As a result, from this view, property is defined not as a physical object, but as a relationship between people on the object or a combination of legal relationships between individuals about an object [25].

But, this concept is abstracted from customary and rational desirability. Simply, from the perspective of law custom alike, objects become property not because the common law regards them as property but their being property is extracted from how to use the objects profitably based on their desired work in custom. From this perspective, property and ownership in online game are approved

based on their value in the players' relationship. In online gaming, what is traded has value only for the players but not for the people who are not involved in the game, and also, virtual objects and goods are not physical and do not exist. Indeed, products and goods which are traded in the games have this attribute because the players purchase them with the aim to mobilize their resources and to improve their position in the game. Thus, there is a rational and common interest in these transactions and it involves an economic value for them and makes them tradable.

Exclusivity of the virtual object

Exclusivity refers to proprietary or exclusive ownership which denote that the property must be assignable and to have exclusive possession. So, private ownership and benefit of the owner from the property is so that prevents others from taking benefit of it. In classic definition of property, it is sometimes regarded synonymous with ownership. So, property is something which can be owned, including commodity, real states or intellectual creations [26]. In other words, property lies in ownership; and here, the ownership is the specific or exclusive right of someone to use and possess something. This prevents the others from using and taking advantage from it. So, from this view, property is an exclusive right to possess and use something by one or more persons (Condominium).

This feature clearly applies to in-game virtual properties because the resources got or purchased by only one player belong to him and other people can't possess it. So virtual goods traded in online games enjoy this feature. It means that they can be possessed able and their ownership is recognized. Adaptability of property concept on in-game virtual objects and goods should be considered through common properties approach because this kind of attitude toward property will include other criteria. According to this approach, to be kind of property is a credit or a rational concept, i.e. a reasonable man consider some items as properties, because of the benefits that these items bring to them. This issue well applies to the virtual commodities and goods in the games that now a day, adopted and traded in business and economic norms because of their Use-Value-Based Attributes [27].

Being property of goods and objects which are traded in non-gambling online games is supported by law. That is why some jurists and lawyers have regarded 'legitimate interest of the property' as a main feature of property. According to them, the property is something legally supported and such support changes the possession and ownership legitimate and legal. This feature also exists for in-game virtual goods. Because, as it was stated earlier, considering a game as gambling changes not only the game, but also the incomes got from it, unlawful. As a result, all the games in the cyberspace, if they are not considered gambling games are lawful, and therefore the transactions conducted and the benefits got from them, are legitimate, and like other types of transactions and property in the real world, are legally supported.

As a result, given that the goods and objects traded in online games are considered properties; legitimate ownership can also be regarded for them [28]. So, virtual items can be considered a particular player's property in the non-virtual world if they are allocated to this particular player, to the exclusion of others. A virtual item is allocated to a particular player if some past event of appropriation has established that player as the owner. The past event of appropriation can, for instance, consist of a payment or of the effort that has been put into acquiring the virtual item [29].

Validity of virtual items as lawful objects

Non-physical and immaterial character virtual items and goods may challenge the validity of in-games transactions. Since online games and all their transactions occur over the Net, therefore, what is bought and sold is virtual or unreal. In other words, the subject of the contract doesn't exist in reality and is not physical. So, this question may raise that from a juridical and legal perspective buying or selling an intangible and non-physical item is legitimate? The challenge may arise from a classic idea which defines property as "a material concept that addresses existing things which have benefit". In response we argue that most legal and judicial concepts are conventional and their existence and validity will be authenticated through law or legislators. Property is also like other legal conceptions; although, in the first instance, property is concrete as a physical thing-in-itself, but it cannot be considered a reified or material concept. From this perspective, properties are divided into material and immaterial possessions. The material possessions refer to the possessions which are tangible. They have specific physical dimensions (length, width and height) and occupy part of the space. In contrast, immaterial properties are not tangible. Immaterial properties have subjective and arbitrary existence. In other words, although immaterial properties have no external representation, their existence and value is authenticated by custom and the law has also recognized it. (Such as many types of rights including the rights for goodwill, usufruct, easement or those for all intellectual properties such as copyrights, patents and so on) [30]. So, neither the jurisprudence nor the law restricts the scope of property (mal) to corporeal or material property. In Contemporary definitions, property is anything, tangible or intangible so that a legal relationship between persons and the law enforces a possessory interest or legal title in that thing [31]. So, in jurisprudence and Iran's law, sale and ownership of the immaterial properties and their legal impacts fully accepted.

Conclusion

The study on judicial-legal aspects of Virtual/On-Line Games, conducted from two perspectives: first the legitimacy and legality of gaming on line, and second the juridical-legal status of in-Games Transactions. The findings of this study, which carried on through the lens of jurisprudence (Islamic Law) and Law (Iran's Law) are as follows:

a. The legitimacy and legality of online games: on the legitimacy (or illegitimacy) and legality (or illegality) of any kinds of Games, whether, on line, in the virtual worlds, or off line, in the real world, Jurisprudence (Islamic law) and Iran's Law allow all fields of interest and entertainment, as long as there are no forbidden parts in there any prohibited game in Islam and Iran's Law is a kind of gamble. Online Video Games are like other games and plays. So, these kinds of computer games are permissible; except those games and entertainment, based on gambling. Two factors may cause a game to be gamble and thus be prohibited: First, they should be free of gambling tools and instruments, and second, they should be free of betting between the players.

b. The validity of in-games transactions: As, what are traded through transactions in games meets legal and judicial criteria of being property, and are entitled as legal virtual objects, and thus they can be referred to as virtual property and recognized in the realm of property and ownership rights. Further, all kinds of online games, if considered non-gambling, are lawful and therefore all transactions conducted in

games and the incomes got from them are legal and lawful. So, they are legally supported like other types of transactions in the real world. As a result, given that these goods and objects traded in online games are considered properties, legal and legitimate ownership can also be regarded for them.

Nomenclature

Gambling means to give or take money or goods depending on something that is not known how it will end. No matter what the name is, any game or bet that has this property and that is played in return for money or goods are called gambling. In Islam gambling (known as maisir, also maisira and sometimes called qimar), is forbidden (in Arabic: Haram). It is stated in the Quran that games of chance, including maisir, are a "grave sin" and "abominations of Satan's handiwork" (Qur'an, 2:219 (al-Baqara)).

If games like backgammon-board, chess, checkers, cards, tennis, and billiards are played with the intention of gambling by risking money, they are also regarded as gambling Section 12 On Gambling and Betting Article 654-Gambling and betting are void transactions and no action based on them will lie. The same rule applies to all engagements which arise out of illegal transactions.

About the Object of a Transaction state that: "The object of a contract must be some property or act which the parties agree to deliver or execute". (Art.214) and "The object of a contract must be capable of being owned and must embody some reasonable and legitimate advantage."(Art.215) and "The object of a transaction should not be ambiguous except in special cases where a general knowledge of the matter would be enough."(Art. 216)

As to the Object Sold, the Article 348 states that: "The sale of something of which the sale or purchase is by law forbidden, or which is not (describable as) property or which can bring no reasonable profit or which is not in the seller's power to deliver is null and void unless the purchaser is able to take possession of it".

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