

ACCEPTANCE RULE IN THE CONTRACTS ACT 1950 (MALAYSIA): AN ANALYSIS

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Abstract

This study provides insight for Contract Act 1950 (Malaysia). How the Contract Act 1950 (Malaysia) governs the online business? And its limitations. Current study also provides insight regarding postal regulation and its use for online contracts. This study also provides limitations regarding postal regulation use and guides future amendments in Contract Act for online business contracts. It is particularly important to correct the Contracts Act 1950 (Malaysia) to address the above issues on the internet contract. The Act ought to be revised in light of the UNCITRAL Model Law on Electronic Commerce 1996 and Uniform Computer Information Transactions Act 1999 (US). Singapore and India have as of now sanctioned new statutes, for example, Electronic Transactions Act 1998 and The Information Technology Act 2000 separately on the premise of UNCITRAL Model. Moreover, to embrace the advantage of new Information and Communication Technology (ICT), the contract law of Malaysia should be upgraded to oblige electronic contract issues. Additionally, to oblige electronic contracting rules in the Contracts Act 1950 (Malaysia), parliament should amend the act or may constitute another regulation to address the following issues.

Keyword: CONTRACTS ACT 1950, Transactions Act 1999 (US), Communication Technology (ICT), Malaysia Contracts, internet interfaces. The arrangements of the Malaysian Contracts Act 1950 were taken from the Indian Contract Act 1872, which was in accordance with the UK

contract law (Fong, 2005). The Malaysia Contracts Act 1950 was revised in 1974. In the event that we read deliberately the arrangements of the Act identified with the development of agreements, we will find that the Act gives fundamentally the postal regulation, otherwise called mailbox regulation for the development of an agreement. It doesn't particularly say which rule will be appropriate for online contract: postal regulation or receipt regulation. Section 4 of the Malaysia Contracts Act 1950 says that:

1. The correspondence of a proposition is finished with regards to the knowledge of the individual to whom it is made.
2. The correspondence of an acknowledgment is finished:
 - a) As against the proposer, when it is placed in a course of transmission to him, in order to be out of the force of the acceptor; and
 - b) As against the acceptor, with regards to the knowledge of the proposer.

Delineations "a" and "b" of section 4 of the Contracts Act 1950 says, i.e. A proposes, by letter, to offer a car to B at a specific cost. The correspondence of the proposition is finished when B gets the letter. B acknowledges A's proposition by a letter sent by post. The correspondence of the acknowledgment is finished. As against A, when the letter is posted and as against B, when the letter is accepted by A (Jalil & Pointon, 2004).

Section 4(2) of the Malaysian Contracts Act 1950 gives two sorts of tenets to the correspondence of acknowledgment, for example, postal regulation and receipt regulation. Section 4(2) (a) says that the correspondence of acknowledgment is finished against the proposer, when the letter (conveying the acknowledgment) is posted, regardless of whether the proposer gets it or not; or he gets it late. This is postal regulation. Section 4(2) (b) states that the correspondence of

acknowledgment is finished against the person who accepts when the letter (conveying acknowledgment) is accepted by the person who offered. This is unmistakably receipt regulation.

For example, in *Madam Loll Sai Nyah v/s American International Insurance Co. Ltd*, the Court of Appeal, Kuala Lumpur considered and clarified the utilization of section 4 of the Contracts Act 1950. For this situation the litigant's husband (the deceased) affected individual mishap protection approach under the respondent insurance agency. The premium for the protection was paid on 24 June 1977 to an insurance representative of the respondent organization. On 26 June 1977 the protected person met with a deadly road mishap and passed away. The premium was accepted by the respondent insurance agency on 27 June, which was one day after the death of the insured person, and the proposition form was accepted on 30 June, which was four days after the death of the insured person. At the point when the appealing party guaranteed the total protected under the insurance policy, the insurance agency declined to pay saying that there was no protection contract made restricting the organization and subsequently the organization was not obliged to pay the cash under the insurance contract.

The Court of Appeal and The High Court held that no legitimate insurance contract was made as the proposition form was accepted by the respondent insurance agency four days after the passing of the insured person and there was no acknowledgment by the respondent organization by issuing the insurance policy. To withstand protection, get the proposition form and premium ought to be accepted and acknowledged by the respondent and the acknowledgment ought to be imparted to the guaranteed. The insurance agency is not obliged to pay under the protection policy when the acknowledgment of the proposition goes to the information of the guaranteed or the protection strategy was accepted by the insured. The High Court considered accordingly: From the certainties of this case, plainly the proposition had not go to the knowledge of the

respondent, on the grounds that the proposition was just accepted at the litigant's office on 30 June 1977, though the deceased had passed on 26 June 1977.

Besides, regardless of the possibility that the insurance contract made was not on line contract, thus, the perception and clarification have not been of much help for our investigation here. Electronic path for instance, email, EDI (electronic information trade), internet interfaces and so forth. As the Contracts Act 1950 is quiet on this point, the postal regulation will be appropriate against the proposer and receipt manage against the acceptor in the arrangement of electronic contract. Presently the issue is whether the postal manage is reasonable for online contract which is momentary in nature (Jalil & Pointon, 2004).

WHY POSTAL RULE IS NOT SUITABLE FOR ONLINE CONTRACTS?

The correspondence of proposition is finished when it comes to the knowledge of the offeree. Thus, an acknowledgment ought to be finished with regards to the information of the proposer or offer (Jalil, 2011). In Powell v/s Lee case, the respondent chose to select the complainant as principal of a school. The terms of the arrangement were never conveyed to the offended party. The court held that there was no agreement since the litigant's acknowledgment of the complainant's offer of service had not been conveyed to him. For the offer or to be bound by the agreement, he or she should get the terms of the acknowledgment from the acceptor. There will be no agreement if the offeror does not get the acknowledgment message from the acceptor.

Once in a while the letters may miss in transit and never accepted by the recipient. The court applies postal regulation on contracts made by sending letters through mail station since, it is simpler for the offered to demonstrate the sending of acknowledgment letter than demonstrating the receipt of the acknowledgment letter by the offering party. Along these lines, postal

regulation favors the offeror at the impediment of the offering party, as the offering party is bound by the agreement when the offering party does not know whether his offer has been acknowledged or dismissed by the accepting party. In any case, the circumstance is distinctive on the Internet. On the Internet, the correspondence is quick and it is not troublesome forward offered to demonstrate the receipt of the acknowledgment message by the offering party (Amin, & Mohd nor, 2011).

Electronic contract can be made through email, electronic information exchange (EDI), internet interfaces and chat services. Presently the issue is whether postal regulation will be good with the internet contract. The background of the postal regulation says that, when an offer and the acknowledgment of the offer are imparted by mail station, the mail station service may require some delay from few days to couple of weeks in order of the letter to be reached to the accepting party or proposing party. It might happen that the acknowledgment letter is posted yet was not accepted at all by the proposing party. It is simpler to show the posting of the letter than showing the receipt of the letter by the recipient (Sinnadurai & Koh, 1979).

Thus, for the purpose of trade it has been chosen that the agreement will tie on the proposing party when the acknowledgment letter is posted by the accepting party regardless of the proposing party has received the letter or not, gave that the letter was legitimately tended to. This postal regulation may not be reasonable on the internet on the grounds that the correspondence on the internet is quick and significantly momentary. It is vital to figure out what sort of agreement lead ought to be relevant on the development of electronic contract. As many purchasers are purchasing products and ventures on the Internet, the worldwide bodies have effectively made contract regulations which will be applied on the internet.

Uniform Computer Information Transactions Act 1999 (UCITA) (US) give receipt regulation to be appropriate on electronic contract (Szwak, 2002). In postal regulation, the acknowledgment of the offer is finished exactly when the letter is posted by the accepting party, regardless of whether the proposing party has received the letter or not. Unlike postal regulation, the receipt regulation which is applicable on the internet contract gives that the acknowledgment of the offer is compelling when the data message is received by the proposing party. The time of receipt is the point at which the data message enters in the data management system of the recipient.

Following are the definition of the terms originator, data message and recipient according to the article 2 of the UNCITRAL Model Law on Electronic Commerce. Originator of a data message implies a man by whom, or on whose sake, the information message indicates to have been sent or created before capacity, assuming any, yet it does exclude a man going about as a mediator as for that data message. Data message implies, data produced, sent, received or put away by gadgets, optical or comparable means including, yet not constrained to, electronic information exchange (EDI), electronic mail, wire or telex. Recipient of a data message implies a man who is proposed by the originator to get the data message, however does exclude a man going about as a mediator as for that data message (Szwak, 2002).

WRITING AND SIGNATURE REQUIREMENT

Legislation may require certain agreement to be made in composing on paper. Contracts Act (Malaysia) does not state anything how to meet this written work prerequisite when the agreement is made by utilizing data message on the Internet, UNCITRAL Model manages this issue. Article 6 of the UNCITRAL Model Law gives that the written work prerequisite is met by data message under if the data contained in that is open in order to be usable for ensuing reference. Be that as it may, Law requires certain agreements be in composing and marked by the

business parties. The Contract Act 1950 (Malaysia) is silent about the issue on the best way to meet the signature necessity (Overby, 1999). In any case, the Digital Signature Act 1997 (Malaysia) says that the signature necessity might be met in an electronic exchange if cryptography innovation is utilized to convey the data message. According to Blythe (2005), section 62 of the Digital Signature Act gives that where a regulation of law requires a signature or accommodates certain outcomes without a signature, that regulation should be fulfilled by a computerized signature where:

- a) Digital signature is checked by reference to people in general key recorded in a legitimate testament issued by an authorized certification authority.
- b) Digital signature was appended by the endorser with the aim of signing the message.
- c) The beneficiary has no prior knowledge or notice that the endorser has breached an obligation as a supporter; or does not legitimately hold the private key used to fasten the digital signature.

WHEN IS AN ELECTRONIC MESSAGE EFFECTIVE?

UCITA and UCC says that, an electronic message is viable at the time of its receipt regardless of the possibility that no individual knows about its receipt (Shah, 2000).

WHEN IS AN ELECTRONIC CONTRACT CREATED?

The Contracts Act 1950 does not give any arrangement to decide the time when an electronic contract is made. It just gives the time when a postal contract is made. Segment 203(4) of UCITA and article 2-204 of UCC gives that if an offer made in an electronic message inspires an electronic message tolerating the offer, an agreement is created when an electronic

acknowledgment is received (Miller, 2008). Following two statutes give that an electronic contract perhaps made regardless of the possibility that no party in the agreement knew about the receipt of the acknowledgment. In this way, human communication is not required to make an electronic contract. Electronic records traded in an electronic exchange are powerful when received in shape and at an area fit for preparing the record regardless of the possibility that no individual knows about their receipt (Rustad, 1999).

CONCLUSION

It is particularly important to correct the Contracts Act 1950 (Malaysia) to address the above issues on the internet contract. The Act ought to be revised in light of the UNCITRAL Model Law on Electronic Commerce 1996 and Uniform Computer Information Transactions Act 1999 (US). Singapore and India have as of now sanctioned new statutes, for example, Electronic Transactions Act 1998 and The Information Technology Act 2000 separately on the premise of UNCITRAL Model. Uniform Computer Information Transactions Act 1999 (US) clearly states that an electronic message is just successful when it is received.

The Act additionally expresses that an electronic contract is made when the acknowledgment is received by the offering party. Be that as it may, UNCITRAL Model Law on Electronic Commerce is quiet on these important issues. To embrace the advantage of new Information and Communication Technology (ICT), the contract law of Malaysia should be upgraded to oblige electronic contract issues. To oblige electronic contracting rules in the Contracts Act 1950 (Malaysia), Parliament should amend the Act or may constitute another regulation to address the following issues. Firstly, the new regulation should explicitly approve the utilization of electronic message in the arrangement of an electronic contract. Secondly, the electronic message should meet the necessity of composed contacts if the message is fit for capacity in the

electronic computer for longer period and if the data contained in that is available to be usable for ensuing reference. Thirdly, new legislation ought to give the place and time of dispatch the receipt of electronic message. The correspondence of proposition and acknowledgment on the Internet is finished exactly when the assigned data management system of the recipient gets the electronic message. Fourthly, in the event that the agreement parties apply advanced encryption technology affirmed by the Certification Authority under the Digital Signature Act 1997, then the electronic message should fulfill the prerequisite of signature. Fifthly, new legislation ought to give that an electronic message is viable when it is received by the recipient. Lastly, new regulation ought to give that an electronic contract is made when the acknowledgment message is received by the offering party.

References

- Fong, C. M. (2005). Restitutionary Developments under Part VI, Malaysian Contracts Act 1950. *The Australian Journal of Asian Law*, 7(1), 24.
- Jalil, M. A., & Pointon, L. D. (2004). Developments in electronic contract laws: A Malaysian perspective. *Computer Law & Security Review*, 20(2), 117-124.
- Jalil, A. (2011). Clarification of Rules of Acceptance in Making Business Contracts. *J. Pol. & L.*, 4, 109.
- Amin, N., & Mohd nor, R. (2011). Issues on essential elements of formation of e-contract in Malaysia: e-consumers' perspective. *Journal of Applied Sciences Research*, 7(13), 2219-2229.
- Sinnadurai, V., & Koh, T. P. (1979). *The law of contract in Malaysia and Singapore: cases and commentary*. Oxford University Press.

- Szwak, D. A. (2002). Uniform Computer Information Transactions Act [UCITA]: The Consumer's Perspective. *La. L. Rev.*, 63, 27.
- Overby, A. B. (1999). Will Cyberlaw Be Uniform--An Introduction to the UNCITRAL Model Law on Electronic Commerce? *Tul. J. Int'l & Comp. L.*, 7, 219.
- Blythe, S. E. (2005). Digital signature law of the United Nations, European Union, United Kingdom and United States: Promotion of growth in E-commerce with enhanced security. *Rich. JL & Tech.*, 11, 6-8.
- Shah, P. A. (2000). The Uniform Computer Information Transactions Act. *Berkeley Technology Law Journal*, 85-107.
- Miller, F. H. (2008). Uniform Commercial Code Article 2 on Sales of Goods and the Uniform Law Process: A True Story of Good v. Duq. *Bus. LJ*, 11, 143.
- Rustad, M. L. (1999). Making UCITA More Consumer-Friendly. *J. Marshall J. Computer & Info. L.*, 18, 547.