

Lecture- 27



Implementation & Judicial Interpretations across the globe

The Model Law of Electronic Commerce was adopted to facilitate the international trade through electronic modes of communication. It aimed at encouraging national legislators to adopt a set of internationally acceptable rules regulating e-commerce. Thus, Model Law is accompanied with a guide which provides background and explanatory information to assist the states in preparing the necessary legislative provisions.

Different states enacted laws based on the principles of this Model Law. Thus, the courts have interpreted the provisions of their domestic laws according to the Model Law.

Khoury v. Tomlinson is a landmark case decided by the Texas Court of Appeal. The facts of this case are such that an agreement was entered via e-mail which was not signed but only the name of the originator appeared in the 'from' section. Referring to the principles in Article 7 of the Model Law, the court found sufficient evidence that the name in the 'from' section establishes the identity of the sender.

Chwee Kin Keong and others is a case dealt with by the Singapore High Court. There was the issue of unilateral mistake in this case as the wrong price was quoted on the seller's website for a product. The server of the seller automatically sent a confirmation mail when the buyers placed an order. All the elements of the contract were established but with a mistake which eliminated consensus ad idem. Referring to the Singapore Electronic Transactions Act based on Model Laws, the court found that human errors, system errors, and transmission errors could vitiate a contract.

Martha Helena Pilonieta v Gabriel Humberto Pulido Casas is a case dealt with by the Supreme Court of Justice of Columbia. The court found that the electronic message by a spouse was not relevant on the ground of evidential thresholds.

Thus, the Model Laws became the basis for a number of legislative texts enacted by various governments across the globe and it gave a uniformity to the laws concerning the information communicated by the electronic mode of communication.

Conclusion

Citing the ambiguity and heterogeneity in law regarding the contracts formed via electronic modes of communication and the threats it posed to the international trade, the United Nations Commission on International Trade Law took the initiative to draft a set of internationally acceptable rules regarding legal validity and enforceability of the information communicated via e-modes. This Model Law has been globally accepted and has been successful in enforcing the principles of non-discrimination, technological neutrality, and functional equivalence regarding the data messages. This has helped in furtherance of international trade and helped homogenising various legal perspectives regarding this subject. MLEC has achieved the following:

- Validation and recognition of contracts formed through electronic means,
- Validating originality and retention of documents in electronic form,
- Provided acceptability to electronic signatures for legal and commercial purposes,
- Support to the admission of computer evidence in courts and arbitration proceedings;