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The Causes of Conflicts in the Contracting Processes on the Internet

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Abstract

The aim of this paper is to examine the causes of conflicts in the contracting processes on the Internet. The methodology used in this paper is pure library research focusing mainly on primary and secondary sources. As a result, the application of the principle of childhood and even some other types of contracts on the Internet has been considered as another problematic case of contracting on the websites. In conclusion, consumer protection in international contracts has become necessary, and that protection requires the development of consumer protection provisions, especially with regard to the terms and conditions of Internet sites.

Keywords: Iraq, European, Union, Conditions, Sites.

Las causas de los conflictos en los procesos de contratación en Internet

Resumen

El objetivo de este documento es examinar las causas de los conflictos en los procesos de contratación en Internet. La metodología utilizada en este documento es una investigación de bibliotecas puras que se centra principalmente en fuentes primarias y secundarias. Como resultado, la aplicación del principio de la infancia e incluso algunos otros tipos de contratos en Internet se ha considerado como otro caso problemático de contratación en los sitios web. En conclusión, la protección del consumidor en los contratos internacionales se ha vuelto necesaria, y esa protección requiere el desarrollo de disposiciones de protección del consumidor, especialmente con respecto a los términos y condiciones de los sitios de Internet.

Palabras clave: Irak, Unión Europea, Condiciones, Sitios.

1. INTRODUCTION

With the emergence of electronic commerce, it has become increasingly more difficult to apply the traditional connection of private international law. This connection often requires identifying the site where the commercial activities occur, such as the place of delivery of products or the place the contract was concluded. The electronic transactions on the internet through the networks do not conform to the traditional boundaries. As a result, the site activities lost to some extent much of its importance in the electronic world.

Therefore, one of the main challenges in contemporary private international law is how to deal with these legal obstacles that arise from the implementation of new technology. In the context of e-commerce, the conflicting interests between buyers and sellers create a jurisdictional problem (Wang, 2010; Manwaring, 2011).

2. FINDINGS AND DISCUSSION

2.1. The terms and conditions of the Internet sites

The terms and conditions of the internet sites are undoubtedly considered to be within the formulation of internet sites. They have legal implications including the legal provisions the user should know. These also include the selection of the court, and applicable law, guarantees, concessions, right of withdrawal, etc. Most of the users of the sites do not read this important information. They are also unaware of the legal implications. These terms and conditions are nonnegotiable. In the case of *Pollstar v Gigmania Ltd*, the court said that the court agrees with the defendants by stating that many visitors of the sites may not be aware of the license agreement. In traditional contracts, those terms and conditions are usually printed on the back of the contractor on a separate sheet that is then stapled together with the contract. As for contracting via the Internet, it regulates those terms and conditions in three ways shrink-wrap, click-wrap and browse-wrap agreements (Almusawi, 2012; Daniel, 2008).

In the European Union, Article 10/3 of the European Directive on Electronic Commerce stipulates that Contractual terms and general conditions provided to the recipient must be made available in a way that allows him to store and reproduce them. Those terms and conditions should be sufficiently clear on the internet sites so that they can be found by the parties to the contract. In some cases, it is not possible to apply these terms and conditions of the internet sites in spite of the consent of the consumer because those conditions are considered as unfair (Soo et al., 2019). The English High Court, refused to impose the unfair terms and conditions on the consumer. David (2010) confirmed the reasons behind this judgment by stating that it would be impossible for the consumer to completely read and understand an agreement that is 49-pages long when subscribing to a site (Shiffman, 2012). He stated that:

As I described earlier, the potential customer was told that four documents, including the Customer Agreement, could be viewed elsewhere online by clicking View. Many, one might suspect most, would have passed up on that invitation and proceeded directly to click on Agree, even though it was suggested that they should do so only when they had read and understood the documents. Even if, exceptionally, the defendant, in fact, chose to look at the documents, he would have been faced in the Customer Agreement alone with 49 pages containing the same number of closely printed and complex paragraphs (Indriastuti, 2019: 18).

It would have come close to a miracle if he had read the second sentence of Clause 10(3), let alone appreciated its purport or

implications, and it would have been quite irrational for the claimant to assume that he had. This was an entirely inadequate way to seek to make the customer liable for any potential trades which he did not authorize and is a further factor rendering the second sentence of Clause 10(3) an unfair term (Emna & Sarabdeen, 2007).

The researcher believes that the validity of the terms and conditions of Internet websites is not stipulated in the Iraqi law. This is because there is no legal text that addresses the issue. This issue has to be addressed by developing the legal rules in the Iraqi Electronic Signature and Transactions Act along the line of the existing legal rules in the European Union's directives in order for it to be applied in the Iraqi courts. Based on the aforementioned, the users of internet sites have to be aware of the terms and conditions developed by the site before the conclusion of the contracts. Knowing these terms and conditions has a benefit from a legal perspective. Therefore, these terms and conditions have to be read carefully before concluding the contract (Almasri, 2004; Russell, 2012).

2.2. The identity of the contractual parties

The failure to disclose the identity of the parties in a contract raises many legal issues. The failure to disclose the identity of the internet users raises the difficulty of determining the location of the parties in the international contract on the Internet. This affects the issue of determining the jurisdiction and applicable law. The first possibility of the effects of failure to disclose the identity is the

possibility that contracts were made by minors. It is important to note that minors are knowledgeable in the use of technology and they are frequent users of such technology (Yang et al., 2019). Studies have shown that many international electronic contracts are concluded by minors and their percentages have reached up to 48% in the European markets on websites such as (eBay and Amazon).

In the United States, 14 million minors are members of Facebook. Based on the previous statements, the minors are involved in various types of activities via the Internet. An apparent question to ask here is concerned with the legality of the transactions carried out by minors via Internet sites as these contracts come with legal obligations. The legal issues related to the authenticity of the contracts concluded by minors lie within the domestic law of each state. For example, the Brussels Regulation and Rome 1 Regulation did not address this issue and such provisions cannot be found in the European Union's directives as well. As such, the national courts of each state will have to deal with the legal activities of the minors on the websites.

However, the request was refused. The father's argument in the lawsuit was based on the principle of childhood. The court rejected the argument of the plaintiff. The mere presence of minors in the contracting affects the contracting authenticity, but there may be another similar allegation under the pretext of the minors. This researcher believes that the companies should be compelled to check the age the potential purchaser during the contracting process via the Internet. The check can be used as a precautionary measure to avoid contracting with minors. This is should not be considered as an evasion

of the parents' responsibilities. Parents should also play a role in the prevention of these types of transactions.

Concerning the difficulty of investigating the identity of the parties of the contract, it is imperative to include the clause in the contracts of e-commerce committing both sides to cast all the personal data that discloses their identity, especially the name and geographical address. In the case that one party does not commit to this condition, the other party in the event of a dispute has the right to demand the application of national law or any other law can give him adequate protection. This study has shown that the identity of the user can be considered one of the most controversial aspects of the contract conducted on websites.

In addition, the non-verification of identity in online communication allows the juvenile to become an active player in online activities via the Internet. Juveniles have become increasingly involved in the purchase of intangible products online, such as loans, services and games. It has been shown that the doctrine of childhood does not help the parents of the children to invalidate the online contracts made by the children on the grounds that the products intangibles cannot be returned after their consumption by the children. Consequently, the application of the principle of childhood and even some other types of contracts on the Internet has been considered as another problematic case of contracting on the websites.

3. CONCLUSION

Consumer protection in international contracts has become necessary, and that protection requires the development of consumer protection provisions, especially with regard to the terms and conditions of Internet sites. The users of the internet sites have to be aware of the terms and conditions developed by the site before the conclusion of the contracts. The validity of the terms and conditions of Internet websites is not stipulated in the Iraqi law, this is because there is no legal text that addresses the issue, this issue has to be addressed by developing the legal rules in the Iraqi Electronic Signature and Transactions Act 2012 along the line of the existing legal rules in the European Union's directives.

In addition, concerning the difficulty of investigating the identity of the parties of the contract, the identity of the user can be considered one of the most controversial aspects of the contract conducted on websites. It is imperative to include the clause in the contracts of e-commerce committing both sides to cast all the personal data that discloses their identity, in the case that one party does not commit to this condition the other party in the event of a dispute has the right to demand the application of national law or any other law can give him adequate protection.

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