

BUSINESS LAW GUIDEBOOK

SECOND EDITION

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CHAPTER 7: E-COMMERCE AND BUSINESS

TEST YOUR KNOWLEDGE

1. Do online contracts have the same elements as conventional contracts?

ANSWER

The formation of online contracts is no different to the formation of conventional contracts. The same elements must be present, such as an intention to create legal relations, agreement (offer and acceptance), consideration, legal capacity, consent and legality of object.

2. Are online agreements legally binding?

ANSWER

Online agreements are legally binding. Section 8(1) of the *Electronic Transactions Act 1999* (Cth) provides:

For the purposes of a law of the Commonwealth, a transaction is not invalid because it took place wholly or partly by means of one or more electronic communications.

If the requirements are satisfied as mentioned in Question 1, and the terms are acceptable to the parties, there is a valid contract. The requirement that there is agreement (offer and acceptance), for example, is particularly important. There must be agreement between the parties that is acceptable in an electronic environment. This occurs when: (1) the buyer makes the offer by clicking on the 'I agree' button, and the offer being sent when the buyer

clicks on the 'send button'; and (2) the seller communicates an acceptance in a similar way and this is received by the buyer.

3. What are domain names?

ANSWER

A domain name is the method used to identify a particular Internet address. Each Internet web address contains a unique domain name, directing each user to a database with text, graphics and other files. An example is <http://www.telstra.com.au>.

A domain name typically includes a generic top level domain name (such as .com (commercial), .gov (government), .org (organisations) or .edu (education)) and country code top level domain names (such as .au (Australia)). The Internet Corporation for Assigned Names and Numbers (ICANN) was established to control the use of names and to authorise other organisations to allocate domain names subject to ICANN's standards.

4. Discuss the methods of resolving online disputes.

ANSWER

There are a number of organisations that have established themselves in providing online dispute resolution services. For example, The Virtual Magistrate Project uses the Alternative Dispute Resolution method for resolving disputes. This is a process by which parties settle their disputes 'out of court' through arbitration, mediation and negotiation. It is a quick, cost effective and accessible means of resolving disputes. All proceedings take place by email and a decision is ready within a few days.

The Online Ombudsman is used to resolve disputes arising mainly from eBay which enables people to buy and sell items at auction. Some matters are suitable for mediation from buyers, such as those that involve items not received or damaged in transit. Some disputes cannot be resolved because the parties refused to participate in voluntary online mediation. Many of the disputes are easily settled.

Disputes involving the allocation of domain names are the most common because of the commercial value being attached to such names. The rules of the Uniform Domain Name Dispute Resolution Policy (UDRP) are vital here. They provide that domain names disputes be resolved by agreement, court action, or arbitration before such names can be cancelled, suspended or transferred. There is a dispute resolution mechanism that can be used, and that is the ICANN (Internet Corporation for Assignment Names and Numbers) Uniform- Domain Name Dispute Resolution Policy (UDRP) which applies to name

registrations (.com, .net, .org, etc.). There is yet another method of resolving domain name disputes, and this involves the application of s 18 of the *Australian Consumer Law (ACL)* which prohibits corporations to engage in conduct that is misleading or deceptive., or that is likely to mislead or deceive, and in so doing encourages ethical trading activities in e-commerce. The Australian Competition and Consumer Commission (ACCC) has bolstered its monitoring of websites to ensure that they do not have claims that are misleading or deceptive and they do comply generally with consumer protection legislation.

5. Explain the main aim of the *Electronic Transactions Act 1999 (Cth)*.

ANSWER

The *Electronic Transactions Act 1999 (Cth)* (ETA) provides a legal framework that supports and encourages the use of electronic transactions, promotes business and community confidence in their use, and enables business and the community to use electronic communication in their dealings with the government. It provides that the law shall treat electronic and paper-based commerce equally so that one is not given an advantage over the other. The legislation aims to recognise the legality of transactions or actions that might have previously been performed in writing on paper or verbally but which is now performed electronically. Thus a transaction does not lack validity even if it takes place electronically: s 8.

PROBLEM QUESTION

Before you attempt the following problem, make sure you read the 'Guidelines for answering problems' and be acquainted with the IPAC method of writing answers to problem questions.

Students must keep in mind that online disputes are always present. There is a need to be aware of the methods that are available to resolve such disputes. Arbitration, mediation and negotiation are some of the methods available. Some would say that these methods have limited application and that litigation is the proper way to resolve any dispute including those that have arisen online. In looking at the following problem, students are advised to focus their attention on the methods that may be useful in resolving the dispute. They should decide whether litigation is to be used here or whether alternative dispute resolution is to be preferred.

PROBLEM (Note: Answer N/A)

Lee lives in Sydney and has been very interested in e-commerce. Last month he decided to give up his job as a school teacher and set up a web server in his bedroom. He, like many of his friends, believed that he could make more money online than what he was getting by teaching in a small local primary school. Recently, Lee was discussing with a friend Thomas on how to make a lot of money quickly. They agreed that starting a new business enterprise

would be too difficult and risky. After looking at the paper Lee noticed that the well-known Australia rock band 'Silverchair' was about to conduct a number of concerts in all the Australian capital cities and many of the Asian countries to the north. Lee thought it would be a good idea to purchase all of the domain names which involve the word 'Silverchair' This way, he would be able to sell them back to the Australian agents at a an inflated price.

Silverchair is worried about what Lee is doing. Advise them fully.