

Contemporary business issues

Business



1. Introduction:-

Information technology has had a great impact upon society and the way society conducts its affairs and has permeated almost every professional, commercial and industrial activity. Law is an important aspect for today's changing business world. It also plays an important role in electronic commerce in which business activities are carried on.

While dealing with this topic the first thing comes to mind is "what is electronic commerce?" Electronic commerce can be said to comprise commercial communications, whether between private individuals or commercial entities, which take place in or over electronic networks. The communication means involving part of the commercial process, it deals from initial marketing and till the place of order and delivery of information and background transaction of processing. The transaction can be of tangible products which can be delivered offline such as books and DVDs for B2C electronic commerce or intangibles such as data or information products which can be delivered either offline or online.

For more than 40 years technology based on electronic network has been used to provide facility for electronic communication between commercial entities and to perform obligations for pre-existing contracts, and which helps to enter into binding agreements and contracts. In today's changing business world electronic commerce is going to revolutionize spending habits. The reasons may be many or varied; the reasons are globalization and the dismantling trade barriers, the internet and the emergence of English as a global language.

Electronic commerce has a great impact on international trade. As many firms' uses computers for conducting trade, firms also use much import-export document software, there are certain companies which use documents to be filled electronically and this created whole new field of cross border trade through electronic commerce. 5

The paper further explains the legal consequences of electronic commerce with electronic contracts. This paper basically focuses on legal aspects and also deals with economics and management of electronic commerce.

Brief introduction to UNCITRAL legislation

The United Nation Commission on International Trade Law (UNCITRAL) was establish by United Nations General Assembly in its resolution 2205(XXI) of 17 December 1966. It plays an important role in developing framework to mandate further progressive harmonization and modernization of international trade law by preparing and promoting legislative and non legislative tools in number of key areas of commercial law.

The various tools which includes dispute resolution, international contract practices, transport, insolvency, electronic commerce, international payments, secured transactions, procurement and sale of goods. The negotiation can be done through international process including variety of participants and member states of UNC ITRAL which helps in legal traditions and economic development. Since establishment of UNCITRAL it has been recognized the core legal body of United Nations system in international trade. 6

2. Legal aspects of electronic commerce:-

The importance of directive on electronic commerce is to provide legal security to increase the internet users its confidence. It sets legal frame work for making information society services and setting the principles of internal market and introducing limited number of harmonized measures. The directive gives guidelines in the commission for communication on electronic commerce and the objective of which is creating a legal frame work in Europe.

There are various contracts which are concluded by electronic means. The Directive helps member states to remove prohibition or restrictions that are use for contracts which are concluded by electronic means. It also helps to introduce legal certainty by changing certain information with the conclusion of such contracts. The provision was supplement in 1999 Directive on electronic signatures. 7

2. 1 What is electronic contract?

There is no precise definition given. But it can be said that an electronic contract is an agreement created and " signed" through electronic means. The various process under which contract can be carried out is by email or informing an acceptance by other party, by clicking on icon which indicates the acceptance. Even though the laws are similar but they have differences and which requires in depth analysis. 8

2. 2 Contracts and types of contracts

Contract means an agreement which will be enforced by the law. In English law contracts can be made orally, by telephone, by written document or by fax. It also allows a contract to be formed on the basis of conduct of the parties. The legal recognition of electronic contracts has specific legislation affirming their validity for example, the Model Law on electronic commerce of the United Nations Commission on International Trade Law states, " In the context of contract formation, unless otherwise agreed by the parties, an offer and the acceptance of an offer may be expressed by means of data messages.

Where a data message is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose or stored by electronic, optical or similar means, including electronic mail." The online contract and sales fall under three categories goods, services and digitized services.

The various types of contract are unilateral contract, bilateral contract and collateral contract. Unilateral contract means an announcement offers money or some reward or performance of an action. The Bilateral contract means in which both parties are bound, and in which the exchange of promise for a promise is done. And the Collateral contract means one which is independent, but subordinate to, an agreement affecting the same subject matter. 9

3. Offer and Acceptance

In English law the formation is analyzed into two stages the offer and the acceptance. The offer means when one party sets out the terms on which he

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is prepared to contract, either in one document or by express or implied reference to a preceding course of negotiation and the acceptance means when the other party agrees to the terms without amending them in any way. When both the parties satisfactorily perform their side there is no need to involve law to resolve the contract. There are three types dispute which might arise and which can be solved by examining the formation process and in which one party believes the contract to be concluded but the other disputes, the both parties agrees that the contract has been formed but disagrees with the terms, the parties disagree as to when and the where the contract was formed.

To be a valid contract there must be valid and effective signature. The signature must provide evidence of three things, the identity of the signatory, his intention, his intention to adopt the terms of documents as is on. The UNCITRAL Model Law on Electronic Signatures 2001, Article 2(a) continues the functional definition approach as Electronic signature means data in electronic form in, affixed to or logically associated with, a data message, which may be used to identify the signatory in relation to the data message and to indicate the signatory's approval of the information contained in the data message. 10

There are several ways of incorporating contract terms into a websites. It is important to prevent the customer from being able either to amend terms in the electronic form or inserting new ones. There must be certain checklist of the terms which should be consider and which must be relevant to an e-seller's online trading terms such as delivery, liability, warranties, dealing with returns and refunds, and law and jurisdiction. 11

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Case:-

Adams v Lindsell.

In this case wool was offered for sale by sending a letter to the claimants. There was a mistake made by the offerors because of which the letter arrived two days late and it was promptly accepted. The court held that the contract which was formed on acceptance, in spite of the offer being delayed. The Court indicated that its decision was partially based on the reason for being delayed due to the offerors' mistake. The offeror had included the time limit on the value of the offer, however, the late acceptance would not have been bound. 12

Consumers v Business offers.

In this case the sender is a consumer, a sent and received email the offer will be deemed to be received as it is accessed, and where the sender is not a consumer the un-accessed offer will not be treated as being received.

And, if a consumer puts improper addresses to the email and which does not arrive and in which no order has been placed, and no offer made. And the same is related with the business offer also.

If the consumer properly addresses the email or properly uses website, and the supplier is not able to access the order then the order is not deemed to be received. In short the problem in transmission outside the consumer's control will affect the consumer's legal position in making an offer before a particular date.

Businessmen affected by delays outside their control are less certainly treated; they may argue that matters out of control should not affect the ability to contract to be made on time.

The best practice is to make electronic offer subject to the date on which the offer will lapse. The simple or more certain method is to specify the objective date and time. In this case businessmen make an email offer to another which is delayed by two days owing to the recipient's Internet Service Provider having a computer fault. The same was held in *Adams v Lindsell*, in which Court observed to assume the offer, was made at the time it should have arrived. 13

4. Electronic Records as Evidence and Security

It is fact that people do not always tell the truth. In modern system commerce is depends partly on trust but it is mainly depends on fact that agreement between the parties are documented. In electronic commerce it has been observe that the parties to the agreement may never have met or spoken to each other. In most cases it has been found that evidence of the agreements between the parties is the documents evidencing the transaction. There must be problem because the document is computer generated. The computer generated documentary evidence is of three types. The first type of evidence is termed as real evidence. The real evidence means calculation or analyses which are created by the computer itself through the running of software.

The second type of evidence is termed as hearsay evidence. The hearsay evidence means in which documents and records produce by the computer
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in which copies of information is supplied to the computer is by human beings. Finally the third type of evidence is termed as derived evidence. In derived evidence the information is combined with real evidence in which information supplied to the computer is by human beings to form a composite record. This evidence is also treated as hearsay evidence in modern evidence statutes. 14 There are various reasons why a record produce by computer is not admissible as evidence. The reasons are as it is not an original, it is hearsay and some rule of law prevents the evidence from being adduced. 15

The Company Act, 1985 states that accounting records have to be kept for six years by public company and three years by private company. 16 The law of evidence must be flexible enough to deal with the real modern business world; otherwise the person committing the offence would escape from conviction too easily. It must be recognize that computers are not reliable and some basic requirements have to be satisfied before computer documents can be used as evidence in criminal proceedings under exclusion to the hearsay rule. 17

Case:-

R. v Spiby

In this case the appellant had been convicted of being found guilty in the unlawful importation of cannabis. With the help contention of knowledge the prosecution used telephone printouts from the hotels computer to particular guest at that hotel had called the appellant at his home. The appeal against conviction, the counsel tried to have the printouts as inadmissible evidence.

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The Court of Criminal Appeal held that the printouts were real evidence. The Court of Criminal Appeal also applied the principle that instrument is one of a kind which, to common knowledge, or often not in working order, and the absence of evidence to the contrary, the Court held that machine was in working order at the time of sending material. The burden of proof lies on the defendant that the machine was not working properly. 18

R. v Wood

In this case, it is assumed that theft of certain metals, turn upon the computer printouts put forward by chemist who made the analysis of the metal found in the possession of accused. The Court found that the evidence is admissible as real evidence as computer is used as calculator. The computer is rightly described as a tool as it does not contribute its own knowledge. It simply did a calculation which would have been done manually by the chemist. 19

Electronic commerce on economics

With the advent of Information technology (electronic commerce) a substantial rise in economic growth has been witnessed. In the old economy, where trade was done by physical forms of contract technology has changed the whole scenario. E-commerce has played the vital role in the growth of the economy. It has generated more jobs with a higher salary packages which leads to higher productivity and high GDP. Electronic commerce has a great impact on economics as it change the way business is conducted, new product and market are developed, relationships between business and consumers comes closer. Secondly, electronic commerce a Catalytic effect

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as it accelerates more widely changes that are already under way in the economy for example reform of regulations.

Thirdly, electronic commerce over the internet hugely increases interactivity in the economy as it extends down to small business and households and reaches out to the world at large. Fourthly, electronic commerce helps in an openness of the business activity and emerged as a strategy with many of the most successful ventures which granting business partners. And lastly electronic commerce alters the relative importance of time, as it helps is reduction of time and allows firms to operate in close co-ordination by speeding up production cycle. As law plays an important role in formulating regulation in electronic commerce in economics.