

Why consequences
for consumer
protection and SMEs.



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Why legal disputes cannot be resolved by simply referring to relevant laws

Application of rules is one of the ways through which legal disputes can be solved. However, laws may be vague thus limiting their effectiveness in resolving conflicts. In resolving legal disputes, the legal rules applied may be general and indeterminate. As a result, all the disputes being resolved using legal resolutions are subjected to the same set of rules. According to Loh (1984, p. 26), laws formulated to solve a particular dispute may not be applicable to other similar cases. In the process of settling disputes, laws are meant to provide an alternative way through which disputes can be resolved. Laws provide a reliable prediction of the resultant legal consequences in relation to a particular human conduct.

This means that legal disputes cannot be resolved by simply referring to relevant laws. Considering the fact that legal dispute resolution mechanisms may be vague, application of alternative disputes programs is necessary. Some of the major reasons causing incorporation of alternative dispute programs include the rising litigation costs and the associated emotional and psychological costs.

Some of these programs relate to arbitration and mediation.

Legal conflict associated with electronic commerce that has not yet been resolved

Disagreements can arise in electronic commerce with regard to the terms of the contract (Leps, 2010, para. 1). One of the legal conflicts in relation to

electronic commerce that has not been resolved arises from existence of uncertainty with regard to cross border disputes.

In conducting electronic commerce, some of the parties involved may be from different countries and hence the difference in jurisdiction (International Chamber of Commerce, 2010, para. 8). This means that the principles adopted in relation to ‘country-of-destination’ and ‘country-of-origin’ may be different. Some economies may adopt the ‘country-of-destination’ principle. This means that the laws applicable in case of a dispute involving cross-border parties are those of the customer’s country. Application of such a principle limits consumer choice (International Chamber of Commerce, 2010, para. 9). Due to existence of the ambiguity, most firms are reluctant to venture into electronic commerce with cross-border business counterparts.

Most of the firm’s business partners include firms within the same territory. This arises from the fact that the firm’s may incur substantial costs as a result of unenforceable contracts in addition to risks of sanctions. The legal conflicts with regard to the ‘country-of-destination’ are further worsened if the customers use interposing technologies in purchasing digital products. In addition, if the payment is made using digital cash, which is not identified by the purchaser, there is a high probability that the firm may not know the law to apply. In such a situation there is a high probability that the firms will forego cross-border electronic commerce.

The consumers are negatively affected since they cannot be able to access internet benefits optimally (International Chamber of Commerce, 2010, para.

9). As a result of the legal conflict in e-commerce, the supply chain of goods and services in the entire global marketplace is limited.

The complexity of compliance means that firms are precluded from the digital economy.

Conclusion

In summation, application of alternative dispute resolution programs in resolving legal disputes is necessary. This arises from the fact that the laws may not be applicable to certain circumstances. Laws provide a basis for alternative dispute resolution mechanism. Due to existence of cross-border differences with regard to e-commerce firms have not been able to implement electronic commerce effectively.

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