

Buying and Paying over the Internet

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Agenda

- Fundamental contract law
 - Electronic contracts
- Electronic signatures
- Payment instruments
- Choice of law and jurisdiction in contract
 - Enforcement
- Questions and comments

Fundamental contract law

- Offer
 - Sufficiently definite (good and price)
 - Invitation to treat
 - Not binding
 - Revocation of an offer
 - Until the offer has come to notice
- Acceptance
 - Statutory time for acceptance
 - Oral offers
 - Unqualified acceptance
 - Rejection and counteroffer
- C.I.S.G. (UNCITRAL)
 - Revocation until acceptance
 - Unless fixed time for acceptance
 - Nordic reservation regarding contract law

Electronic contracts

- Declaration of intention
 - Manifestation of intention
- UNCITRAL Model Law on Electronic Commerce
 - “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.”
- EU directive on e-commerce
 - Order confirmation
 - Disclosure of identity
 - Who are you dealing with?

Electronic signatures

- What is an electronic signatures?
 - Public Key Infrastructure
 - Trusted third party
 - Digital certificates
 - Secure identification
 - Revocation
 - Expiration
 - Certification Policy / Certification Practice Statements
- Properties
 - The identity of the parties
 - Authentification of message
 - Integrity of content

Enforceability and liability

- Enforceability of electronic signatures
 - A binding signature is a signature that can be enforced!
 - "An objective manifestation of the will to be bound"
 - Legal proof
 - Courts freedom to asses evidence
 - EDI agreements
 - Different legal traditions: Formalism vs. non-formalism.
 - Specific formal requirements
- **Liability**
 - What is misuse? How does it take place?
 - Forgery and fraud
 - A forged signature does not create a legal obligation
 - Passivity
 - The perpetrator is liable!
 - The owner of the electronic signature might be liable for the loss suffered by a part who in good faith relied on the validity of the electronic signature
 - Potential liability of the trusted third party

Payment instruments

- Act on Certain Payment Instruments
 - Safe and well-working payment instruments
 - Transparency, voluntariness and protection against abuse
- Liability rules
 - Liability for abuse and limits
 - DKK 1,200 if personal code has been used
 - DKK 8,000 when personal code has been used and
 - The holder has failed to inform the issuer that the code has been known
 - The holder has disclosed the code
 - Grossly irresponsible conduct by the holder
 - Without limits if the issuer proves that the code has been disclosed by the holder
- Receipt unless easy access to transaction information
- Charge back
 - Transactions without PIN code or signature
 - Transaction not undertaken or authorised by the holder
 - The sum charged exceed the agreed sum
 - Delivery has not taken place
 - Using right of withdrawal by not collecting the goods or services

Choice of law and jurisdiction in contract

- Choice of forum (jurisdiction)
 - Legislation
 - Brussels Regulation
 - Brussels Convention
 - Lugano Convention
 - Home Court (defendant domicile)
 - Party autonomy
 - Place of performance of the obligation in question
- Choice of applicable law (private international law)
 - Legislation
 - Hague Convention
 - Rome Convention
 - Party autonomy
 - National law vs. C.I.S.G.
 - Center of Gravity (closest connection)
 - Characteristic performer (supplier)

Enforcement

- Free movement of judgements
 - EU and EFTA
 - Exorbitant bases
- Alternative Dispute Resolution (ADR)
 - Mediation
 - Arbitration awards
 - New York Convention
 - Online Dispute Resolution (ODR)

Questions and comments