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Legal security in electronic commerce contracts

Segurança jurídica em contratos de comércio eletrônico

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Abstract:

The advent of the digital age has transformed the way businesses operate and consumers shop. Electronic commerce (e-commerce) has revolutionized the global marketplace, providing convenience, accessibility, and efficiency. However, this digital revolution has brought about a multitude of legal considerations that must be addressed to ensure legal security in e-commerce contracts. In this article, we delve into the critical aspects that businesses and consumers alike should be aware of to navigate the complex landscape of electronic commerce contracts.

Keywords: Electronic commerce. Legal Considerations. Legal security. E-commerce contracts.

Resumo:

O advento da era digital transformou a forma como as empresas operam e os consumidores compram. O comércio eletrônico (e-commerce) revolucionou o mercado global, proporcionando conveniência, acessibilidade e eficiência. No entanto, esta revolução digital trouxe uma série de considerações jurídicas que devem ser abordadas para garantir a segurança jurídica nos contratos de comércio eletrônico. Neste artigo, investigamos os aspectos críticos que tanto as empresas como os consumidores devem conhecer para navegar no complexo cenário dos contratos de comércio eletrônico.

Palavras-chave: Comércio eletrônico. Considerações Jurídicas. segurança jurídica. contratos de comércio eletrônico.

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I. Introduction

The digital age has ushered in a remarkable transformation in the way businesses operate and consumers engage in commerce. Electronic commerce, commonly known as e-commerce, has emerged as a dynamic and pervasive force in the global marketplace. It has revolutionized traditional business models, offering unparalleled convenience, accessibility, and efficiency in transactions that transcend geographical boundaries. As e-commerce continues to flourish, it has brought about profound changes not only in the realm of commerce but also in the legal landscape that governs it.

Amidst this digital revolution, the concept of legal security has taken center stage as a critical component of e-commerce contracts. Legal security refers to the assurance and protection of the rights, interests, and legal standing of both businesses and consumers involved in electronic transactions. It encompasses a multifaceted framework of legal provisions, safeguards, and mechanisms that establish trust, resolve disputes, and ensure compliance with a myriad of national and international regulations.

In this era of digital commerce, where transactions are conducted through the click of a button and the exchange of electronic signatures, the importance of legal security cannot be overstated. It not only fosters confidence and transparency in online transactions but also serves as a safeguard against potential risks, disputes, and legal liabilities. As businesses seek to thrive in the e-commerce landscape and consumers increasingly rely on digital platforms for their shopping needs, understanding and implementing legal security measures becomes paramount.

This exploration into the realm of Legal Security in E-commerce Contracts delves into the critical aspects that businesses and consumers alike should be aware of to navigate the complex and evolving legal landscape. We will examine the challenges and opportunities that legal security presents, the nuances of electronic contracts, the protection of consumer rights, and the role of businesses and policymakers in shaping a secure and trustworthy digital marketplace.

In the light of the above, we tend to unravel the intricacies of legal security in e-commerce contracts, and discover the pivotal role it plays in ensuring fairness, trust, and compliance in the ever-expanding digital marketplace. In the same line, here are the details and analysis of the research objectives, including the primary research questions and the rationale behind the research:

II. Research Objectives:

➤ Primary Research Questions:

1. What are the key legal security challenges in electronic commerce contracts?

- The primary aim of this research question is to identify and thoroughly examine the most significant legal security challenges inherent in electronic commerce contracts. These challenges could include issues related to offer and acceptance, consent mechanisms, data privacy concerns, and compliance with diverse international and national regulations. By understanding these challenges, this research aims to shed light on areas where businesses and consumers may be vulnerable and where legal security measures are most urgently needed.

2. How can businesses enhance legal security in e-commerce contracts?

- This research question focuses on providing practical solutions and strategies for businesses to improve the legal security of their e-commerce contracts. It aims to

explore and analyze best practices and innovative approaches that organizations can implement to ensure their contracts are legally robust, transparent, and conducive to building and maintaining consumer trust. By addressing this question, the research aims to offer actionable insights that businesses can adopt to protect both their interests and those of their customers.

I. Explanations and Rationale:

- **Gap in Existing Research:** The complexity of the digital age and the rapid growth of e-commerce have led to a significant gap in existing research concerning legal security in electronic commerce contracts. Many previous studies may not adequately cover the evolving challenges and best practices in this dynamic field. This research aims to bridge this gap by conducting a comprehensive examination of the current landscape.
- **Importance of Legal Security:** The increasing reliance on e-commerce for everyday transactions underscores the paramount importance of legal security. The research recognizes that without robust legal security measures, consumers may hesitate to engage in online transactions due to concerns about privacy, trustworthiness, and the risk of disputes. Therefore, this research seeks to underscore the vital role of legal security in building and sustaining consumer confidence in the digital marketplace.
- **Complexity of the Legal Environment:** The legal environment surrounding e-commerce is highly intricate, involving a web of international, national, and regional laws and regulations. The rapid evolution of technology and the cross-border nature of online transactions further compound the complexity. Understanding and addressing these multifaceted legal challenges is essential for businesses, consumers, and policymakers alike. This research endeavors to provide a deeper understanding of these complexities and offer guidance for navigating them effectively.
- **Business and Consumer Interests:** The research acknowledges the intertwined interests of businesses and consumers in e-commerce. While businesses seek legal security to protect themselves from liability and reputational harm, consumers require it to safeguard their rights and interests. By addressing both perspectives, this research aims to strike a balance that promotes fair and transparent online transactions while also safeguarding the interests of all parties involved.

In summary, these research objectives and the rationale behind them reflect a comprehensive approach to understanding and enhancing legal security in electronic commerce contracts. They recognize the need to address evolving challenges, provide actionable guidance, navigate legal complexities, and harmonize the interests of businesses and consumers in the digital age.

Chapter 1: Background and Context

1.1 Definition of Electronic Commerce:

E-commerce, (electronic commerce), refers to the practice of electronically buying or selling goods and services over the internet. To facilitate these transactions, electronic transfers of money and data are carried out through a payment processor. A payment processor is a third-party company responsible for handling credit and debit card transactions. These processors serve as intermediaries, connecting merchants, consumers, banks, and card networks to

enable card payments while safeguarding the security of consumers' card information.

Technological advancements drive the growth of e-commerce, making it a prominent sector within the electronics industry. One common misconception is the belief that e-commerce exclusively involves the sale of digitized products or services, such as music or e-books. In reality, e-commerce primarily pertains to the method of conducting transactions rather than the specific nature of the products or services being bought or sold. In the same line, researchers has defined the term as “e-commerce is the process of buying and selling tangible products and services online². It involves more than one party along with the exchange of data or currency to process a transaction. It is part of the greater industry that is known as electronic business (e-business), which involves all of the processes required to run a company online.³ That is to say, electronic commerce, often abbreviated as e-commerce, refers to the buying and selling of goods and services using electronic means, typically over the internet. In e-commerce transactions, money and data are exchanged electronically, allowing businesses and consumers to engage in commercial activities without the need for physical presence.

E-commerce encompasses a wide range of activities, including online retail, electronic payments, digital marketing, and online banking, among others. It has revolutionized the way businesses operate and how consumers shop by offering convenience, accessibility, and efficiency.

1.1 E-commerce Encompasses a Wide Range of Activities:⁴

1. **Online Retail:** E-commerce platforms serve as virtual storefronts, allowing businesses to showcase and sell products and services directly to consumers. This includes physical goods like clothing, electronics, and furniture.
2. **Electronic Payments:** E-commerce facilitates various payment methods, including credit/debit card transactions, digital wallets (e.g., PayPal, Apple Pay), and cryptocurrency payments, making it convenient for consumers to make purchases.
3. **Digital Marketing:** E-commerce relies heavily on digital marketing strategies such as search engine optimization (SEO), pay-per-click advertising, social media marketing, and email marketing to attract and engage customers.
4. **Online Banking:** E-commerce extends to online banking services, enabling users to manage their finances, transfer funds, pay bills, and even apply for loans through secure online platforms.
5. **Digital Content Sales:** E-commerce platforms enable the sale of digital content such as e-books, music, videos, and software. Customers can purchase and download digital files instantly.
6. **Subscription Services:** Many businesses offer subscription-based e-commerce models, providing regular access to products or services. Examples include streaming services like Netflix and subscription boxes for curated products.
7. **Marketplaces:** Online marketplaces like Amazon, eBay, and Alibaba connect buyers and sellers, offering a wide range of products from various sellers on a single platform.

² E-Commerce CEO. "What Is Ecommerce? <https://www.ecommerceceo.com/>

³ Shopify. "Ecommerce <https://www.shopify.com/>"

⁴ Martin Luenendonk, E-Commerce – A Complete Guide, Last updated on October 13, 2021, <https://cleverism.com/> , last seen on October 04, 2023.

1.2 Revolutionizing Business Operations:

1. **Global Reach:** E-commerce transcends geographical boundaries, allowing businesses to reach a global customer base. Small businesses can expand their market presence without the need for physical stores in multiple locations.
2. **Reduced Overhead Costs:** E-commerce often reduces overhead costs associated with brick-and-mortar stores, such as rent, utilities, and in-store staff. This can lead to increased profitability.
3. **Inventory Management:** E-commerce businesses can employ efficient inventory management systems, reducing the risk of overstocking or understocking products.
4. **Data-Driven Insights:** E-commerce platforms collect vast amounts of data on customer behavior, preferences, and purchase history. Businesses can use this data to personalize marketing efforts, optimize pricing, and improve customer experiences.
5. **Scalability:** E-commerce businesses can easily scale operations up or down to meet changing demand. This flexibility is particularly valuable during peak shopping seasons.

1.3 Revolutionizing Consumer Shopping:

1. **Convenience:** E-commerce enables consumers to shop 24/7, eliminating the constraints of traditional store hours. Shoppers can make purchases at their convenience.
2. **Accessibility:** E-commerce eliminates geographical barriers, allowing consumers to access a vast array of products and services from anywhere with an internet connection.
3. **Comparison Shopping:** Online shoppers can easily compare prices, read reviews, and research products before making informed purchasing decisions.
4. **Personalization:** E-commerce platforms use algorithms to recommend products based on a user's browsing and purchase history, creating personalized shopping experiences.
5. **Efficiency:** The streamlined checkout process and automated order fulfillment enhance the efficiency of shopping, reducing the time and effort required to make a purchase.
6. **Delivery Options:** Consumers can choose from various delivery options, including same-day delivery and click-and-collect services, for added convenience.

2 Significance of E-Commerce:

E-commerce has become a significant driver of economic growth and globalization, connecting businesses and consumers across the world and transforming the traditional retail landscape. It has also given rise to various legal and regulatory considerations to ensure secure and fair online transactions and protect the rights and privacy of consumers. In the same line, electronic commerce means engaging commercial activities using the electronic media. mainly the operating efficiency of the business firm will definitely improve and which in turn strengthen the value and service given to customers and provide a complete edge over competitors.

Also, the direct benefit accrue to an organisation on practising ecommerce are better quality, greater customer satisfaction, better decision making, low cost, high speed and real time interaction. Therefore, e-commerce has the potential to increase revenue by creating new markets for the existing products and establishing new distribution channels to better serve and interact with customers. Finally, plenty of

opportunities are available from e-commerce and the importance of e-commerce can be discussed under the following heads.⁵

3 Advantages and Disadvantages of E-commerce⁶

3.1 Advantages:

- There is no need to wait in lines.
- There is ease of access to stores that may be further away or even overseas. This can be especially useful for consumers in a rural locations.
- There is no need to set up and invest in a physical store.
- There are many options available, both in terms of competitors and variety of products offered by each of them.
- There is no store timing restrictions and customers can shop 24 hours a day.
- Internet commerce has allowed customers various platforms to sell to each other which is a valuable benefit.
- In the case of digital items, the purchase is instant and there is no need to wait for delivery.
- There is unlimited space to sell as many items as a storage locations can hold. This means more variety than a physical store location.

3.2 Disadvantages :

- There needs to be relatively fast and reliable internet service.
- There also need to be a device that can allow access to the store such as a smartphone or a laptop.
- The shopping experience can be somewhat impersonal and clinical.
- There is no way to experience a product before purchase. The luxury of touching and feeling the item is taken away.
- There is the ever present threat of credit card theft and fraud.
- In the case of physical goods, the customer has to wait to receive their purchased items.
- This is often confusion in terms of regulations as taxation as the buyer and seller may be in different locations that have different taxation mechanisms.

4 The Pervasiveness of E-commerce:

E-commerce Expansion: E-commerce has witnessed remarkable expansion and integration into various aspects of modern life. Its growth is evident in several key areas:

1. **Market Size:** The global e-commerce market has experienced exponential growth over the past few decades. In 2020, e-commerce sales surpassed \$4 trillion, and this figure continues to rise. This expansion reflects the increasing reliance on digital platforms for commercial activities.

2. **Business Adoption:** E-commerce is no longer limited to tech giants; businesses of all sizes have embraced online sales and services. Small and medium-sized enterprises (SMEs) have particularly benefited from the digital transformation, enabling them to compete with larger counterparts on a global scale.

3. **Consumer Behavior:** The adoption of e-commerce has fundamentally changed how consumers shop. Many people now prefer the convenience of online shopping,

⁵ Riya Jacob K, IMPORTANCE OF E-COMMERCE, Dept of BCA 2020 – 21, <https://littleflowercollege.edu.in/>

⁶ Martin Luenendonk, *ibid.*

especially for routine purchases. The ability to browse and make purchases from anywhere with an internet connection has become an integral part of modern consumer behavior.

4. Industry Diversification: E-commerce's reach extends beyond retail. It has infiltrated diverse industries, including travel (e.g., booking flights and hotels online), entertainment (e.g., streaming services), healthcare (e.g., telemedicine), and education (e-learning platforms). This diversification showcases its adaptability and applicability across sectors.

The pervasiveness of e-commerce and its expansion into various sectors of the economy is a testament to its transformative impact. Here are key points of analysis:

- **Digital Economy Backbone:** E-commerce has become a foundational element of the digital economy. It not only drives revenue for businesses but also shapes consumer behavior and expectations.
- **Consumer-Centric:** E-commerce's expansion is largely driven by consumer demand for convenience, accessibility, and choice. It offers consumers the flexibility to shop on their terms, contributing to its sustained growth.
- **Business Adaptation:** Businesses that adapt to e-commerce are better positioned to thrive in the digital age. The expansion of e-commerce has allowed companies to reach a broader audience, reduce overhead costs, and innovate in terms of products and services.
- **Economic Impact:** The expansion of e-commerce has significant economic implications, including job creation in logistics, digital marketing, and online sales. It also influences real estate markets as businesses reevaluate their physical footprints.
- **Technological Enablers:** The expansion of e-commerce is made possible by technological advancements, such as secure online payment systems, robust e-commerce platforms, and mobile accessibility. These technologies continue to evolve, driving further expansion.

In brief, the pervasiveness of e-commerce and its diverse transactions underscore its central role in the modern economy. Its ongoing expansion reflects both consumer preferences and businesses' adaptability in leveraging digital technology to meet evolving market demands. Understanding the breadth and depth of e-commerce is essential for businesses, policymakers, and consumers in navigating the digital marketplace effectively.

Chapter 2: Legal Security in E-commerce Contracts

The advent of the digital age has transformed the way businesses operate and consumers shop. Electronic commerce (e-commerce) has revolutionized the global marketplace, providing convenience, accessibility, and efficiency. However, this digital revolution has brought about a multitude of legal considerations that must be addressed to ensure legal security in e-commerce contracts. In this article, we delve into the critical aspects that businesses and consumers alike should be aware of to navigate the complex landscape of electronic commerce contracts.

1 Definition of Electronic Contracts

An electronic contract has a technical specificity that derives from the method of its conclusion, which is done by relying on modern means of communication, and therefore it is necessary to define the concept of this type of contract as follows⁷:

1.1. Jurisprudence Definition of Electronic Contract

Jurisprudence has covered the definition of the electronic contract, but it is clear that lawyers have been divergent in their opinions, which led to the emergence of several jurisprudential definitions.

A part of the jurisprudence defines the electronic contract according to the method in which it is concluded as an agreement in which the offer and the acceptance converge on an international network open to telecommunications in an auditable and visual way through the interaction between the offerer and the acceptor⁸.

Another jurisprudential approach takes into consideration the international aspect of this type of contract, and defines it as: "The contract in which offers of goods and services meet the acceptance of people in other countries through multiple technological means, including the international information network and Internet, in order to perform the contract"⁹.

While another aspect of jurisprudence relied on various electronic means to conclude the electronic contract, by defining it as: "the contract concluded by a full or partial electronic means, whether electrical, magnetic, photoelectric, and electromagnetic"¹⁰.

1.2. The Legislative Definition of The Electronic Contract

The concept of electronic contracting has stirred significant debate within the realm of legislation, leading to the exploration of comprehensive definitions and unique characteristics that set electronic contracts apart from traditional contracts. As a result, numerous international and national legislations have addressed this matter.

Hence, the UNCITRAL Model Law on Electronic Commerce, which was published on December 16, 1996, and later finalized in 1998, including an additional Article 5bis, represents the initial legislation acknowledging the possibility of electronic contracting. This law defined an electronic contract in Article 2/A-a, referring to "data message" as information generated, transmitted, received, or stored through electronic, optical, or similar means, encompassing technologies like electronic data interchange, email, telegraph, telex, or their electronic counterparts. Furthermore, Article 11 within the same model law, categorized under "Formation and validity of contracts," asserted that data messages could be used to indicate the offer and acceptance of an agreement. Importantly, the utilization of a data message for this purpose does not impact the validity or enforceability of the contract, unless otherwise agreed upon by the involved parties, **"In the formation of contracts, and unless the parties agree otherwise, data messages may be used to express the offer and acceptance of the offer and when using the data message in the creation the contract. A contract does not lose its validity or enforceability simply because a data message is used for that purpose"**.

⁷ MAAZI Djihad, AMROUNE Celian, Electronic contract: A Legal mechanism for the e-commerce An analytical study under law no 18-05; related to e-commerce, The journal of El-Ryssala for studies and research in humanities, Faculty of Law Saïd Hamdine, Algiers University 1, Published: 05 / 02 / 2022, Volume : 07 / N° : 01/ février 2022. pp 413-421.

⁸ Karim, A. A. (2000, p 68). Specific International Private. Cairo: Dar Al-Nahda Al-Arabiya, p 68.

⁹ Ibid, p 68.

¹⁰ Al-Roumi, M. A. (2004, P 49). Electronic Contracting via the Internet. Alexandria: University Press, p 49.

The electronic contract has also received a definition in accordance with the European directive n°97/7/CE concerning consumer protection (directive n°97/7/CE, 1997), specifically within the context of distance contracts. Article 2/1 of this directive precisely outlines this by stating that an electronic contract pertains to **"any sale of goods or any service concluded, without the simultaneous physical presence of the parties, between a consumer and a professional who, for the conclusion of this contract, relies solely on one or more remote communication techniques."**

The French legislator has defined the concept of electronic contract, based on its definition of the contract concluded at a distance in accordance with French consumer law (Consumer code), and which falls within the scope of its article 121-16 precisating that **"any sale of a good or any provision of service concluded, without the simultaneous physical presence of the parties, between a consumer and a professional who, for the conclusion of this contract, use exclusively one or more techniques of remote communication"**. In addition to addressing the definition of electronic commerce in Article 14 of law for confidence in the digital economy (Law No. 200-575 of June 22, 2004), also known as the law on electronic commerce, which states that: **"electronic commerce is the economic activity by which a person offers or ensures the supply of goods or services at a distance and by electronic means"**. Also, the Algerian legislator has regulated the activity of electronic commerce according to law 18-05 (law n° 18-05, 2018), whose definition of the electronic contract within the article 6/2 states that: **"contract within the meaning of law n°04-02 of 5 jomada El oula 1425 corresponding to June 23, 2004, fixing the rules applicable to the commercial practices, concluded at a distance without the simultaneous physical presence of the parts by the exclusive use of a technique of electronic communication"**.¹¹

In this context, it is worth to note the significance of this text, which cannot be underestimated. Indeed, the definition of an electronic contract remained absent from Algerian law until 2018. Whether it was the civil code prior to this year or afterward, there was no mention of it. The only reference to electronic contracts in the civil code pertained to issues of evidence, and couldn't be regarded as a comprehensive definition. This underscores the importance of considering the recently introduced definition of electronic contracts as a significant development.

Another noteworthy point concerns the definition of electronic contracts itself. Article 6/2 of law no. 18-05 attempts to incorporate its new definition by referencing the definition provided in law no. 04-02 (law n°04-02 of 23rd of June 2004, 2004). Surprisingly, instead of aligning the definition of electronic contracts with the one found in Article 54 of the civil code, Article 6/2 of law no. 18-05 connects it to the definition articulated in Article 3/4 of law no. 04-02. This linkage can be explained by at least two possible reasons. The first reason is that, unlike Article 3/4 of law no. 04-02, the definition of contracts in Article 54 of the civil code is not considered a part of public policy. In this context, it appears that the legislator preferred to establish a mandatory definition rather than a supplementary one. The second reason could be that the definition of electronic contracts falls under consumer law, which also includes law no. 04-02. This makes it the more appropriate text to reference in this context, as opposed to the civil code.¹²

¹¹ MAAZI Djihad, AMROUNE Celian, *ibid*, p 415.

¹² H. Barbier. (2018). Can consumer law be a common law? . RTD Civ., p96 et ss.

1.3. Characteristics of The Electronic Contract

The field of civil doctrine has long recognized that electronic contracts possess distinct characteristics that set them apart from traditional contracts. Consequently, the conventional definition of contracts as outlined in Article 54 of the civil code is deemed too broad to encompass these unique features. Therefore, the primary objective of legislating law no. 18-05 was to address the significant growth of e-commerce in Algeria. This began with the creation of a precise legal definition for electronic contracts, effectively addressing the previously identified shortcomings in regulating this specific contract type.

Moreover, electronic contracts stand out from conventional contracts due to a range of characteristics and peculiarities that establish them as the most dependable mode of contracting in the realm of commercial transactions. These distinctive features include:

1.3.1 An Electronic Contract is an International Contract

The electronic contract is characterized by its international feature in its conclusion via various modern means of communication, which transcend all geographical boundaries of the countries, and this is what makes most countries of the world in permanent contact online.¹³

1.3.2 Electronic Contracting Is Mainly Commercial And Consumption Based In Its Nature

The electronic contract is closely related to commercial transactions, hence it was referred to as "e-commerce", this feature is considered as one of the characteristics that distinguish this contract since often the provider of the good or service is a merchant, meaning that it has a commercial character¹⁴. A significant portion of all contracts is formed remotely. Furthermore, these contracts typically possess a consumer-oriented nature, as they frequently involve transactions between a business entity and a consumer. Consequently, such contracts also fall under the category of consumer contracts.

1.3.3 The Electronic Contract Is Concluded At Distance By Electronic Means

The electronic contract is marked by the material and contemporary absence of its cocontractors brought together by a hypothetical contractual council¹⁵, which makes this type of contract part of a group of contracts formed at distance (distance contracts or contracts between absentees), since the co-contractors exchange expressions of their will using electronic means. This is also confirmed by the European Directive n°97/7/CE in its definition of distance communication in its article 4/2, stating that "any means which, without the simultaneous physical presence of the supplier and the consumer, may be used for the conclusion of the contract between these parties"¹⁶.

1.3.4 Electronic Contract Negotiation

According to legal precedent, when considering the manner in which an electronic contract is formed, it is categorized as a consensual contract when the general terms and conditions of sale are established. Consequently, the protection

¹³ 16. Lionel, B. (2001, P 131). Internet and electronic Commerce. /: 2 nd edition ed delmas.p 131.

¹⁴ Ibrahim, K. M. (2011, P 76). Concluding the Electronic Contract: A Comparative Study. Dar Al Fikr University: Alexandria, p 76.

¹⁵ Brunaux, G. (P227). Distance contract in the 21 st century. Paris, : ed LEX TENSO

¹⁶ MAAZI Jihad, AMROUNE Celian, ibid, p416-417.

provided by the civil code to electronic consumers is quite broad and primarily focuses, at this stage, on safeguarding their consent and acceptance, similar to any other contracting party. Given its generality, this protection remains impartial and neutral, irrespective of the economic, social, or technical circumstances of the parties involved. It's evident that preserving the consent of the contracting parties holds a pivotal position in contract law, and its maintenance remains essential for the integrity of the contract.¹⁷

2 The Requirements For An E-Contract

The most important elements of a valid contract are:¹⁸

2.1 Electronic Offer

The initial contract includes an offer by one party to exchange something of value for something else that the other party is willing to offer, such as a fee for a service.

The electronic offer is defined according to one aspect of the jurisprudence as: **“The offer made by a specific person to one or more persons with the intention of concluding a contract, to obtain the acceptance of this offer and thus the conclusion of the contract”**.¹⁹

2.2 Consideration

What do the parties gain from signing the contract? This factor is known as the ‘consideration’, i.e., what one party is willing to do so that the other party agrees to offer something of value in exchange.

2.3 Electronic Acceptance

After consideration, the other party will either accept or decline the offer or make a counteroffer (in which case steps 1 and 2 will repeat). Acceptance is defined according to jurisprudence as **“The expression of the will of the party to whom the offer is addressed by accepting the offer made by the offeror”**²⁰. While some authors have defined it as **“An expression made by the person to whom the offer was addressed, and if it is identical to the offer, the contract shall be concluded”**

The Algerian legislator has overlooked the provision of a legal definition for acceptance, both within the framework of general regulations, where reference is solely made to the methods of expressing intent in Article 60 of the Algerian Civil Code, and concerning electronic acceptance, as no precise definition is provided in compliance with electronic commerce law.

Electronic acceptance can be described as the manifestation of intent, facilitated through electronic means, pertaining to the obligation imposed on an individual. This expression of intent employs specific electronic methods to produce a particular legal outcome.

¹⁷ Djihad, M. (2021, 07). The electronic consumer's civil protection in the Algerian law: an evolutive overview. The legal system of consumer contracts in the virtual environment: current achievements and future requirements, 01-17, Amin El-Aqal Haj Musa Ak Akhmuk Tamengest University - Faculty of Law and Political Sciences, in collaboration with the Law and Local Development Laboratory

¹⁸ Will Cannon, What Are the Requirements for an E-Contract?, ELECTRONIC SIGNATURES, Last updated on January 19, 2023, <https://signaturely.com/requirements-for-e-contract/>.

¹⁹ Al-Saeedi, M. s. (2007, P 109). Clearly Explained in the Explanation of Civil Law: The General theory of Obligations, Sources of Commitment and the single will: A Comparative Study in Arab Laws, Fourth Edition. Algeria: Dar Al-Hoda

²⁰ Al-Saeedi, M. s. (2007, P 109). Clearly Explained in the Explanation of Civil Law: The General theory of Obligations, Sources of Commitment and the single will: A Comparative Study in Arab Laws, Fourth Edition. Algeria: Dar Al-Hoda

2.4 Intention

Intention means that all parties agree to create a valid, enforceable agreement. It also involves matters of consent and coercion.

2.5 Capacity

Finally, all parties must have the legal capacity to sign the contract. For instance, minors usually can't sign contracts.

3 Match of the Electronic Offer with the Electronic Acceptance

One of the legal issues that arise during the process of aligning the offer with the acceptance to finalize an electronic contract concerns the determination of the contract's time and location of conclusion. This issue will be discussed in detail as follows:

3.1 Determination When the Electronic Contract is Concluded

The majority of regulations governing electronic commerce do not mandate that the contract must be completed at the exact moment of the offer. This is because the nature of the offer often possesses an international dimension, leading to a practical challenge evident in the various legal approaches employed to ascertain when contracts are considered concluded through modern communication methods.

In the context of establishing when an electronic contract is deemed concluded, the Algerian legislator has embraced the theory of "affirmation of acceptance." This approach is aimed at safeguarding the interests of the consumer, who is often considered the party with less bargaining power in electronic contractual relationships. This is particularly evident in Article 12/3/4 of law no. 18-05, which specifies that the details of order verification by the e-consumer, encompassing product or service orders, their individual and total prices, ordered quantities, order modifications, cancellations, or error corrections, culminate in the confirmation of the order, leading to the formation of the contract.

1.2 Determination where to Conclude the Electronic Contract

1.3 There is a divergence of opinions among scholars regarding the determination of the location where an electronic contract is concluded. However, legislative measures have sought to resolve this matter by drawing on legal theories. In this context, referring to the UNCITRAL Model Law on Electronic Commerce, it's evident that the determination of the contract's conclusion point is linked to the debtor's place of residence, without considering the presence of an information system for sending or receiving. Article 15/4 of this law, for instance, states, **"The second paragraph applies even if the place where the information system is located is different from the place where the data message is considered to have been received in accordance with paragraph 4."**²¹

- Unless the originator and the addressee agree otherwise, the data message shall be considered to have been sent from the location of the originator's business and shall be considered to have been received at the location of the addressee's business;
- If the originator or receiver has more than one place of business, the place of business shall be the one most closely connected with the transaction concerned or the registered office in the absence of such transaction;

²¹ MAAZI Djihad, AMROUNE Celian, ibid

- If the sender or the recipient has no establishment, then its habitual residence should be indicated from there”

The Algerian legislator has refrained from providing a clear stance on the location where an electronic contract is considered concluded within the electronic commerce law. Nevertheless, it's important to note that the conventional perspective that a contract necessitates the presence of a valid offer and a valid acceptance, as outlined in Article 59 of the Civil Code, has undergone reevaluation in light of the emergence of electronic commerce. However, the alignment of the offer and acceptance remains an essential requirement, regardless of the method employed for contracting.

4. The Benefits of an E-Contract ²²

The most obvious benefit of an e-contract is the time and money saved. You don't have to post and store mountains of hard copies at each deal stage. This frees up time in the office to work on more productive tasks.

Considering the ever-increasing focus on environmental impact, paperless documents also help reduce wastage in the workplace. And with the pandemic still looming, digital contracts help you stay safe while managing business as usual.

With cloud storage, all parties can locate, access, and review documents in real time. There is greater transparency since you can see when edits are made and who made them. And with digital security protocols, contracts are kept safe from hackers.

5. The Creation and Management of Electronic Contracts

Contract administration involves the management of agreements with various parties, including vendors, employees, partners, or customers. Contracts are at the core of the organization and require proper supervision. Outdated contract management approaches can hinder the company's efficiency and result in costly mistakes. Effective contract administration empowers to oversee agreements at every stage of the process.²³

- **Generate:** Manage drafting contracts and easily handle requests. You can create easy-to-use workflows customized to your contract process.
- **Negotiate:** Communicate easily with contracting parties within a single platform. The Ironclad Editor lets you work collaboratively in one system, rather than redlining through emails.
- **Approve:** Run the contract by stakeholders and get approval within a single platform.
- **Accept:** Decide how the contract will be signed, and all parties can sign digitally.
- **Fulfill:** Once the contract is approved, you can meet important deadlines, account for renewals, and meet other obligations.
- **Analyze:** Contract management lets you analyze your contract after the deal has concluded. Useful metadata can inform business and contracting decisions for the future.
- **Optimize:** Analyzed data can be used to automate processes, improve business operations, and find growth opportunities.

²² Will Cannon, *ibid.*

²³ IRONCLAD JOURNAL, What Is an Electronic Contract?, last seen on October 05, 2023. <https://ironcladapp.com/>

- **Renew:** You can create alerts to stay on top of renewal dates. Contract management software also gives you the data to know whether you want to renew based on your business performance.

6. Legally binding contracts

If all the necessary components of a contract align with the regulations of the relevant jurisdiction, then once the parties reach an agreement, the contract assumes legal validity. Matters such as breach of contract, remedies, enforcement, and related legal doctrines are extensive subjects that are better delved into within an academic setting. hence, the primary focus lies in enhancing the contract process.²⁴

7. The Enforcement of Contract

The essential prerequisites for establishing a legally enforceable contract in the United States encompass a valid offer and acceptance, substantial consideration, the capacity of the parties involved, and conformity with the law. The UK has its own set of criteria, as mentioned earlier, and different jurisdictions adopt varying approaches to contract law.

In the United States, the Statute of Frauds typically mandates that contracts related to the sale or transfer of land, or those that cannot be fulfilled within a year, must be documented in writing and formally executed to be legally enforceable. Nevertheless, parties can still enter into a binding agreement without the necessity of signing a formal written contract.

Conclusion

In conclusion, this research affirms that the electronic contract stands as the most dependable element within the realm of international commercial transactions. It sets itself apart from traditional contracts, primarily owing to the advent of the internet, which has endowed it with numerous features and qualities that significantly enhance its efficacy in driving the progress of the digital economy.

Thus, the electronic contract forms the heart of e-commerce, and as such, it necessitates regulation within a legal framework that comprehensively addresses all its legal facets. This is crucial to fulfill the primary objective of its utilization, which is the advancement of the digital economy in Algeria.

In summary, e-commerce's broad scope encompasses a multitude of activities, revolutionizing both how businesses operate and how consumers shop. It has become an integral part of the modern economy, offering convenience, accessibility, and efficiency that have transformed the way goods and services are bought and sold.

²⁴ The elements of a contract: understanding contract requirements, <https://juro.com/> last seen on October 05, 2023

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