

PROBLEMS OF ELECTRONIC CONTRACT IN NIGERIA TODAY*

Abstract

By its very nature, formation, mode of enforcement, and usage, electronic contract poses a number of legal problems that have bothered law makers and legal practitioners. It creates, for instance, legal muddle in the ascertainment of the actual time a contract is formed and as such impinges on issues of withdrawal of offer, jurisdiction and a number of such other problems. This study considered these legal issues as they relate to Nigeria. Using a doctrinal method, the inquiry found that despite the challenges, legal or otherwise, Nigerian electronic contract is vibrant, only that most Nigerians are ignorant of the fact that some transactions they agree to online are actually binding as electronic contract. The paper recommended, among other things, that just like the traditional contract, electronic contract should be added to the Nigerian law students' curriculum and taught as part and parcel of the law of contract.

Keywords: Electronic Contract, Commerce, Nigeria, Challenges, Prospects

1. Introduction

The law cannot afford to be ignorant of modern business methods or lag behind them. Law must open its eyes to the mysteries of computer.¹ Since the advent of computer and internet operations, contract which is 'an agreement which the law will enforce or recognize as affecting the legal rights and duties of the parties'² has taken a new turn. Information and Communications Technology (ICT) has now been globally adopted as an easier means of enhancing human interaction. This development has also affected the traditional mode of contract. People can now buy and sell goods and services just by a click *via* the internet. Little wonder the world is now referred to as a global marketplace. This recent business development is what is referred to as E-Contract or E-Commerce. E-Contract is growing extensively in terms of the volume of goods and services that are being traded online and it is now so easy that people engage in E-contract almost on daily basis often without knowing they are entering into a binding contract. Facebook users, for instance, while registering, are asked to fill several pieces of personal information before they are registered or connected. Often, certain terms and conditions (which may include service fees and security details) will be presented to such intended user to either accept or reject and many will ignorantly accept just to get connected; little do these users know that they have entered into an agreement with Facebook Company. E-contract on the internet uses various electronic agents or mechanisms such as computer programme, phones and so on that can cater for much diversity of applications.

No doubt, Nigeria has certainly benefited from e-contract transactions and has witnessed exponential development of certain industries through the adaptation of ICT. For instance, there are now many online markets or trading companies contracting and trading effectively in all corners of Nigeria: JUMIA, KONGA, OLX, among others. However, the emergence of this new world order has brought with it a number of legal and socio-economic issues. The reason for some of these issues is partly because the regulation of E-commerce subsector of the Nigerian economy has practically been left exclusively to the architecture of the internet, without any focal or precise law to govern transactions or business behaviour online. This study discusses the framework of E-Contract generally and does an analysis of the legal issues or challenges thereof in Nigeria. It will also attempt to give a little overview of E-contract law and practice in some foreign jurisdictions compared to what obtains in Nigeria. The paper will end with a few recommendations on how the attendant legal problems facing electronic contract in Nigeria can be surmounted for the growth of Nigerian economy.

2. Meaning and Benefits of E-Contract

There is no exclusive definition of E-Contract. Studies in various perspectives have tried to define E-contract. E-contract has been viewed as a contract modeled, specified, executed and deployed by a software system.³ It has also been described as any agreement which is entered on via the internet by competent parties with lawful

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¹ Per *Esso West* in the case of *Africa Inc v T.oyegbola*(1996)NMLR 19

² Sagay, *Nigerian Law of Contract* (Second Edition), Spectrum Books Limited, Ibadan, 2000, p. 1

³ www.legalserviceindia.com/articles/ecta.htm. Accessed on 13/2/2020

consideration, free consent without any *mala fide* intention, and to create legal relationship.⁴ E-contract is any kind of contract formed in the course of e-commerce by the interaction of two or more individuals using electronic means such as email, the interaction of an individual with an electronic agent such as a computer programme, or the interaction of at least two electronic agents that are programmed to recognize the existence of a contract.⁵ 'Electronic agents' refers to any electronic means or automated means such as a computer programme, phones, iPods, WhatsApp, automated teller machines (ATM) that can initiate or respond to an action independently without a human's review. 'E-contract or electronic contract is a piece of information communications, or correspondence in an electronic document, creating obligations between two or more correspondents that are enforceable or otherwise recognizable at law '⁶ Thus, E-contract can be seen as a means of transacting business electronically: Black's Law Dictionary defines E-contract as 'Any type of contract formed in the course of e-commerce by (1) The interaction of two or more individuals using electronic means such as e-mail (2) The interaction of an individual with an electronic agent such as a computer program, or (3) The interaction of at least two electronic agents that are programmed to recognize the existence of a contract'. It is a 'form of a binding agreement by means of a computer or other electronic or automated technology'⁷

Hence, E-contract is any kind of contract formed by the interaction of two or more persons, executed and enacted by means of an online technology. It is the buying and selling of information, products and services through computer networks. E-contracts are conceptually similar to traditional commercial contracts. Vendors present their products, prices and terms to prospective buyers. Buyers consider their options, negotiate prices and terms (where possible), place orders and make payments. Then the vendor delivers the purchased product. Nevertheless, because of the ways in which it differs from traditional commerce, electronic contract raises some new technical and legal issues. It is noteworthy that although online contracts and electronic contracts are most often used interchangeably, there is a slight difference between them. While every online contract is also an electronic contract, it is not every electronic contract that is an online contract. A contract concluded only by the use of phone through text messages, phone calls and other facsimile machines is only an electronic contract and not an online contract since it did not require internet connections but every online contract is also an electronic contract because it is initiated and concluded through electronic means over the internet. Therefore, electronic contracts can be made via electronic mails, Gmail, Yahoo mails or its correspondences; it can also be made by electronic communication platforms such as online instant messaging applications (like WhatsApp, Facebook, twitter, blackberry, snap chat or any type of electronic information). This study is mostly and basically concerned with electronic contracts concluded via internet.

The benefit e-contract offers appears to be unlimited. They are a legion. They include the facilitation of international co-operation through trade; making goods and services available to consumers all over the world irrespective of the distance; the expansion of the consumer base for manufacturers or producers of goods and services; and a reduction in the cost of service delivery by delivering these electronically. The importance of internet trading in the emerging globalized economy is to the effect that today's consumers are able to have access to goods and services in the remotest parts of the world without having to see the sellers as happens in the traditional physical buying and selling process⁸ Other benefits include the facilities of avoiding errors, revising content, reducing time to contract, buying/selling 24/7, more reach to customers (no theoretical geographic limitations), low operational costs and better quality of services, no need of physical company set ups, easy to start and manage a business. Again, customers can easily select products from different parts of the world without moving around physically. The phenomenon creates no stress as people can shop and transact from the confines of their homes. In all, E-contract ensures order, peace, security and the smooth and efficient operation of commerce, industry and the economy.

3. Problems and Issues of Electronic Contract in Nigeria

Nigeria still grapples with the implement of a comprehensive legal regime facilitating e-contract, despite being the country with the highest number of internet users in the continent.⁹ What obtains in Nigeria is that various disjointed pieces of predominantly obsolete pieces of legislation collectively regulate various spheres of activity, including e-commerce. What is rather needed is a comprehensive legal framework which harmonizes the regulation of the entire gamut of e-commerce activity, inclusive of cyber-crimes and paves way for the legal

⁴ Ehodhganga.inflibnet.ac. Accessed on 13/2/2022

⁵ <https://definitions.uslegal.com/e/e-contract/> Accessed on 13/2/2020

⁶ <https://akintundeesan.blogspot.co.ke/2015/09/formation-validity-and-enforcement-of-html>'m=1. Accessed on 13/2/2020

⁷ BA Garner (ed), *Black's Law Dictionary* (9th ed.2004) p. 1558

⁸ T.1 Akomolode, 'Contemporary Legal Issues In Electronic Commerce In Nigeria', *Potchefstroom Electronic Law Journal* vol 11 no 3, p.3

⁹ N. Ewelukwa, 'Is Africa Ready for Electronic Commerce? A Critical Appraisal of the Legal Framework for E-Commerce in Africa' < <http://www.acicol.com/temp/Dr N.pdf>. Accessed on 13/2/2020

recognition of documents/materials in the electronic form, in order to ensure legal certainty. For instance, Commerce in Nigeria today, is generally still regulated by the Sale of Goods Act of 1893. The Sale of Goods Act became applicable in Nigeria, by virtue of its incorporation into Nigerian Law, with other Statutes of General Application in England, in force before the 1st of January 1900 in the United Kingdom. It goes without saying that this law is archaic and can hardly cater for e-commerce challenges, much less, regulate it effectively. This presents a clear picture of the nature of the problem.

The Evidence Act 2011 is however a welcome development in Nigeria. The provisions on the admissibility of computer generated evidence and more as primary, provision on the acceptability of electronic signature, and the inclusion of computer files and programmes into the definition of documents are a milestone not only in enhancing E-commerce, but also towards integrating Nigeria into the one-world order *vide* the globalization process. The conditions for admissibility are contained in section 84 (5) of the Act.

- a. The document containing the statement must be produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities. Such activities must be regularly carried on over that same period;
- b. The information supplied to the computer in the ordinary course of those activities must be of the kind contained in the statement or the kind from which the information contained in the statement was derived;
- c. The computer was in proper working condition throughout the material part of the period. Where it was not, it must be shown that the fault was not such as to affect the production of the document or the accuracy of its contents; and
- d. The information contained in the statement must be reproduced or derived from information supplied to the computer in the ordinary course of those activities.

On proof of execution of documents, section 93 of the Act provides as follows:

- (1) If a document is alleged to be signed or to have been written wholly or in parts by a person, the signature or the hand writing of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.
- (2) Where a rule of evidence requires a signature, or provides for certain consequences if a document is not signed, an electronic signature satisfies that rule of law or avoids those consequences.
- (3) An electronic signature may be proved in any manner, including by showing that a procedure existed by which it is necessary for a person in order to proceed further with a transaction, to have executed a symbol or security procedure for the purpose of verifying that an electronic record is that of the person.

More still, with the Electronic Transactions Act, Nigerians are offered a full protections to contracts entered into via emails, and transactions conducted with online shops, electronic commerce and services platforms, which are currently not provided for in our laws. Another obvious benefit of this bill is that it will reduce the cost of doing business by eliminating transportation and other logistics cost. By passing this bill, the Senate gave legitimacy and local application to the United Nations Convention on the Use of Electronic Communications in International Contracts, which was adopted by the General Assembly of the United Nations on 23rd November 2005 (the UN Convention). This new legal framework emboldens innovative creativity and open up new areas of investment opportunity for our young population and start-ups that have suffered a lack of support from creditors and investors due to the absence of this law. The implication is that the country now has the opportunity to see the emergence of a new generation online, electronic application giants. The Act gives validity to online contracts, electronic signature and records, admissibility of electronic evidence, and security of parties to an online transaction. There are currently before the legislature other bills which when passed and signed to law will add to the body of law for the regulation of electronic contracts and transactions in Nigeria. Pending the completion of the law making process, the judiciary is left to decide upon matters arising from Electronic contract by resorting to several existing statutes

The task before this inquiry is to determine how far the legal provisions have affected E-Contract in view of national economic growth and development in Nigeria.

Before going into the heart of this study, it may be *ad rem* to give working definitions of the terms 'contract', 'electronic', 'E-contract', and 'electronic commerce'. A *contract* is any agreement which the law will enforce or recognize as affecting the legal rights and duties of the parties. A contract has also been defined as a promise or a

set of promises the law will enforce.¹⁰ The term *electronic* has been variously defined by several authors. According to Hornby, it is seen as ‘having or using many small parts, such as microchips, that control and directs small electric current, concerned with electronic equipment.’¹¹ It is seen in the fourth sense in Merriam-Webster dictionary thus as ‘of relating to, or being a medium (such as television) by which information is transmitted electronically’.¹² This study understands *electronic* to mean that which pertains to the use of internet or other devices as a medium for communication or transfer of information. *E-contract* is the clip form of electronic contract and it is good to note at this point that there is no exclusive definition of e-contract. This study, however, views E-contract as any kind of contract formed by the interaction of two or more persons, executed and enacted by means of a technology or electronic agents or mechanisms. By electronic agents are any electronic or automated means, such as a computer programme, that can independently initiate or respond to an action or message without a human's review. E-contract is also referred to as cyber contracts or online contracts. *Electronic commerce* or *E-commerce* is seen as the practice of buying and selling goods and services through online consumer facilities on the internet. In this paper, electronic contract (E-contract), online contract, electronic commerce (E-commerce), cyber contracts are used interchangeably although there may be nuances in the meaning of the terms.

Consumers are faced with a number of risks arising from the general lack of understanding of the operations of the internet. Also legal and other issues which have already been taken care of in more developed countries are still being grappled with in developing countries like Nigeria where internet trading is fairly new. These issues include formation of contracts on internet, choice of law and jurisdiction of court, execution and electronic signature, data protection, issues of evidence and enforcement, dearth of relevant infrastructure, and lack of awareness and computer literacy.

Problem of E-Contract Formation

Formation of E-contract is all about the determination of the point when a contract may be said to have come into existence in an electronic environment. It is primary knowledge that there is no specific form in which a contract may be made or entered. In *UBN Plc v Ogusiji*,¹³ the court stated that it is elementary law that a contract may be demonstrated by the conduct of the parties as well as by their deeds or by the documents passed between them. Thus, a contract may be made or entered orally, in writing or by conduct of the parties. The addition of electronic documents as a means of entering into a contract other than a paper document does not change the basic requirements for formation of a valid and enforceable contract. Therefore, whichever means a contract is entered or formed; the law almost everywhere in the world recognizes five traditional requirements for a contract to be valid. These are offer, acceptance and consideration, intention to enter into legal relations, and capacity to contract.¹⁴ All these five ingredients are autonomous units in the sense that a contract cannot be formed if any of them is absent. In other words, for a contract to exist in law, all the five ingredients must be present’.¹⁵ For better understanding of the intricacies involved in contract formation on the internet, there may be a need to consider *seriatim* the foregoing essentials of a valid contract: Offer, Acceptance, Consideration, Intention to create legal relations, and Capacity to contract.

An *offer* is a proposal by one person, whereby one expresses one’s willingness to enter into a contractual obligation in return for a promise, act or forbearance. An offer has been defined as a definite undertaking or promise made by one party with the intention that it shall become binding on the party making it as soon as it is accepted by the party to whom it is addressed.¹⁶ An offer is different from an invitation to treat that is merely a preliminary move in negotiations,¹⁷ which may lead to a contract. The most common examples of invitation to treat are the display of goods in a shop window¹⁸ or supermarket shelf. The picking up of goods by the shopper and their presentation at checkout amounts to an offer, which is accepted by the cashier. It has therefore been argued that the description of goods in a web page advertisement should be regarded as an invitation to treat and not an offer. The issue is whether online advertisement constitutes an invitation to treat as opposed to an offer. If it is the former, then the offer is made by the consumer who selects the product advertised and seeks to pay for it, and it is accepted by the supplier who delivers or ships the product to the consumer. In that case, the term ‘order’ by a consumer is actually an offer that is made to the supplier who advertised his products online. On the other hand, the issue of a confirmation of an order placed online by a consumer may mean an ‘acceptance’ of the offer made by a supplier.

¹⁰ Treitel, *The Law of Contract* (5th ed. 1979) p. 1

¹¹ A. S. Hornby, *Oxford Advanced Learners’ Dictionary* (8th edn, Oxford University Press 2010) p.473

¹² <https://www.merriam-webster.com/dictionary/electronic>. Accessed on 13/2/2020

¹³ 1 (2013) 1 NWLR (pt1334) at pg 13

¹⁴ *Orient Bank v Bilante Intl* (1997)8 NWLR 9PT 515037

¹⁵ *Onuminiya v Access Bank plc* (2015)9 NWLR pt

¹⁶ Sagay, *Nigerian Law Of Contract*, p. 10

¹⁷ *Carlill v Carbolic Smoke Ball Co.* (1893)1 QB 256

¹⁸ *Pharmaceutical Society of Great Britain v Boots Cash Chemist* (1953) 1 QB 401

It has been further argued that the test is essentially one of intention of the person putting the information on the web page. In other words did he intend to be bound by a response (in which case he has made an offer) or did he intend that he would need to acknowledge the response by word or action, such as dispatching the goods, in which case the web constitutes an invitation to treat?

The test of the offeror's intention has been described as an objective one, in the absence of express statement or actual knowledge by the recipient that the maker does not intend to be bound. In view of the uncertainty as to the binding nature of the statement on the web, it may be safe to expressly state how the binding contract is to come into existence. However, common ground appears to have been established for the international sales of goods where consumers are not involved. Article 14 of the United Nations Convention for the International Sales of Goods 1980¹⁹ clearly follows the U.S approach when it specifies:

- (1) A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in the case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provisions for determining the quantity and the price.
- (2) A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal.

There is, however, the expressed caveat that for the parties to be bound by these rules, not only must the Convention apply to them but the subject of the contract must also be within the scope of definition of 'goods', a particularly thorny issue in a digital environment. The position of the law in Nigeria on the distinction between an offer and an invitation to treat is not different from the position in the United Kingdom.¹⁹ It is however observed websites are often designed in such a way as to constitute invitation to make an offer and not situations of real offers by the web owners.

Another essential element of contract formation is acceptance. *Acceptance* is a final and unqualified expression of assent to the terms of an offer. Signing of a contract is one way in which a party may show its assent. The essential element is that there must be evidence that the parties have an objective perspective engaged in conduct manifesting their assent. There are some rules dealing with the communication of acceptance. These rules are as follows: (1) Acceptance must be absolute and unqualified, (2) Acceptance must be communicated, (3) Offer must be made by offeror, (4) an offer can only be accepted by the offeree, (5) An offeree is not bound, if another person accepts the offer on his behalf without his authorization, (6) If the offer specifies a method of acceptance (by post or fax) it must be accepted in that specified method and (7) Silence cannot be construed as acceptance.²⁰ The general rules applicable to the acceptance of offers are also applicable to the acceptance of offers made on the internet. However, where the offer is through e-mail, the receipt of such mail by the website owner will not constitute the acceptance of the terms of such an offer. It has also been held that e-mail message sent in reply to an e-mailed offer stating the recipient's intention to reply in due course will not be an acceptance.

In an 'everyday' situation, once an offer has been made, either orally or in writing, the offeree accepts it, again orally or in writing, and thus creates a contract. But in an online transaction, the parties may be thousands of miles apart, and in different time zones. If we assume that that an email sent out by the retailer, or the retailer's website itself constitutes the invitation to treat, and it is the consumer that makes the offer, the moment of contract creation is the instant time of acceptance by the offeree (the retailer). The following questions therefore arise; if the retailer then accepts the offer, how, where and when is the contract actually created? This is important for the purposes of determining the choice of law and jurisdiction which applies to the contract.

Historically, two rules have been developed by the courts to determine the moment of formation of contracts made by post and by facsimile/telex: the postal rule and the receipt rule. Under the postal rule, the contract is created the moment the letter accepting the offer is posted, irrespective of the fact that the offeror has not yet been notified of the acceptance. The receipt rule applies to situations of continuous communication between the parties, either on the telephone or using a fax machine. Under this rule, the contract is only created when the acceptance is communicated to the offeror. It must therefore be determined which rule applies to contracts which are formed online, whether by email or using the internet. Email may, at first glance, seem to fall under the postal rule, primarily as it is unusual for the sender of the message to receive instant feedback concerning its delivery, and the sender has no control over the message once sent. However, there are also reasons why email acceptance could fall within the receipt rule. Emails can be lost in the ether of cyberspace, and even if they arrive, they may have

¹⁹ Cited by Musendiq Adeniji Kazeem in his article *Electronic Contract Formation and The Nigerian Initiatives*

²⁰ *Felthouse v Bindley* (1862) 142 ER 1037.

been corrupted *en route*. Given this, it may be unreasonable to conclude that a contract is formed the moment an email is sent. No cases have yet addressed the question of email acceptances. In respect of contracts made over the World Wide Web (WWW), which allows real-time instantaneous communication, as the sender has instant feedback, it is reasonable for the receipt rule to apply. Given the fact that the retailer's acceptance does not create a contract until received by the customer under the receipt rule, the contract may well be formed in the customer's own jurisdiction. This is unsatisfactory for the merchant, who, in the event of a dispute with the customer, may have to issue proceedings in a foreign court. It is, however, open to the retailer, to specify in its standard terms and conditions that acceptance is effective once sent. The merchant thus seeks to ensure that the postal rule applies to the contract, which would be formed in the retailer's own jurisdiction. As a backup, the standard terms and conditions would also contain choice of law and jurisdiction provisions suitable to the retailer.

Consideration is yet another significant factor of formation of contract. The most comprehensive and most applied definition of consideration is that of Lush, J. in *Currie v. Misa*.²¹ The Court held that 'a valuable consideration in the eye of the law may consist either in some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility, given, suffered or undertaken by the other'. Therefore, consideration does not only consist of profit by one party but also exists where the other party abandons some legal right in the present, or limits his legal freedom of action in the future as an inducement for the promise of the first. So, it is irrelevant whether one party benefits. It is rather enough that he accepts the consideration and that the party giving it does thereby undertake some burden, or lose something which in contemplation of the law may be of value. Consideration may consist of either actual performance such as delivery of goods or services or payment for them or a return promise. Although electronic commerce may involve novel methods of payment and delivery, as long as, a transaction includes a bargaining for exchange of adequately commensurate promises or performances, agreement will comply with the consideration requirement. In an online contract, the valid consideration is payment of the goods purchased. Consideration must be something of value in the eyes of the law. This excludes promises of love and affection, gaming and betting etc. A one-sided promise which is not supported by consideration is a gift. The law does not enforce gifts unless they are made by deed. It is observed that for the fulfillment of this 'payment of consideration' a new revolution has come to nations' including Nigerian financial economy in the form of e-Banking. The use of digital cash in exchange for goods or services raises issues not of consideration but of performance of a contract in a web-wrap contract which is an agreement at the front of a website which purports to bind the browsers to a contract should they proceed to browse the site. Promises to pay over the internet are enough to form the consideration to create a contract in the same way as such promises would lead to enforceable contracts in normal commercial transactions.²² The requirement of consideration poses no threat to the validity of electronic contracts under which goods and money are likely to be exchanged, just like under a written traditional contract.

Furthermore, *intention to create legal relation* is also essential to e-contracts. The presence of a contractual intention is even more important in e-commerce, because more often than not only one human being is involved in the communication, with programmed computers or machines at the other side. It is settled that contracts can be made with machines, and it is of no legal consequence that a machine physically completed the contract. Whenever a person makes an agreement with a website, the site either accepts or rejects the communication according to the computer programme being run at the time. None of the parties to the contract sits on the server side and this poses a serious issue of how the contract can be formed without direct intentions. This issue was settled by Lord Denning in *Thornton v Shoe Lane Parking*.²³ In that case, Mr. Thornton accepted a contract by driving a car park. It was held that the automatic reaction of car park turning a light from red to green and thrusting a ticket was enough to create a contract. Hence, if the viewer's offer is accepted in error as a result of a bug in the contracting programme, then the court will presume that there was requisite intention to create legal relations.²⁴ The burden, therefore, is on the offeror to prove that there was no intention to have a legal consequence.²⁵ However, in most cases, the courts look objectively into the circumstances of each case to determine whether a contract has been made or not. Thus, in determining the requisite intention, the court applies an objective test as against a subjective one.²⁶

Finally, there is the *capacity to contract*. Capacity to contract is the legal competence or legal ability of a person to validly enter into a contract under an existing legal framework. Persons who are minor, illiterate, of unsound

²¹ (1875) L.R 10Exch.153 at p.162 cited in Sagay, *Nigerian Law of Contract*

²² TI Akomolede, 'Contemporary Legal Issues In Electronic Commerce In Nigeria' p. 5

²³ (1971)2QB 163 at 169

²⁴ Gringras, *The Laws of the Internet* (2nd ed), London: Butterworth Lexis Nexis 2008

²⁵ *Edwards v Skyways Ltd* (1964)WLR 349 at 355

²⁶ See *Shaktas On-line Services v Burrough* [1999] (unreported), reviewed in Reporter 1999 *SBJ* 6; see also *Smith v Hughes* (1871) LR 6 QB 597.

mind, etc ordinarily lack legal capacity except with regard to certain situations. This is especially because these categories of persons can be easily exploited or taken advantage of at the course of negotiating contract. Since any person less than 18 years of age, for instance, does not have the capacity to contract, any agreement made with a minor is void *ab initio* (from the beginning). Capacity of parties refers to each party who is entering a contract. Each is required by law to have the mental and intellectual capacity to understand the terms of the contract and to make the decision to enter it. Capacity of parties is also known as legal capacity. However, the law relating to the subject of capacity to contract does not enjoy unanimity among jurisdictions. In online transactions across national borders, this differentiation can be a source of great problem. Choice of law rules within the realm of private international law can be of great moment in the determination and enforcement of e-contract.

Problem of Jurisdiction and Choice of Law

Foremost among the problems facing e-contract and e-commerce in Nigeria are issues of jurisdiction and evidence. The question has always been which court assumes jurisdiction in resolving a dispute arising from a contract between parties in view of the fact that the parties may be residing in different jurisdictions with different legal systems. The issue basically is one of Private International Law, and the relevant Convention is the Brussels Convention on Jurisdiction and Enforcement of Judgment in Civil and Commercial Matters. The Convention is applicable to those countries that have ratified it and incorporated its provisions into their municipal laws. There are also the evidentiary issues regarding the proof of transactions conducted through the internet. The peculiarity of these issues and the confusion that has also greeted their interpretation by the courts have exposed the difficulty encountered in Nigerian law on evidence to cope with the admissibility of the avalanche of electronically-generated materials that constitute the hallmark of electronic commercial transactions.²⁷ E-commerce transactions are paperless transactions made through magnetic materials such as tapes or disks. These are in contradistinction to paper-based contracts that are embodied in a permanent form and typically expressed in words and figures usually authenticated by signatures. Such paper transactions can therefore not be altered without an alteration on the face of the document.

Jurisdiction is the authority of a court to hear a case and resolve a dispute. This issue is highly conflicting and debatable especially in online contracting as to the maintainability of any suit which has been filed. It becomes more complicated largely on account of the fact that the internet is borderless. The notion of jurisdiction is rooted in territoriality from the point of view of the law which should be applied while deciding the dispute. Because of the often cross-border nature of online contracts, it may be the case that a dispute will arise as to the law applicable to the transaction. Generally, the parties can in their contract determine which law will be applicable in the event of a dispute.²⁸ If the parties have not agreed on a choice of law, it falls on the court to determine the law to apply using the international conflict of law criteria that the law of the jurisdiction that has the most significant relationship to the transaction and the parties with respect to the issue in dispute will control. The jurisdiction of most significant relationship to the parties and the transaction is determined by a variety of factors including the place of the contract; the place the contract was negotiated; the place of performance; the location of the subject matter of the contract; and the domicile, residence, nationality, place of incorporation, and place of business of the parties.

In any case, despite doubts as to the ratification of the Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters 1958 in Nigeria, its provisions may be useful in determining choice of law and jurisdiction issues regarding cross-border online contracts. For online contracts for the sale of goods, there is also the Convention on the International Sale of Goods which provides rules that may substantially lessen the risk of conflicts. In any case, it is advisable that parties, where possible, indicate in their contracts, the law that will apply in the event of a dispute.²⁹ Hence, this difficulty may be bridged if parties clearly state the governing law for their transactions in their contracts, or each party's domicile may be stated in the contract. Parties are therefore encouraged to ascertain the nature of their transactions from the point of inception of the contract. This would serve as a roadmap in the determination of what law governs as well as what legal rights exist in each transaction.

Problem of Data Protection

This appears to be a major problem for people intending to enter into electronic contract especially online, as they tend to have a grasp of how much of their dealing is being seen by other members of the public. In addition, the

²⁷ TI Akomolede, *Contemporary Legal Issues in Electronic Commerce in Nigeria*, *Potchefstroom Electronic Law Journal*, Vol 11No. 3, 2008, p.3

²⁸ See *African Petroleum Ltd v. Owodunni* [1991] NWLR (Pt. 210) 351.

²⁹<http://law.unn.edu.ng/wp-content/uploads/sites/article-4-online-contracts-in-Nigeria-An-overview-edwin-O-Ezike.pdf>. Accessed on 13/2/2020

thread of Aryana between this issue and cybercrime has made its consequences even more worrisome as intruders may hijack the transaction at any time without the knowledge of the other party due the fact that transactional process is not a physical one. It is possible for someone to send electronic messages and make them appear to come from someone else thereby diverting payments and in some occasions the goods. Sequel to this gap in the system, there exist no means to seek redress in event of such act. Nigeria only recently through NITDA issued Data Protection Regulation in 2019. Yet the difficulty in adhering to the provisions of the Regulations is not amenable to the internet world where information published on the website is open to a global audience. In the English case of *R v Brown*³⁰, Lord Hoffman lucidly captured the thrust of the problems associated with data protection in e-commerce as follows:

Vast amounts of information about everyone are stored on computers, capable of instant transformation anywhere in the world and accessible at the touch of a keyboard. The right to keep oneself to oneself, to tell other people that certain things are none of their business is under technological threat. In view of the openness and accessibility of the internet the protection of such data has been a constant source of concern for internet users and consequently has remained a threat to e-commerce.

Thus a number of jurisdictions have therefore come up with protective legislations and the situation portends a great danger for consumers in e-contracts. It is suggested that a cue be taken from the United Kingdom where there are principles that govern the protection of the data or communication of the parties in all internet transactions.³¹ The reality is that consumers do not realize that they are exposed to fraudulent and deceptive commercial practices when they are parties to an e-commerce-oriented transaction.

Problem of Proof and Evidence

The emergence of e-commerce and its growing popularity have provoked fundamental evidential issues especially in relation to the proof of transactions conducted through the internet. E-commerce transactions are paperless transactions made through magnetic materials such as tapes or disks. These are in contradistinction to paper-based transactions that are embodied in a permanent form and typically expressed in words and figures usually authenticated by signatures. Such transactions can therefore not be altered without an alteration on the face of the document.³² It has been observed that the issue of admissibility of computer-generated evidence is a practical legal conundrum in the Nigerian legal system.³³ This shows that the position of admissibility of computer-generated evidence appears dicey. This is even manifest in the various conflicting decisions of our courts as exemplified in a number of cases cutting across three tiers of the federal judicial system³⁴ with a bearing on the admissibility of electronically stored information (ESI) evidence. Thus in *Esso West African Inc. v Oyegbola*,³⁵ the Supreme Court held that the law cannot be and is not ignorant of the modern times reproduction or inscriptions on ledgers or other documents by mechanical process are commonplace and section 97 of Evidence Act Cap E14 Laws of the Federation of Nigeria 2004 cannot therefore apply only to books of account as the pages cannot be easily replaced. It was further held that the ledger cards in this case had been wrongly rejected and they should have been admitted in evidence. In *Yesufu v ACB*,³⁶ the Court of Appeal held that the computer print-outs are not admissible while in *Elizabeth Anyabosi v RT Brisco Nigeria Ltd*³⁷ the Supreme Court opined that computer print-out is admissible as secondary evidence. Similarly, in *Unity Life and Insurance co. ltd v IBWA Ltd*³⁸ the Supreme Court held also that computer print-out is admissible as secondary evidence. However, the Court of Appeal in *Nubu Commercial Farms Ltd v NAL Merchant Bank Ltd*³⁹ held that the admission in evidence by the trial court of computer print-out as secondary evidence of entries of a banker's book was wrong because among other things the relevant provision of section 97 of Evidence Act do not contemplate information stored 'other than in a book.'

However, the enactment of the new Evidence Act 2011 has laid the argument on admissibility or otherwise of computer print-outs to rest. The new Act under section 258 (b) (c) and (d) defines document to include:

- b) any disc, tape, sound track or other devices in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it;

³⁰ (1996)1ALL ER 545,546

³¹ Data Protection Act(1984)UK

³² See Bender *Computer Law Journal* 703.

³³ Sebastian (SAN), 'Law of Evidence can't admit posers of the use of DDC machines, the Guardian jan.25 2011 p.70

³⁴ The Trial High Court, The Court Of Appeal And The Supreme Court

³⁵ (1969)NWLR 194

³⁶ (1976)ANLR(pt 1)328

³⁷ (1987) 3 NWLR(pt 59)84

³⁸ (2001)7 NWLR (pt 713)610

³⁹ (2003) FWLR (pt 145) 661

- c) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it; and
- d) any device by means of which information is recorded, stored or retrievable including computer output.

The contents of the above mentioned electronic documents can be proved before any court in Nigeria by way of either primary or secondary evidence.⁴⁰ In the case of secondary evidence of electronic document, the law requires proper foundation to be laid before tendering same in evidence, for example where the original has been destroyed or lost, it must be established that in the latter case that all possible search has been made for it but to no avail.⁴¹ Thus, in any proceedings, a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible, if it is shown that certain condition specified under Section 84(2) of the new Act are satisfied in relation to the statement and computer in question.⁴²

One of the greatest evidentiary challenges facing the courts in Nigeria is the admissibility of computer-generated evidence in view of the rule that a party must give the best evidence of facts that are in issue before the courts. In the context of e-commerce, information fed into the computer and posted on the websites of sellers and suppliers of goods and services, when retrieved from the web, would only be copies of such information and at best would be hearsay evidence. Under the old Nigerian Evidence Act, the communication between the parties would also be copies as against originals when downloaded from the internet, and for it to be admitted, it would have to be put in under any of the exceptions to section 91 of the Evidence Act. Happily, however, Evidence Act 2011 has laid the argument on admissibility or otherwise of computer-generated evidence to rest by its several provisions.⁴³ Sections 258 (b) (c) and (d) enlarges the meaning of document to include:

- b) any disc, tape, sound track or other devices in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it;
- c) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it; and
- d) any device by means of which information is recorded, stored or retrievable including computer output.

Again, section 84 of the new Act has provided for the admissibility of electronically generated evidence together with the conditions precedent.

The problem of admissibility of computer generated evidence and the huddles passed by computer generated evidence before it could be rendered admissible in evidence (for instance by legislative reforms) was not only peculiar to Nigeria. Some other countries including the developed ones like United Kingdom, United States and India had also undergone the same process. In these jurisdictions, admission of computer-generated evidence is made possible through specific legislation on computer evidence and judicial activism. For instance, in the United Kingdom, prior to enacting appropriate legislation⁴⁴ on electronic evidence, courts had utilized the ‘best evidence rule’ to admit computer-based or computer generated information. The best evidence rule is an age-old common law principle of evidence that permits the admission of evidence if that appears to be the best available evidence to prove a fact raised by litigants seeking to introduce that evidence.

Similarly, in the US case of *King v State Ex Rel Murdock Acceptance Corporation*,⁴⁵ the court admitted in evidence a computer print-out tendered by the plaintiffs which showed the amount owed to them by the defendant. The clerks who accepted the payments were neither called, nor were the original records in the branch offices of the corporation produced. The court nevertheless admitted the documents and extended the exception to the hearsay evidence to cover computer records. In a bold display of judicial activism, the court declared as follows:

⁴⁰ S. 85-88 of the Evidence Act, 2011.

⁴¹ S. 89 (c) of the Evidence Act, 2011

⁴² *Kubor and Anor v Dickson and Anor* (2013) 4 NWLR (Pt. 1345) 534

⁴³ Such as Section 93 (2) of the Evidence Act 2011 which clearly gives recognition to an electronic signature.

⁴⁴ For example the English Civil Evidence Act of 1968 which defines documents to include in addition to a document in writing, maps, plans, graphs, drawings or photographs, any disc, tap, sound, sound track or other device in which sounds or other data... are embodied so as to be capable of being reproduced. This definition is wide enough to accommodate computer records in any form as opposed to what was obtainable under the English Evidence Act of 1938.

⁴⁵1996] 22 F2d 39.

‘The expenditure which the entire commercial world recognizes as safe shall be sanctioned and not discredited by the courts of justice.’

Problem of Electronic Execution/Signature

Another area of controversy in the Evidence Act concerning electronic contract is in the recognition of electronic signatures. An electronic signature, also called a digital signature is a secure, digital code attached to an electronically transmitted message that uniquely identifies and authenticates the sender. This is primarily because the old Evidence Act did not make room for recognition of electronic signature and execution of contract by email or via the internet. The Act did not contemplate any provisions regarding the evidentiary value of documents that are validated and singularized via electronic techniques such as cryptography, biometric technique etc. However, the Act commands the use of electronic or digital signature for the authentication of electronic contracts in contracts where a rule of evidence requires a signature or provides for certain consequences if a document is not signed. Similarly, the Act permits that all electronic signatures may be proved in any manner, including by showing that a procedure existed by which it is necessary for a person, in order to proceed further with a transaction to have executed a symbol or security procedure for the purpose of verifying that an electronic record is that of the person. Also, the effect of Section 93 (2) of the Act clearly is of significant moment. It provides to the effect that where a rule of Law/Evidence stipulates the requirement of a signature, for the validity of a document, an electronic signature satisfies this requirement. Hence, it may be safely posited that an electronic signature suffices for the purpose of execution of an e-commerce transaction, provided that it is certified and accompanies the electronic communication.

By way of criticism, it is respectfully submitted that the new Act did not make elaborate provisions on rules regarding electronic signature. This is of course necessary in view of the increasing rate of cyber criminality and fraudulent practice that is threatening e-commerce. The 2011 Act should be amended to bridge this lacuna or in the alternative, the National Assembly should hasten to pass the Electronic Transaction Bill 2011, which deals with issues relating to e-signature. Doing this will certainly complement the provisions of the new Act, otherwise rights and obligations of parties based on online transactions would continue to suffer enforcement difficulties in Nigeria.

Likewise, the Cyber Crimes (Prohibition, prevention, etc.) Act 2015 provides that electronic signature in respect of purchases of goods, and any other transactions is binding and whenever the genuineness or otherwise of such signatures is in question, the burden of proof that the signature does not belong to the purported originator of such electronic signatures shall be on the contender. Any person who with the intent to defraud and or misrepresent, forges through electronic devices another person’s signature or company mandate commits an offence and shall be liable on conviction to imprisonment for a term of not more than 7 years or a fine of not more than N10,000,000.00 or to both fine and imprisonment. Under the Cyber Crimes Act, the following transactions are excluded from the categories of contractual transactions or declarations that are valid by virtue of electronic signature: creation and execution of wills, codicils and or other testamentary documents; death certificate; birth certificate; matters of family law such as marriage, divorce, adoption and other related issues; issuance of court orders, notices, official court documents such as affidavit, pleadings, motions and other related judicial documents and instruments; any cancellation or termination of utility services; any instrument required to accompany any transportation or handling of dangerous materials either solid or liquid in nature; and any document ordering withdrawal of drugs, chemicals and any other material either on the ground that such items are fake, dangerous to the people or the environment or expired by any authority empowered to issue orders for withdrawal of such items.⁴⁶

Problem of Enforcement

It is established earlier that an electronic contract is valid and enforceable in Nigeria, that the only legal consequence is to provide evidence to show that in the electronic correspondence or dialogue between the parties that there was an offer and acceptance backed by consideration with the intention to create legal relationship between the electronic correspondents who possessed or possess the capacity to enter into such contract. However, Esan⁴⁷ has identified likely peculiar issues that may crop up in the enforcement of an electronic contract, and which issues may affect the effectiveness of the growth and operation of electronic contract. They include possibility of negligence or carelessness with passwords or access codes thereby enabling an impostor to use an electronic platform to defraud an unsuspecting correspondent. One can also repudiate the electronic contract or denying liability on the ground that, an impostor entered the contract. It is equally possible not to verify the other

⁴⁶ E. Akintunde & S. Apos, Legal Illumination: E-Commerce: Formation, Validity and Enforcement of Online and Electronic Contracts In Nigeria.org/smash/get/diva2:4190/FULLTEXT01. Accessed on 13/2/2020

⁴⁷ Akintundeesan.blogspot.com/2015/09/formation-validity-and-enforcement-of.html Accessed on 13/2/2020

party's identity before making commitments. There can be the difficulty of the sender proving the receipt of an electronic correspondence where the other party denies receipt or the sender claiming the electronic correspondence received by the receipt is different from the one sent by him or her. Hackers can access, steal, manipulate or corrupt or destroy electronic documents. There is poverty of statutory legal framework specifically regulating electronic transactions and contracts in Nigeria. It is possible that electronic viruses may corrupt a file and render it inaccessible. Other related problems include Alteration of sent messages saved in sent box and inbox and deleting of emails; convergence of digital devices e.g. phone, camera, email, etc; the statutory requirement for some contracts to be signed by the parties; limitation of electronic data storage capacity; web insecurity; failure to exercise due diligence; and the difficulty in the determination of the date, time and place when an electronic document or piece of information is sent or received.

The advent of electronic contract has necessitated the need for the provision of regulatory rules that will govern and ensure the homogeneity of the conditions under which such transactions are made through the internet. Nigeria has made some salient progress in this regard as it has passed into Law the National Information Technology Development Agency Act, 2010 and the Cyber Crimes (Prohibition, Prevention, Etc) Act 2015. There is also Electronic Transactions Act. However, a number of bills meant to regulate electronic transactions and contracts are still pending. In spite of the near absence of a comprehensive legal framework to regulate electronic contracts and transactions in Nigeria, electronic contracts can be enforced. This postulation draws strength from the following provisions of the Law. Section 4 of the Statute of Frauds 1677 provides that no action shall be brought on some types of contract unless it is in writing and signed. Section 84 of the Evidence Act 2011 provides for the admissibility of computer generated evidence. Section 93(3) of the Evidence Act 2011 acknowledges that an electronic signature satisfies the rule of law as to signature. Section 17 of the Cyber Crimes Act 2015 provides for effective legal recognition of electronic signature and provides for legal sanction for forgery, misrepresentation and falsification. The joint provision of these laws grants legitimacy to electronic contracts and transactions. Its legal consequence is in the evidence in the correspondence between the parties, which shows an offer and acceptance backed by a consideration, with the intention to create legal obligations between the parties who possess the capacity to enter into such a contract. These effectively make it binding on the parties as they satisfy the requirements of the law. Therefore, the courts in Nigeria need not shy away from adjudicating over issues of breach brought before them.

In order for electronic contracts to be valid and enforceable, the tenets of contract formation still must be followed. To be legally valid, all contracts must have an agreement (an offer by one party and an acceptance by the other) and consideration (something of legal value given in exchange for a promise). Additionally, the parties must have the legal capacity to enter into a contract and of course the subject matter of the contract must be lawful. Enforceability of contract not only depends on the above factors but also on whether the terms of the contract are clear and consistent, whether a person was under duress or undue influence when entering into the contract, and whether a party signed by mistake or without knowledge of the contracts' meaning.

A breach of contract arises when a party to a contract, without lawful excuse, fails, neglects or refuses to perform an obligation he undertook in the contract or either performs the obligation defectively or incapacitates himself from performing the contract or by wrongfully repudiating the contract.⁴⁸ The consequences of breach of electronic contract is that where parties voluntarily agree to do an act and one party neglected or defaulted from carrying out or doing what was agreed to be done, then there is a breach of that contract by the party who neglected or defaulted in performing his or her own side of the contract and the person responsible for the breach of the contract will be liable in damages to the other party.⁴⁹

Problem of Infrastructure

This is a major issue facing electronic contract particularly online contracts in Nigeria, ranging from lack of electricity to poor network or internet services. The existence of adequate IT infrastructure is a necessary condition for the take-off of and development of e-commerce in any given country.⁵⁰ To say the least electricity supply which is the bed rock for e-commerce in Nigeria is sporadic and inefficient. Without power, the electronic gadgets cannot function. For instance, where transactions are contracted through emails, it is possible that one of the contracting parties may not even be able to read his mail, in order to respond appropriately for lack of electricity. It was argued that the semi-comatose state of NEPA Plc (now Power Holding Company of Nigeria Plc), the sole generator and distributor of electric power, has proved detrimental to the health of e-commerce in general and e-

⁴⁸ *Kentas Nigeria ltd* (2007) ALL FWLR(pt.384)320 at 342

⁴⁹ *Obimiami Brick & Stone (Nig) Ltd. v African Continental Bank Limited* (1992) LPELR-SC.186/1990, Per Babalakin, J.S.C. (Pp.93-94, paras.E-G)

⁵⁰ L. Aghauno, Factors Affecting Ecommerce adoption in Nigerian Banks (2006), available at hj.diva-portal.org/smash/get/diva2:4190/FULLTEXT01. Accessed on 13/2/2020.

banking by extension.⁵¹ It was also maintained that if Nigeria really wants to take the advantage of e-commerce, supportive indicators need to be present. These include: reliable power supply, uninterrupted telecommunication services. Also, internet access is hardly available and when available it is very slow, erratic and epileptic. There is also a very low internet penetration. As a result, people rarely place relevance on internet services which are the fulcrum upon which online business gravitates; Nigeria has a very low internet penetration, with negligible internet bandwidth, in comparison with more developed nations. Internet access in Nigerian homes is still relatively low, and internet links and details have been relatively slow. It was contended that the greatest obstacle to the growth of e-commerce is low PC penetration⁵².

Lack of Computer Literacy and E-contract Awareness

Apart from low PC utilization, not everybody in Nigeria is computer literate. There is the general lack of understanding of the operations of the internet and this hampers the development of e-commerce in the country. In fact, for a developing country aspiring to join the information superhighway, the significance of mass computer education cannot be over-emphasized. Training is to focus on computer skills acquisition, technical profile off the internet and e-commerce structures etc. Also, since e-contract is a relatively new concept so many people in Nigeria are unaware of its operation, including lawyers. so many people enter into e-contract every minute in Nigeria without understanding the way it operates and its legal effect or consequences, for instance, while registering for social media such as WhatsApp, Facebook, twitter, Instagram, including online markets such as Jumia, Konga, Ali express etc, are usually presented at some stage with a box which contains terms and conditions which you must either accept or decline before proceeding to the next stage, majority disregard this and often times click 'I agree' without going through those terms and conditions which may sometimes grant the site permission to access their personal files which internet fraudsters will end up using against them, sadly enough the company must have inserted a clause in that agreement exonerating them from any liability whatsoever that may occur as a result of contracting with them. According to Esan:

The value of reliability placed on electronic correspondence in Nigeria is very low, as many users of electronic platform including some lawyers are either not aware that, electronic contracts can be implied or made from mere electronic correspondences without signatures or are wary of entering into a contract without a direct face to face communication. The latter may be due to the online fraudulent activities of internet fraudsters known as 'yahoo boys' or due to ignorance of the fact that, transacting business on electronic platforms is cost effective and time saving compare to than traditional paper platforms.⁵³

The key to the future is existence of lawyers who understand the technology so that long standing and robust legal principles can be properly applied in the resolution of legal disputes.

4. Conclusion and Recommendations

Today, the recent advancement in the areas of computer technology, telecommunications technology, software and information technology has led to a shift in the standard of human living in an unimaginable way. The advent of the ICT revolution poses new challenges for the legal system and the administration of justice. It requires a re-orientation of the traditional focus of laws on paper-based transactions to accommodate the new methods of communication. Yet, the actual position is quite dicey, in the wake of the absence of specific legislation. The whole world is getting smaller as a result of the internet which has catalysed the process of globalization. Electronic commerce is an area that one has only recently started exploring in Nigeria. As such, one is gradually learning about the technicalities involved. Nigeria being a developing country with a low level of technological awareness and expertise is still struggling with its numerous problems which have left consumers in E-commerce transactions crying out for protection. One is more dependent on the internet presently than one did in the past, and the speed at which it has influenced commercial transactions in Nigeria starting from banking and telecommunications; major influence from online retail with the advent of websites like Jumia.com and Konga.com etc, emphasizes the urgent need to address the legal issues and problems presently confronting e-commerce in Nigeria. These challenges must be addressed through carefully considered policies, legislation and judicial decisions.

In the light of the above findings, the study recommends that just like other countries such as US, UK and India have constructed legislative frameworks that have helped them solve the fundamental problems associated with electronic contract, so are Nigerian legislatures required to expedite action on the enactment of the Electronic

⁵¹ O. A. Orifowomo, *op cit* at p. 177.

⁵² L. Aghauno, *op cit*.

⁵³ A. Esan & S. Apos, *Legal Illumination: E-Commerce: Formation, Validity And Enforcement Of Online And Electronic Contracts In Nigeria*

Transactions Bill and other pieces legislation that will facilitate the growth of electronic contract. Similarly, it is hoped that the Nigerian judiciary, albeit through judicial activism, will apply itself to tackling the legal issues that will arise out of electronic contract disputes in an informed and accurate manner that would enhance confidence in the sector.

More still, since Nigeria is still a developing country with a low level of technology awareness and expertise, one sees the problem of mass ignorance affecting all kinds of persons including lawyers with respect to the techniques and processes of electronic contract. Adding electronic contract as an aspect of contract law in the curriculum of universities all over the country will go a long way in educating Nigerians thereby reducing illiteracy and lack of confidence associated with electronic contract. Therefore, it is necessary to upgrade Nigeria's commercial system in line with the global digital economic system occasioned by information communication technology revolution by educating would-be lawyers and other students on the law and practice of E-contract.

Finally, the problem of jurisdiction can be resolved by enacting an online contracting multilateral treaty to which all countries accede which will apply in all instances. This surely would be followed by comprehensive local enactments that would domesticate the provisions of the treaty in view of bindingness and enforcement among other needs. Such a move will promote much certainty in electronic contracts as all parties stand to know exactly what their entitlements and responsibilities are in such contracts.