

ONLINE CONTRACTS

JURISDICTIONAL ISSUES

E - CONTRACT

- A contract is an agreement creating and defining obligations between the parties.
- An e-contract is a contract modeled, executed and enacted by a software system. It is a contract “drafted” and “signed” in an electronic form.

FORMS OF E-CONTRACTS

- E-Mail Agreements:
- The e-mails which convey the clear intention of parties can be treated as a binding contract.
- It can be referred to in the case of Trimex International FZE vs Vedanta Aluminum Limited that once the contract is concluded orally or in writing, the mere fact that a formal contract has to be prepared and initialed by the parties would not affect either the acceptance of the contract so entered into or implementation thereof, even if the formal contract has never been initialed.

Online agreements are of three kinds-

Browse Wrap Agreements

An agreement is considered as a browse wrap agreement which is intended to be binding upon the contracting party by the use of the website. These include the use of the website.

These include the User Policies and terms of service of web sites and are in the form of a “terms of use” or “terms of service”, which can be used as the links at the corner or bottom of website.

Shrink

Wrap

Agreements

These contracts are the license agreement by which the terms and conditions of the contract are enforced upon the contracting parties and are usually present on the plastic or in manuals accompanying with the software products which the consumer buys.

Click wrap agreements

These agreements require the user to give his consent to the terms and conditions which are known as end user agreement and govern the licensed usage of software by clicking “ok” or “I agree” button.

Jurisdiction of Courts

- The CPC prescribes the manner of determining the jurisdiction of civil courts in India, based on two principles:
 - i) the place of residence of the defendant
 - li) the place where the cause of action arises

- While the parties remain free to determine the choice of courts to adjudicate their disputes, they can choose only such courts which is/are not barred from exercising jurisdiction to entertain their case.

Ordinarily, contracts contain a specific provision wrt the place of execution thereof, and the courts of such a place would have territorial jurisdiction to entertain and try the disputes arising under such contracts if in accordance with CPC.

However, since e-contracts are not physically signed/executed and are concluded in a virtual space, simply imposing the traditional principles of jurisdiction, applicable to physical contracts, to such transactions can prove to be challenging.

The jurisdictional issues of e-contracts have, however, been addressed to an extent under the IT act. Section 13 of the IT act governs the provisions relating to time and place of dispatch and receipt of an electronic record and addresses the issue of deemed jurisdiction in electronic contracts:

Time and place of dispatch and receipt of electronic record.—(1)

Save as otherwise agreed to between the originator and the addressee, the despatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:—

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,—

- (i) receipt occurs at the time when the electronic record enters the designated computer resource; or
- (ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be despatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,—

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) —usual place of residence, in relation to a body corporate, means the place where it is registered.