

THE DICKINSON DEES DIFFERENCE





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Contract formation in electronic commerce

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Contract formation

- Basic principles
- Electronic environment
- European dimension
- Future direction
- Associated issues





Basic Principles

- Offer
- Acceptance
- Value (“consideration”)





Analytic approach

- What happened?
- What were the intentions?
- Did they differ?
- When was the contract made
- What were its terms?
- Are there competing terms?





The traditional environment

- Face to face
- Postal dealings
- Telephone
- Telegraph
- Telex





The electronic environment

- Fax
- EDI
- E-mail
- Internet





Contracting parties

- B2B
- B2C
- B2G
- C2G





Contracting parties

- B2B
 - Confidence
 - Investment – legal resource availability
 - TPA
 - Secure payment
- B2C
 - Consumer issues
 - Distance selling
 - Mobility of goods
- C2G
 - Administrative rules
 - Accessibility
 - Paper alternatives





Human/electronic interface

- Computers cannot make contracts!
- System establishment
- Commercial relationship
- Repeatable data flows
- Long term supply agreements





Evidence of contract

- Nature of record
- Admissibility
- Probative value
- Formalities
- Signature





European environment

- Electronic Commerce Directive
- Digital Signatures Directive
- Distant Selling Directive
- Data Protection Directive
- Commercial law code?





Mediation

- Monitor or enforcer?
- TTP role
- Risk management and insurance
- Contract terms or time of creation
- UN/CEFACT recommendation 31





Conclusions

- Contractual solutions
- Legislation
- International conventions
- Codes of conduct





Thanks for listening!

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