Status of will governance in determination of law governing business documents validity

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Law governing substantive conditions of business documents issuance is one of important problems facing investigators. Since law governing business contracts and documents is governing out of limits of national law today, value and effect of will governance is of interest to jurisprudents because contract parties are allowed to determine contract effects and terms consensually to the extent to which these effects and terms do not contradict public order and imperative law and, in fact, they can replace law with these agreed terms. In Iranian law, although it is accepted, in principle, that law agreed upon by parties is the same law governing constitutional terms of issuing business documents, some took an opposite perspective since they consider Article 968 of civil law imperative. As issues regarding intent, consent, and capacity are considered as having relation to domestic public order, it seems that acceptance of governance of agreed law over these conditions of business documents issuance is difficult.

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1. Introduction

Lack of a transitional law and existence of differences among different nations' laws around the world have made necessity if determination of law governing international documents inevitable. The same need for law determining citizens' rights and duties, which exists within any nations' territory, is being felt internationally. This need particularly becomes impressive at the time of issuing and transferring business documents. In addition, determination of law governing validity of business documents is important because, in this sense, there are some differences among nations' domestic laws and different effects are imposed on this issue in accordance with which country's law is governing. In Iranian law, for example, if the ultimate purpose (direction) asserted in business document is concubine (to sleep with a woman without a marriage contract exercised), the document is invalid. But under laws of countries accepting free sexual relationships, assertion of such direction, basically, has no effect on validity of business documents. Rules for settling conflicts of legal systems have foreseen different methods to determine law governing business documents validity and will governance is of a firm position in almost all systems. Under private international law, principle of will governance is paid attention to and discussed within discussion of determination of law governing business contracts and documents under the title of law selected and/or intended by parties. Despite validity of this principle, there exist other methods to determine governing law. In present research, realm and limitations of will governance in determination of governing law is studied in viewpoint of conflict settlement rules of Iranian law while taking a glance at some of other countries' laws and international instruments, especially Geneva Convention.

2. Topic 1 - semantics (terminology)

To open discussion requires definitions of research basic concepts, namely, will governance, governing law, and constitutional conditions of business documents validity.

1.2. Will governance

Literally, will governance is a synonym for will independency. Some of jurisprudents believe that in persons' relationships in legal life, the principle is that their will is the source of effects and lack of will effectiveness requires particular reasons and causes (Ja'fari Langroudi, 2008). Principle of will governance has different meanings depending on whether it is put forward in domestic laws or in private international law. In domestic law, this principle has appeared in the form of contractual freedom principles and of Article 10 of civil law. Principle of will governance has, in fact, provided foundation and basis for contractual freedom principle which is the result of said principle. But will governance principle was put forward for the first time by Charles Dumoulin in private international law within discussion of laws conflict. Domoulin believed that since a contract is created by contract parties' will and is, indeed, a kind of limitation on freedom of parties' rights. So legal logic dictates that contract parties should be able to make any law they consider suitable govern their contracts freely. In this connection, principle of will governance is divided into 2 parts: first, contract parties are entitled to choose law governing their contract; and second, whenever they do not select a competent law explicitly, it needs to be seen if they accepted competence of a particular law implicitly, in other words. Their implicit wills should be searched for (Almassi, 1997, 205).

1.3. Law governing business documents validity

Competent law or law governing business documents is also known as applicable law. One author has defined law governing contracts as follows: a law under which a contract is concluded and, generally, governs formation of contract, reality of agreement, effects of any false statements, mistakes, reluctance, contract interpretation and accuracy of contract and its terms, retention of parties' duties under contract, and, to some extent, contract legitimacy (Samavati, 1998). If meeting criteria of legal validity, business documents are valid among those responsible for them, document holders, and their deputies. A question raised in the field of laws conflict is that which country is validity of a business document subject to? This is an important matter because selection of each law entails different results. A law selected to determine validity of business documents governs all following matters:

1- It dictates what specific qualities a business document should have naturally so that it can be regarded a draft, a note, and/or a check;
2- It determines whether a document has legal value and influence or is voided and/or the term is neglected whenever payment obligation reflected in business document is conditional;

3- It specifies what voluntary terms of business documents are. Also, it determines, for drafts, a cosigner has joint and several liability, and to what extent, to which one of the main obliged or sponsors. Matters of mistake, fraud, coercion, urgency, reluctance, and dissimulation fall within the realm of competency of law governing business documents validity; and

4- It specifies what constitutional terms of document accuracy are and, in addition, it clarifies issues related to the parties' capacity, intent, and consent to issue a document.

1.4. Constitutional terms of business document validity

One of important issues discussed in relation to any legal acts is substantive conditions of a document conclusion or issuance. Trade law has not foreseen specific regulations in terms of substantive conditions of issuing business documents. Since issuance and transfer of a business document are a kind of legal acts, in accordance with general rule included in Article 190 of civil law, constitutional terms of issuing business documents include parties' intent and consent; parties' capacity; given subject of transaction; and direction legitimacy. In issuing and transferring business documents, capacity is the same as capacity of property possession and of financial rights and in order for transactions regarding business documents to be accurate, having capacity is required for issuers and other people responsible for them (documents). But it should be noticed that capacity regime of business documents issuance is different from that provided for in civil law, differences between which need to be considered. For business documents, for example, governing principle is parties' signatures independence, based on which it is possible that a business document be issued and transferred by an incompetent person. In fact, issuance of a business document necessitates having capacity. But immediately after that a business document has been issued and circulated, holder can, with good faith, refer to concerned attendants except for incapacitated persons (Eskini, 1994). In law of such nations as France, according to regulations of Trade law, whoever embarks on drawing a draft should have business capacity (Eskini, 1994). But in Iranian law, drawing a draft does not require trade capacity in addition to civil capacity even though it is related to business in nature, as opposed to opinions of some legal authors (Erfani, 1986 & Safari, 1990, 153:12).

3. Topic 2- Will governance on methods of determination of law governing business documents validity

Different methods have been proposed to determine law governing business documents validity including;

1) Agreed law or will governance law [Lex volu numtatis (L.) = loid' autonomie (F.)];
2) Proper law [Lex Propariae (L.)];
3) Place of contract formation law [Lex loci Contractus (L.)); and
4) Place of contract implementation law [Lex Loci Solutions (L.)].

As the research subject completely relates to the first method of governing law selection, this method is merely explained here.

Advocates of will governance principle believe that selected and agreed law governs business documents validity and such a law must be considered as a norm discerning valid documents from invalid ones. This traditional belief has rooted in most legal systems with a large number of advocates. Some criticisms of this view include this law is difficult to implement on such matters as constitutional terms of contract conclusion, direction of transactions, and consent defects. Moreover, in event that parties do not select a law, it is not known how to determine governing law. In response to the first defect, acceptance of limitations of will governance principle, and to the second defect, resort to implicit will have been stated. Judicial procedures incline to acceptance of will governance principle in selecting governing law and to optionality of Article 968 of civil law. This inclination is evidenced by decisions of national supreme court in dealing with suits regarding international trade arbitration, including decision 1478 of seventh Circuit on 01/08/1974, a part of which said declinatory exceptions of relative incapacity of partisan arbitrator (Liverpool Cotton Company) as having foreign nationality is not valid because according to last part of Article 633 of civil procedure law/code, mere foreignness of arbitrator would not nullify arbitration contract; but rather such a contract would be nullified and in effectuated exclusively when the arbitrator would be of the same nationality of one party while there was no legal suit on a party and the arbitrator unity of nationality. Given that according to Article 968 of civil law, obligations under contracts are subject to the law of contract formation place, one the basis of last part of this article, accord on the matter that the contract is
subject to Liverpool Company's regulation is not prohibited legally unless contract parties made it. Explicitly or implicitly subject to another law. In the view of some jurisprudents, seventh circuit of national supreme court has considered, in that decision, optionality of the rule contained in Article 968 as relieved, therefore, it identified satisfaction of both parties with implementation of Liverpool Co. regulations on the contract valid without entering discussion of optionality and/or imperativeness of contracts of Article 968, that is, with no hesitation about selectivity and/or constructionality of the rule included in Article 968 (Jonaidi, 1997; 287). Iranian legislators also incline to adopt principle of will governance in determination of governing law. In relation to law governing a contract, Article 5 of Algerian Declaration, which is considered an international treaty and equivalent to the rule of domestic law under Article 9 of civil law, mentions insertions of contracts. One of the other most powerful indications of legislators' tendency toward will governance theory and its adoption can be found in international commercial arbitration law, Article 27 of which provides in its clause 1 that an arbitrator shall make decisions based on legal rules the contract parties selected for the nature of the controversy. Determination of law by any given country's legal system and by whatever method is regarded as a reference to that country's substantive laws. An exception to this rule is the rules for conflict settlement unless parties have agreed otherwise. To support will governance principle in Iranian law, professors of private international law argue that by definition, a contract is the creature of its parties' wills therefore, legal logic dictates free from any prudence that contract parties should be able to make any law they consider suitable govern their contract's substantive conditions, especially intent and consent. Since effects and conditions of any contracts, to the extent they do not contradict public order and imperative laws, can be determined by consensus of their parties who can, in fact, replace law with agreed conditions, it is not problematic that parties be entitled to make their contractual obligation subject to the very law with no need to repeat regulations of one particular in-contract law as they find those regulation sufficient to their purposes (Nassiri, 1991). On the other hand, even if legislators have enacted that rule imperatively given prudence's extant at the time of ratification and public order specific to then society, in present age, retention of main and real purpose of legislators, that is, to maintain society advisability and to provide interests, requires that article to be regarded a selective one. So assuming selectivity of that article and given that, nowadays, principle of will governance is adopted by almost all legal systems and international conventions, in Iranian law and in discussion of governing law determination, principle of parties' will governance over obligations of contracts or business documents conclusion place of which is Iran can be adopted. Adoption of will governance principle, of course does not contradict limitations on governing law determination. To determine whether parties determined law implicitly as the law governing their contract requires detection of real wills of parties. As the beginning of Article 968 of Iranian civil law provides "Obligations under contracts are subject to law of formation place", it is inferred that detection of real parties' wills in determination of governing law is, in fact, based on the existence of a conventional and acceptable relationship between a contract and a country law of which can be considered as governing the contract. In cases where a contract is silent on determination of governing law and parties have not included this matter in the contract due to disagreement, not to forgetfulness, this apparent silence makes investigating authority face different governing law alternatives because it is impossible to detect real parties' wills as there has been no will in this regard at all with no implicit agreement on it, on one hand, and a given country's substantive law must govern parties' rights and obligations inevitably, on the other. The most important job a judge needs to do in order to solve this problem and to implement conflict rules is to describe legal action and its elements or state of matter in issue so that he can, initially, detect its nature and, then, put it in a suitable category given its form or nature. For example, the judge must explain, at first, whether matter in issue is related to parties' obligations or to substantive matters. He makes such description necessarily on the basis of laws and regulations of the country the court is located in while searching for governing law based on this. In Iranian law, if both parties remain completely silent so that their implicit wills can't be inferred, the judge won't be absolutely free so he should determine applicable law on the basis of Iranian law's conflict settlement rules and, for obligations under business documents, Article 968 of civil law is governing and based on the most moderate construction, that is, in case it is considered selective, law of contract conclusion place will be governing in case both parties are silent (Almassi, 2003).

4. Topic 3- Position of will governance in determination of law governing any conditions of business documents validity
Earlier we spoke of will governance as the main method of determination of governing law. Constitutional conditions of business documents validity and its respective legal acts include issuance, transfer, endorsement, guarantee, parties' intent and consent, their capacity, given subject of transaction, and legitimacy of transaction direction.

4.1. Determination of law governing issuance (drawing) capacity

Like any other legal acts, issuance (drawing) of business documents is valid if issuer (drawer) is of capacity (is capacitated). But since superficial accuracy of a business document suffices to attract people's trust, issuance (drawing) of a business document can't be exactly subject to civil law regulations regarding consent and capacity as taking draft liability is for changing a business document into a means easily exchangeable playing role of money (cash flow) as much as possible although it can't be regarded cash flow exactly. In accordance with governing principles and rules, therefore, obligations under such documents enjoy innate independence and validity as well as abstract description in most legal systems (Sotoudeh Tehrani, 1995). Crucial question is that is will governance principle applicable to capacity of issuer (drawer)? And can contract parties determine law governing issuer's (drawer's) capacity?

In response, it must be said that for law governing capacity, regardless of disagreements between legal systems and jurisprudents, there is some agreement on two matters:

First, capacity of a contract's liable parties is not ascertained by low they agreed upon because it is law that considers individuals' wills as having legal influence and determines conditions of influential will, therefore, individuals can't confer capacity on themselves.

Second, according to principle of subjection of conflict settlement rule to substantive law in terms of it; being imperative or complementary, since capacity rules are imperative, this feature of them spreads to respective conflict settlement rule so such rules related to capacity become imperative, too.

In this case, satisfaction of parties with other law governance will be ineffective. Concerning this, some legal authors have noted that so long as contract parties to agree and conclude a contract and because it is impossible for parties' capacity precedes their agreement necessarily (Nassiri, 1991). Other jurisprudents argued that rules which specify given civil state in society have not just been enacted to preserve its interests; rather important goal of such rules is providing public interests. For this reason, people can't accord with each other against those rules. Regulations on individuals' capacity are completely dependent on public order. Purpose of enactment of these laws is to provide will freedom and to protect incapacitated people. Therefore, infringing on them is impossible with reference to will freedom and protection principle (Katouziyan, 1990). But in perspective of international instruments, Geneva Uniform Convention, approved on 7 June 1930, is lacking of regulations regarding capacity of draft drawing. In addition, Article 2 of the Convention states that capacity of a person to undertake liability for drafts and notes is determined under his national law. Therefore, capacity is subject to any nations' domestic law. From what put forward by far, it is concluded that rules and regulations related to capacity are imperative and related to public order in all legal systems, thus conflict settlement rule appears to be among substantive rules of nationality capacity, that is, contract parties are not permitted to select law governing capacity themselves and agreement and will governance is ineffective until their capacity has been obtained under their respective country's law.

4.2. Determination of law governing intent and consent

Intent and consent are substantial conditions of accuracy of any transactions. Consent resulting from mistakes and/or reluctance creates no influence for transactions. For issuance and transfer of business documents, an offer must be made by issuer/drawer and/or by endorsee and accepted by beneficial. Transaction of drawing or endorsement of a business document does not take place until the beneficial gives consent for document to be included in his legal relationship with its formulator. Conversely, if seeming holder takes document out of its owner's hand by violence or deceit and/or takes it for safekeeping, but commits treason and/or finds it, he will be considered as usurper and unlawful possessor having no rights to the document. Like any other legal acts, transactions related to business documents require intent of writing which should be effective to something signifying intent. Based on this, business documents need to be signed. Signing a business document indicates its issuer's consent. In Iranian law, stamp is accepted as an alternative to signature and its existence on the business document signifies its issuer's consent. A question in terms of laws conflict is that can law governing
intent and consent be the same agreed law or not? To answer this question, we explore this matter briefly in British, French, and Iranian laws as well as Geneva Convention.

4.3. British law

In British law, issuance and transfer of business documents is a kind of contract and, according to the view prevailing in this country, proper law doctrine needs to be used to determine law governing intent and consent in international contracts. Based on decisions issued by courts of this country, there are two methods to determine proper law: first, subjective theory and second, objective theory. These 2 theories are collinear, that is the court judges in position of determining proper law should pay attention to contract parties' intent initially. As parties have selected a law explicitly, their wills would be valid. Otherwise, when there is no parties' explicit wills, the judge employs objective method or determination of parties' implicit and assumed wills. It should be noted that validity of law selected by parties faces limitations of governing law determinations. In relation to the issue of Vita Food Co., for example, Lord Wright asserted that contract parties should make selection of law with good faith and legitimacy, with mentioned law not contradicting British public order (Choshire & North, 1979). British Draft Law approved in 1882 refers issues regarding documents accuracy and/or nullification to the law of contract formation place. This theoretical law has abolished proper law typical to international contracts in relation to business documents and provided that, in this regard, proper law is the very law of the place of business documents implementation (Graveson, 1968, 450 & Dicey and Morris, 1989, 891).

4.4. French law

There is no explicit rule on applicable law and will governance principle within French laws and Article 3 of French civil law identifies French laws as governing the country's residents as well as immovable property located in the country even if they belong to foreigners. In this law, there is no rule on contract parties' agreement on governing law and respective laws conflict in relation to the law governing contracts. Based on this, French procedures seek to solve this problem while remaining silent legally. Some authors believe that method of applicable law determination within French law is the product of efforts made by this country's procedures. Prior to its approval, contents of Rome Convention, 19 June 1980. Regarding the law governing contracts have been implemented due to some French judiciary decisions. In this way, after France has joined the Convention which became binding officially, no major changes have been made in French law. Decision on 5 December 1910 of civil branch of French Supreme Court provides that the law applicable to contracts regarding their formation and/or terms is the law accepted by parties. And Decision on 24 April 1952 provides that if contract parties are silent, courts need to obtain their assumed wills for contracts' focus given contracts' economic implementation (Loussouarnet, 1969, 178). Therefore, it to how contracts are concluded and conditioned, the law applicable to contracts is one selected by parties. In case of the lack of explicit intents, judges should infer the law governing contractual relationships considering conditions and circumstances of contracts as well as of parties.

4.5. Geneva Convention

For position of will governance principle, Geneva Convention provides in the first sentence of para.1 of Article 3 that any contracts shall be subject to the law selected by parties. Neglecting theoretical criticisms of this method of governing law selection, Convention gives useful explanations about the law governing substantive conditions, especially those related to consent. According to para.1 of Convention Article 8, "Existence and accuracy of any contracts or one of their established provisions are subject to the law which, under this Convention, is applicable to the condition of accuracy of contracts or their given provisions. Therefore, there is no link factor for conditions of contracts' accuracy and the law determined by Articles 3-6 is applicable. In the views of some jurisprudents, Article 8 encompasses all contact accuracy conditions other than conditions being subject to a specific rule. So mentioned law is enforced for consent and respective defects, fraud, subject and direction (in accordance with French subject), but not for capacity. Nevertheless, para.2 of Article 8 provides for a particular conflict settlement rule in relation to consent. This Article allows one party of a contract to refer to his usual residential place law in order to prove that he was not satisfied with contract conclusion provided that circumstances be expressive of his claim. According to what put forward by far, in Geneva Convention, law governing substantive conditions and effects of international contracts depends on the law accepted explicitly or implicitly by parties. To determine
whether parties of contract have intended and specified explicitly/ implicitly a law as the one governing their contract or respective documents requires real wills of parties to be discovered; this is inferred through hints. In this case, by considering implicit wills of parties, the judge makes a choice from 2 laws: First, signing (conclusion) place law, and second, fulfillment place law (Loussoyam,1969).

4.6. Iranian law

Seemingly, according to Article 968 of civil law, will governance principle has been adopted in Iranian law. This Article provides that obligations under contracts are subject to conclusion place law unless contract parties are foreign nationals who made the contract explicitly/ implicitly subject to another law. Ambiguous appearance of 1st part of said Article has raised a lot question in relation to whether will governance principle be adopted or not while there is some disagreement among jurisprudents on this matter whether this Article is imperative or optional, although the rule of Article 968 of civil law is limited to obligations under contracts and Iranian civil law and trade law remain silent regarding law governing establishment of contracts and business documents and its substantial conception. Some jurisprudents argued that Iranian law needs to be considered competent basically for contracts concluded in Iran (Almassi,212 & Nassiri,57) according to the territoriality of laws principle included in Article 5 of civil law unless the opposite is asserted, in other words, Iranian law will govern as the law of contracts conclusion place. This view that the principle of Iranian law governance is limited do those contracts concluded in Iran is the case when a contract either is devoid of international character or possesses such character but parties remained silent in relation to selection of law governing their contract. Now, this is considered as having an international quality due to presence of elements like foreign nationality of either parties or contract fulfillment being out of Iranian so that contract parties accord on governance of law of other country linked to the contract, is such an agreement valid, or, in any case, low of contract conclusion place will govern?

In response, some jurisprudents said regulations regarding contract validity conditions like Articles 190 on of civil law are typically imperative so conflict settlement rule put forward in Article 5 of civil law is also imperative in compliance with nature of mentioned regulations. Certainly, for this category of disagreements, Iranian law has taken an approach other than that generally accepted internationally (Jonaidi,1997). But the author believes that, in response to above question, it must be said that principle of governance of contract formation place law is applicable when the parties of contract or of business documents do not recognize each other’s law. But in case of law governing an international commercial document being selected, it is not reasonable to disregard selection and implementation of contract conclusion place law because in order to settle conflict of laws related to international contracts, legal method or the fittest selection method should be followed instead of definitive one. There are two methods for settling laws conflict, which, in fact, identify two different thinking schools. First, in principle or definitive method, and second, legal or the fittest selection method. Under definitive method, in order to determine the rule for conflict settlement, initially, a principal problem or a definitive idea must be accepted, on which general views are based; next, particular subject rules will be derived from general views. Proponents of this method believe that private international law is political in nature, that is this legal field is encompassed by international politics factors in such a manner that its goal can no longer be considered as obtaining the best legally rule. So legal aspect is overshadowed by political aspect; and whenever in principle or definitive method proponents want to find a solution to a given conflict, they need to take certain interests of any countries into account first, and derive rules related to the given conflict next. But in legal or the fittest selection method, arbitrators qualified in any given category of conflicts are searched for, in other words, political factors are not of interest in this method, therefore, (UN) desirable outcomes of implementation of selected rules are not important at all. As for this question that which one of these two methods should employed to settle conflict of laws, there seems that no firm and general answer exists because in private international law, especially in its basic topic, that is, laws conflict, we encounter different matters with respect to features of each of which we should apply a proper method. In other words, in order to apply a given method of laws conflict settlement, each matter needs to be considered separately and based on whether its political or legal aspect dominates, a proper method should be implemented (Amassi,50). Anyway, will governance principle is accepted in almost all legal systems and international contentions today, having a high position in determination of governing law. To confirm will governance principle in Iranian law, private international law professors refer to this point that, by definition, contracts are created by parties’ wills. Therefore, legal logic dictates, free from any prudence, that parties’ of contracts should be able to make any laws they consider proper govern the contracts’ substantive conditions, especially intent and consent since effects and conditions of each contract can be determined, to the extent they
do not contradict public order and imperative laws, under agreement of parties of the contract and, in fact, these agreed conditions can replace law (Nassiri, 64 & Almassi, 205).

4.7. Determination of law governing legitimacy of direction

Transaction direction is one of basic conditions for each transaction accuracy. This point is referred to in clause 4 of Article 190 of civil law. One jurist defines direction as follows: "Transaction direction is the reason each party has prior to transaction, which results in doing transaction. Direction is something each of parties thinks of that prior to transaction in order to create it externally by means of doing transaction. Direction motivates traders to do transaction in order to achieve their purposes. Therefore, direction is imagined prior to doing transaction and, after transaction, it may be created externally (Emami, 2000). Iranian trade law provides no rule on legitimacy of transaction direction. Since issuance of business documents is a legal act, it is necessary to observe general conditions, which are needed in relation to accuracy of legal acts, for such documents. Direction is one of legitimacy conditions. In this regard, a question is that just as illegitimate directions of sale contracts cause them to be nullified, does illegitimate direction of issuance or transfer of a business document result in its nullification? Direction states of draft-related liabilities and their effects are different among the world's countries. In French law, direction must be legitimate. In some countries like Germany, reason for fulfilling documentary obligations has no effect on rights under business documents because this system considers commercial documents in depended of and separate from basic contracts leading to their issuance (Safari, 2000, 158:12). There exist no articles in Geneva Convention on direction or cause of draft-related liabilities. Thus, with solutions absent in Geneva Convention, any disagreements on direction must be settled through general principles of private international law (Akhlaghi, 2000). Iranian trade law has not foreseen specific regulations for above matters. So reference should be made to general regulations of civil law, saying that to mention direction of issuance is not necessary within business documents; as a holder receives a business document with illegitimate direction, he can request the document liable people to fulfill their obligations with respect to signatures independence principle. Such response depends on that the holder is not aware of document's illegitimacy and has good faith because business documents are documents in appearance of which people trust and, in order to protect their holders, legislators provided signatures independence principle. And violation of above view leads to distrust in business documents so that individuals refuse to accept them. But in cases where illegitimate direction is asserted in a business document, obligations caused by it are, with no doubt, void and holder can't invoke to his good faith because assertion of illegitimate direction in business documents leads receivers to be informed of illegitimacy of their issuance direction by observing them. Additionally, Article 217 of civil law stipulates that such documents are void. Also, in case where illegitimate direction is not asserted in a business document but holder knows the matter, it seems that promise to nullify obligations under document to be more accurate because, firstly, assuming such obligations somehow contradicts public order and, secondly, by description, Article 217 means Knowledge of other party because assertion does not have a special character potentially and is only a means to inform other party. Jurists follow above view predominantly (Eskiçi, 1986). Having accepted necessity of legitimacy of draft-related obligations direction in Iranian law, it should be examined that whether parties' wills can determine law governing legitimacy of business documents' direction. This question is important because governing law makes it clear whether obligations are valid regardless of their directions and causes or their directions and causes need to be legitimate. For example, Iranian civil law stipulates in doing transactions, direction needs not to be asserted, nut if it is asserted, it needs to be legitimate or transactions are nullified. In cases where parties remain silent on law governing legitimacy determination, Iranian civil law has no reference to governance of implementation place law for business documents. But some believe that this matter is evident and lack of assertion on it in civil law is not problematic (Nassiri, 55-56) although it should be noticed that respect must be shown to both Iranian law as the of contract conclusion place and law of contract implementation place. In other words, for inclusion of Iranian law in relation to the issue of legitimacy of transactions, territoriality principle is referred to and for inclusion of implementation place law, rule of public order in a foreign country is considered. As a result, for law governing determination of legitimacy of international business documents, absolutely law of implementation place will govern because even if document is not problematic under the law of conclusion place, implementation of its contents should not contradict public order of the country where it is implemented (Parvin, 2002). In Iranian law, although Article 968 of civil law places extraordinary emphasis on the law of contract conclusion place, under this law, transaction accuracy can't prevent it from not being implemented in the country where it is going to be implemented when it disturbs public order and, at the opposite point, if contract conclusion is accurate under the
law of fulfillment place, nullification of document due to illegitimacy of obligations direction under the law of issuance place does not impair its implementation in other country (Parvin, 2002). Ultimately, agreed law, in principle, governs conditions of accuracy of business document issuance, including direction of document issuance, but it may be impaired in its international meaning and dismissed in favor of the law of the court place because of exercising general principles and of contradicting public order.

5. Conclusion

Today, will governance principle is adopted in almost all legal systems and international conventions, having a high position in determining governing law. Iranian civil and trade laws remain silent on law governing business contracts and documents formation and conception of its substantial conditions. Article 968 of civil law also limited its rule to obligations under contracts; therefore, in relation to business documents lacking international character, basically, Iranian law must be considered competent according to territoriality principle of laws included in Article 5 of civil law unless otherwise is asserted. In relation to the subject of determination of law governing substantive conditions of issuance of international business documents, especially intent and consent, will governance principle has been adopted in almost all legal systems and international conventions although Geneva Convention has remained silent on this matter. In Iranian law, principle of contract parties' will governance has been adopted for international business documents concluded in Iran. Of course, adoption of will governance principle does not contradict consideration of limitations on determination of governing law. In case parties remain silent and no governing law is determined explicitly or implicitly, in any case, law of contract conclusion place or implementation place will govern issues of intent and consent. Geneva Convention has assigned no duties in relation to the law governing draft-related obligations direction. Consequently, in the absence of solutions in Geneva Convention and in Iranian law, in cases where conflicts emerge on determination of law governing direction, they will be settled through general principles of private international law which intend to implement will governance law. Since rules and regulations on capacity are imperative in all legal systems and conflict rule is also considered imperative according to the principle of subjection of laws conflict rule to substantive rules, contract parties or traders are not allowed to select law governing their own capacity of issuance or drawing so their agreement is ineffective; capacity is subject to domestic law. In any case, Iranian trade law is not commensurate with real position of business documents, needing to be amended and revised and, in this connection, it will be necessary to make use of regulations of Geneva and Anstral Conventions as well as of developed laws of other countries. In direction of implementation of will governance principle to determine governing law, it is suggested that Article 968 of civil law either be considered a selective one or be revised by eliminating phrase "foreign nationals".

References