

Information Technology Law in the Global Society

University of Latvia

Faculty of Law

Class 10

21 April 2020

Shawn Sullivan





16. Electronic contracts

Substantive Contract Law

- Is generally a matter of national law.
- Contract laws differ from one country to another.
- There are some special international contract law regimes, including the UN Convention on International Sales of Goods (CISG)
- Model contract rules that can be adopted by agreement include
 - The UNIDROIT Principles of International Commercial Contracts.
 - The Principles of European Contract Law (PECL).



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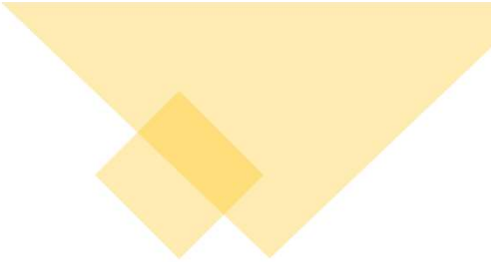


Both have influenced development of Latvian contract law



UNIDROIT

International Institute for the Unification of Private Law



UNIDROIT PRINCIPLES

OF INTERNATIONAL COMMERCIAL CONTRACTS



Contract Law in the United States

In the USA, most contract principles are a matter of state law, so all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and other possessions have their own laws. Despite this diversity, the laws are very similar from one state to another.



Contract Formation

- The initial question addressed in our textbook is: When is a contract formed in an Internet sales transaction?
- To have a binding contract, there must generally be an offer followed by an acceptance of the offer.
- Many countries (U.S., England & Wales, etc.) also have a requirement of “consideration”—a bargained for exchange of value between parties to a contract.
 - E.g., a payment or promise to pay money, transfer of property, performance of services.

A red, distressed-style stamp with the word "OFFER" in bold, uppercase letters. The stamp is tilted slightly to the right and has a rough, ink-like texture with splatters around it.A green, distressed-style stamp with the word "ACCEPTED" in bold, uppercase letters. The stamp is rectangular with rounded corners and is surrounded by a circular border of small stars.

So to Sum Up, Anglo-American Law on Contract Formation Requires:

- Offer
- Acceptance
- Intention to enter legal relations
- Consideration
- Legal capacity
- Genuine consent



Offer & Acceptance in Ordinary Sales

- Window displays – held by English courts not to be an offer that can be immediately accepted by a shopper but an “invitation to treat”—i.e., an invitation for the customer to make an offer. *Fisher v Bell* [1961] 1 QB 394.
- Display of goods on the shelves of self-service shop was also an invitation to treat. In this case, the offer is made by purchaser at checkout. Acceptance is made by shop clerk operating the checkout. *Pharmaceutical Society of Great Britain v. Boots Cash Chemists (Southern) Ltd.* [1953] EWCA Civ 6.
- Usually, public advertisements, catalogs, etc., for sale of merchandise at specified price are not considered offers to enter into a binding contract. But if an advertisement is sufficiently clear, definite, and explicit, and leaves nothing open for negotiation, it may constitute an offer, acceptance of which will complete the contract. *Lefkowitz v. Great Minneapolis Surplus Store, Inc.*, 86 NW 2d 689 (Minn. 1957).
- Most traditional offer & acceptance situations in classic cases had at least one human being on each side of the offer and acceptance.
- But online transactions often are computer automated on the seller’s side.
- How does this affect legal analysis of whether (and when) a contract is formed?



Early English Case on Contracts Formed with Non-Human Actors

- *Thornton v Shoe Lane Parking Ticket Ltd.* [1971] 2 QB 162.
- A man drove his car to a car park, took a ticket from the machine, entered the car park, and parked his car. The ticket stated that, "this ticket is issued subject to the conditions of issue as displayed on the premises."
- Inside the car park, posted on a pillar, was a notice that the car park owner disclaimed any liability for personal injury to customers.
- The court held that a contractual term displayed or communicated to contractual party after agreement has been reached is not incorporated into the contractual terms





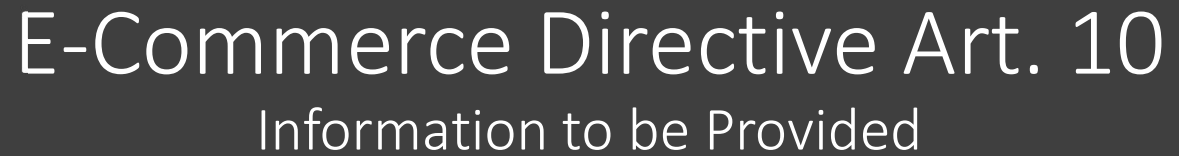
Enter the E-Commerce Directive

- Directive 2000/31/EC.
- In force since 8 June 2000.
- Attempt to establish legal framework for online services in the Internal Market.
 - Electronic contracting (Arts. 9-11).
 - SPAM emails.
 - Protection of Internet intermediaries.

The E-Commerce Directive does not:

- Harmonize EU member states' laws regarding when a contract is formed; or
- Determine which EU member state has jurisdiction to adjudicate disputes regarding an online contract.





1. In addition to other information requirements established by Community law, Member States shall ensure, except when otherwise agreed by parties who are not consumers, that at least the following information is given by the service provider clearly, comprehensibly and unambiguously and prior to the order being placed by the recipient of the service:
 - (a) the different technical steps to follow to conclude the contract;
 - (b) whether or not the concluded contract will be filed by the service provider and whether it will be accessible;
 - (c) the technical means for identifying and correcting input errors prior to the placing of the order;
 - (d) the languages offered for the conclusion of the contract.
2. Member States shall ensure that, except when otherwise agreed by parties who are not consumers, the service provider indicates any relevant codes of conduct to which he subscribes and information on how those codes can be consulted electronically.
3. Contract terms and general conditions provided to the recipient must be made available in a way that allows him to store and reproduce them.
4. Paragraphs 1 and 2 shall not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.



E-Commerce Directive Article 11 Placing of the Order

1. Member States shall ensure, except when otherwise agreed by parties who are not consumers, that in cases where the recipient of the service places his order through technological means, the following principles apply:
 - the service provider has to acknowledge the receipt of the recipient's order without undue delay and by electronic means,
 - the order and the acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them.
2. Member States shall ensure that, except when otherwise agreed by parties who are not consumers, the service provider makes available to the recipient of the service appropriate, effective and accessible technical means allowing him to identify and correct input errors, prior to the placing of the order.
3. Paragraph 1, first indent, and paragraph 2 shall not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.



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It is the customer who makes an offer by placing an order.

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Terms and Conditions of Online Contracts

- Express terms
- Terms incorporated by reference
- Implied terms.



Express Terms

- Provisions specifically mentioned and agreed by both parties at the time the contract is made.
- Main issues regarding whether they are binding:
 - Are they obviously part of the contract?
 - Are they unambiguously stated?
 - Do the terms violate any public policy?

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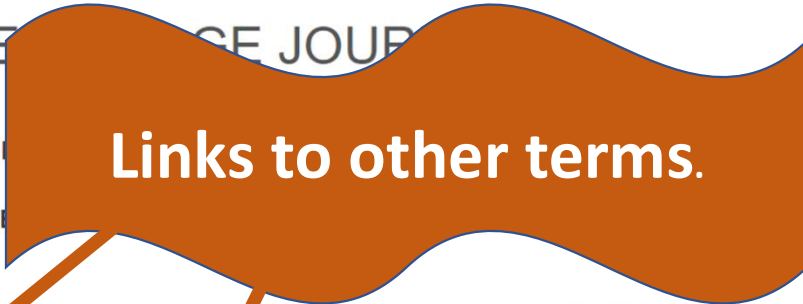
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ARTICLE 5.1.2 (IMPLIED OBLIGATIONS)
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Implied obligations stem from

- (a) the nature and purpose of the contract;
- (b) practices established between the parties and usages;
- (c) good faith and fair dealing;
- (d) reasonableness.

COMMENT
This Article describes the sources of implied obligations. Different reasons may account for the fact that they have not been expressly stated. The implied obligations may for example have been so obvious, given the nature or the purpose of the obligation, that the parties felt that the obligations "went without saying". Alternatively, they may already have been included in the practices

Electronic Signatures

- Traditionally we used pen and paper, of course.



UNCITRAL

United Nations Commission on International
Trade Law

An organization for enacting commercial law on
international trade and transactions

Has developed the following:

- Model Law on Electronic Commerce (1996)
- Model Law on Electronic Signatures (2001)
- Convention on the Use of Electronic
Communications in
Electronic Contracts (2005)



European Union eIDAS Regulation

- Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC
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 - qualified certificates
 - electronic seals
 - qualified electronic time stamps





Next Week

Please read chapters 17 and
18