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CONTRACT FORMATION IN OPEN ELECTRONIC NETWORKS
University of Sydney, Faculty of Law

CONTRACT FORMATION IN OPEN ELECTRONIC NETWORKS

by

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ABSTRACT

This thesis examines the process of contract formation in open electronic networks, such as the Internet. It departs from usual analytical approaches, which focus on the electronic form of the transaction and focuses on the fact that the contract is formed over a network. It opposes the endless repetition of analogies and metaphors and adopts a more direct approach to on-line transacting - an approach based on an understanding of the technologies underlying networked communications. It stresses the fact that parties transact absent prior agreement in an environment, which is characterised by a number of novel risks. Most importantly, this thesis abandons the “wholesale” approach to the Internet and examines the respective methods of communication and information retrieval, which the Internet is comprised of. This thesis attempts to answer some basic questions pertaining to the existence of intention, the time of formation and the contents of the contract. Various stages in the formation process are examined from different technological angles.

The point of departure is that that contract law can absorb technological change. Contract formation principles – employing concepts devised for analytical purposes – remain unchanged. It is their practical application in the novel transacting environment that may change. As the technologies enabled by open electronic networks alter the manner contractual intention is presented and transmitted, the traditional analytical tool of “offer and acceptance” becomes more difficult to apply. Despite such difficulties, it is not necessary to introduce a parallel legal regime for on-line contracting.

The concepts of functional equivalence, technological- and media-neutrality are criticized. Although they underlie most model laws dealing with electronic commerce, their utility for the application of contract formation principles is questioned. Instead of discussing the fulfilment of formal requirements on-line, be it by means of digital signatures or by the functional equivalents of “writing,” the thesis focuses on the contractual implications of hypertext, the client and server model as well as the speed and reliability of on-line communications.

The thesis is based on materials valid on 31st December 2006. It contains my original work. To the best of my knowledge, the thesis contains no copy, paraphrase or summation of the published or unpublished work of any other person, except where duly acknowledged in the text and/or footnotes. No part of this thesis has been previously presented for a degree at the University of Sydney or at any other university.
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