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E-CONTRACTS: ONLINE VERSUS OFFLINE ENVIRONMENT

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Introduction

Electronic business in broad and electronic contract in precise are promptly attaining universal desirability. Business over internet offers foremost budget redeemable, improves efficacy and increases output. We are familiarized with offline environment where we get prospect to enter a store, to scrutinize probable procurements and to judge ourselves the reliability of a vendor. But in online world we find no such break to use our customary performs. A contract often becomes the instrument and the means to structure and organize timely exchange of values and services¹. Internet became the backbone for the exchange of messages between organizations. Thus, electronic commerce over internet became a low-cost undertaking. Furthermore, with its flexibility and extensibility. Internet allowed a wide range of applications and standards to be developed and widely used over it. This set of factors allowed companies to trade over internet on a wide scale, in an efficient and effective manner, benefiting from the newly emerging technological and business paradigms².

E-Contract

Individuals have been exchanging standards and services or interchanging goods or commodities subsequently the very foundation of human history. in common each mutual agreement enforceable by local or intonational law that defines the terms and conditions of a commercial law deal between two or more parties³. An agreement between the trading rims acts as an explanation that assumes the rights, obligations and responsibilities increasing mutual trust. Moreover, a well written contract eradicates uncertainties, avoids errors and permits members to effort on trade implementation built on trust and mutual respect. Electronic contracting objects at using information technologies ominously to amplify efficiency and efficacy of paper contracting⁴. An electronic contract, also known as a click-wrap, web-wrap. browse-wrap, or point and click contract is an agreement offered and accomplished completely in an on-line environment, utmost on the internet. These contracts are characteristically agreements of linkage i.e., one-sided, bailer plate agreements accessible to customers on a take-it or leave it basis. For every contract, the entire development of electronic contractual events includes not only contract enactment and contract enforcement, but also pre-contract activities. such as substituting commercial information and contract intervention.

¹ Angelov S. Till S and Grefen P."Dynamic and Secure B2B E- Contract Update Management ". 2005.

² Angelov S. and Grefen P. "The Buisness Case for BN2B EContracting". 6 International Conference on Electronic Commerce. 2004.

³ Reinecke, Desler G., and Scholle W."Introduction to business" 1989.

⁴ Nabil A Yesha Y. "Electronic Commerce". Current Reasearch Issues and Applications.

Elements of valid contract as well as Online Contract

The followings are the essential elements for the online contracts to recognize its legality those are mostly very common to every contract

- Offer
- Acceptance
- Consideration
- Consent
- Agreement (offer& acceptance)
- Capacity to contract
- Consideration
- Legal purpose
- Legality of form
- Intention to create legal relations
- Consent to contract
- Vitiating factors: Mistakes, undue influence, misrepresentation & duress.

Offer - Where a company is expected to enter into contracts over internet, it resolves to do so by way of an advertisement which if worded correctly, would amount to an "invitation to treat". The visitor to the site or buyer can make an offer. Online contracts nurture certain curious concerns. A website acts as an advertisement, a display and a shop for sales. Bearing in mind that when an offer acknowledged outcomes a binding contract, it is suitable to plan and pose a website in such a mode as to evade creating an offer, further it is prudent to arrange matters that it is the Consumer or visitor to the website who makes an offer to the website owner.

Acceptance - An acceptance of an offer has to be unconditional. In online transaction the visitor to the site or the buyer can accept or disregard the prospect provided by the website to enter into transaction with him but not make a counter offer. On a website this is characteristically held by letting a simple sort of progressive reply, explicitly the pressing of a button stating "I agree" or a similar signal. In the case of email transactions, email offers or acceptance, there is better scope for counter offers and therefore reduced scope for automation of processes. Automated offers and acceptances are valid. An offer or acceptance made by an automated machine or system programmed by any person or on his behalf binds such person.

Consideration - Under exceptional circumstances any contract except as permitted by law is not valid, without valid consideration. Consideration is the price or return for a promise that turn the promise into a legally binding Contract. In electronic Commerce, consideration does not pretense any unusual alarm excluding, for the threat allied with payment online or through electronic means.

Consent - If the parties do not understand the same thing in the same sense, there can be no agreement i.e., without free consent there exists no contract. In website transactions it is very

important for a website owner to ensure that the consumer scrolls through the appropriate terms and conditions before clicking.

Verification of party to contract - biggest concern in electronic Communications is the identity and authority of the person on the other side. Since electronic communications do not involve trade cards, letterhead or corporate seals, it is difficult for one party to determine the other party to reserve meeting or to sign a Contract. Basic function of a contract is collection data about acknowledged accountabilities in a legally binding method. For structuring the data of a contract, the concept for an XML based secure contract container was developed⁵, i.e.

- Parties to an online contract need due diligence to determine whom they are dealing with on other side.
- The development of digital signatures is helping to solve this problem, which is an electronic signature substitute for a manual signature.

Types of e-contracts

a) Click wrap agreements: A part after going through the terms and conditions indicate his assent by clicking "I Agree" or "Disagree"

b) Shrink wrap agreements: The terms and conditions of accessing the particular software are printed on the shrink wrap covering of the CD and the purchaser after going through the same tears the cover to access the CD Rom. Sometimes additional terms are also imposed in such licenses which appear only when the CD is loaded in a computer. The user is always have option of returning it if not satisfied.

c) The Electronic Data Interchange: It is the communication between the trading partners i.e. contracts used in trade transactions which enable the transfer of data from one computer to other and processed virtually with no paper work. Unlike the other two, contract exist between two computers and not between an individual and computer.

Dispute in Online Transaction

India and other parts of the world badly require a specific online contract Act to adjudicate the disputes in a techno-legal perspective. In an online paperless world, the debate usually arises as to whether electronic records and electronic -signature electronically imposed upon it, are to be considered as a writing.

The OECD's Co-approved the guidelines for consumer protection in the context of Electronic Commerce in December1999.The guidelines establish the core characteristics of effective

⁵ Bray et al., 1999.

consumer protection for online business-to-consumer transactions, thereby eliminating some of the uncertainties that both consumers and businesses encounter when buying and selling online.

Liabilities and Damages

Like the remedy against the breach of contract, the remedy against the e - contract is cyber tort. In a breach of contract an award of specific performance requires a court order demanding the defendant. Because specific performance is an extraordinary remedy, the capability to accurately identify the person whose specific performance. Where specific performance is infeasible, court may award damages upon the nature of breach. The potential for liability due to statutory provisions for conclusive legal attribution provides additional incentive for electronic commerce participants to employ adequate security measures, which includes

- Trading companion and legal practical agreements.
- Acquiescence with familiar measures, guide lines and applies,
- Audit and control programmers and reviews,
- Technical capability and authorization,
- Appropriate social reserve management,
- Indemnification,
- Enhance notice & disclosure mechanisms and
- Legislature and directive lecturing relatable secure electronic commerce delivering.

International Boundary for Electronic Contracts

The United Nations convention on the use of electronic communications in international contracts is a treaty that aims at facilitating the use of electronic communications in international trade. It was prepared by the United Nations commission on international trade Law (UNCITRAL) and adopted by the United Nations general assembly on 23rd November 2005. The model law on Electronic Commerce was adopted by UNCITRAL in 1996. Its purpose is to help states enhance their legislation with respect to electronic communications and to serve as a impediments reference aid for the interpretation of existing conventions in order to avoid electronic commerce⁶. According to Article 1, the law 'applies to any kind of information in the form of data message used in the context of commercial activities'. But allows for over sights to be made by individual counties. UNCITRAL determined that data messages can satisfy the traditional functions and therefore are functionally equivalent⁷ This is significant because it recognizes that future developments and applications are unforeseeable⁸. The use of functionally equivalent language such as this leaves the Model Law requirements broad enough allow for new technologies and applications which can meet the traditional purposes of writing and signature requirements.

⁶ Christoph Glatt, 'Comparative issues in the Formation of Electronic Contracts ', (uk)(Spring 1998)6:1 Int.J.L.& Info. Tech. 34, at 57

⁷ UNCITRAL Model Law on Electronic Commerce with Guide to enactment 1996, with additional article 5, as adopted in 1998,online at <http://www.uncitral.org/en-index.htm>.

⁸ John D. GREGORY, 'Solving Legal Issues in electronic Commerce, (1999) 32 Can. Bus. L.j.84, at 104.

Legislations in India

Information Technology Act, 2000 – Section 4 (Attribution) 11 (Acknowledgement), 12 (Dispatch of Electronic Records), 13 (Secure Electronic Records). & 15(Secure Digital Signatures) which are related to the e-contracts. Though any number of laws are passed by the authorities, e-commerce pupil should be aware of the potential invalidity or enforceability of contracts against the public interest. Various types of illegal subject matter may cause particularly great harm within the e-commerce environment, such as an agreement to traffic in pornographic or obscene material on the internet. Even section 6 of the Act accepts use of electronic records and signatures. A digital signature performs the function of an ink signature a different method in many ways as it is an important element in electronic transactions.

Evidentiary Value - It can be inferred from Indian Evidence Act

- It says e-records of an agreement is concluded as soon as a digital signature is affixed to the record. It has been added in order to ensure the validity of e-contracts but with some restrictions.
- The secure status of the record may be demanded till specific time The digital signature should also be presumed to have been affixed with an intention of signing & approving the electronic record.
- The court may presume that an e-message forwarded by the originator through mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission.
- As far as digital signature is concerned, the information listed in certificate is true& correct.
- Gives about admissibility of electronic records, any information on a paper or optical /magnetic media produced by a computer shall be evidence without further proof of original.

Conclusion

Electronic contract is the fundamental of forming an e-transaction. Emerging electronic contracting technologies offer both promise and peril; the promise of greater ease of use, economic efficiency and access, peril of defacto lawmaking outside any recognized framework of accountability. Regulators and courts must work to identify ways to manage the interface between law and technical norms that preserve the effectiveness of legal institutions while harnessing the power of technological innovation for the public interest, e-contracts provide the law students to improve legal knowledge regarding the treats and liabilities while entering the contracts in the internet, who can contribute to the proper business of e-commerce.



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