

A CRITIQUE OF THE DOCTRINE OF CONSENSUS AD IDEM IN ELECTRONIC CONTRACT FORMATION.

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"The law must be stable, but it must not stand still"

Per -Roscoe Pound

Abstract

This paper examined the response of the law on Electronic contract precisely on when a contract will take legally effect. The transformation that has occasioned our adoption of Information communication technology is indeed revolutionary. Relationships boarding on personal and business platforms have never being so convenient, efficient and expedient. The major challenge with this evolution is the rather slow and conservative response by the law on the speed of this innovation. The analysis juxtaposed the traditional principles of communication of acceptance, with a view of considering whether a different reasoning would be necessary for contract formed electronically. The reasoning analysed are the principle of instantaneity i.e. acceptance is deemed communicated only when it is actually delivered to the offeror. The paper resolved that websites based contracts, are caught by this principle as communication with this medium is instantaneous. Secondly is the principle of Non instantaneity i.e. acceptance is deemed communicated only when it is delivered to a third party other than the offeror; parties having consented to this arrangement. This principle is akin to Postal rule. This paper argued that despite the similarities between communication by email and postal service, imposing the Postal rule to email communication will be suicidal. This paper further argued that the rationales for the creation of the postal rule are fundamentally different from the challenges the email regime have generated. To resolve these complexities this paper recommended that parties interested to transact via email should incorporate in their contract when their contract would take legal effect and which legal jurisdiction should entertain their dispute.

Keywords: Consensus Ad Idem, Electronic Contract, Principles of Instantaneity and Non Instantaneity of Communication, The Postal rule.

I. Introduction

This essay will evaluate the doctrine of Consensus Ad idem' which is fundamental to contract formation. This study is aimed at considering whether the transposition of the established doctrine of Contract formation traditionally into electronically formed contract, will be best suited to address the challenges that have arisen as a result of the adoption of new communication infrastructure.

Basically, this work is segmented into six parts. Part one, being the introduction; Part two, the background - a justification for this study; the origin of communicating of acceptance; provides a synoptic overview of the meaning of contract law; Part three the

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