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PROBLEMS WITH TRANSACTIONS INVOLVING E-COMMERCE AGREEMENTS

When parties enter into contracts with each other and they are interacting face to face, it is easier to avoid mistakes than when they are at a distance and contracting with each other virtually through the internet or phone as medium. When parties enter into electronic contracts the whole contract can literally be concluded within seconds at the click of a button. These contracts are also known as 'click-wrap agreement'.

The traditional paper based contract law has rules that apply to matters such as jurisdiction, validity, formation of contract, modifications to contracts but in the world of online trading, these are all issues that arise in online contracts and the challenge is to apply the traditional concepts of contract law.

The internet market is extremely large and continues to grow as new methods of E-commerce develops. This brings with it the issues that arise with such transactions which are discussed below:

1) Enforceability of online contracts.

This problem arises because of the differences between the civil law systems and common law systems due to which the citizens of different states cannot be sure when the contract has come into existence. Consent is also a problem as the customers do not have any opportunity to negotiate the terms and conditions and they simply have to accept the contract before commencing to purchase.

2) Jurisdiction

Jurisdiction is an issue as to where the contract came into existence and which courts can hear the dispute related to the transaction because a court must have authority over the subject matter in dispute and the parties, which is difficult to determine in online transactions. Activities occur worldwide- the server may be in one country, the service provider in another and the customer in the third country.

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3) **Data protection.**

Security of the information provided during the online transaction is a major concern which should be addressed by online goods/service providers because data can be sensitive or personal or both for which a sound privacy policy is necessary. Interface with payment gateways is yet another challenge in online transactions and so contractual obligations on data protection and usage should be clearly defined.

4) **Intellectual Property Rights**

The issues that arise here include protecting a web site, a domain name, a trade mark or any other type of intellectual property right against illegal misappropriation, rights involved when downloading, viewing or printing a protected work, remuneration to the right holder, controlling the use of protected material on global infrastructure, detection of illegal use and fixation of liability.

5) **Delivery system and a supply chain and service management**

The lack of specific provisions related to online transactions creates the risk of unaddressed grievances of customers because even Consumer Protection Act specifically excludes from scope any service rendered free of cost. So users will only be considered customers if actual sale is taking place online. Further, courts have also held that intermediaries will not

be made liable for infringement arising out of a third party's actions since it is not possible to always check every advertisement posted online.

6) **Competition**

Potential issues for e-commerce players would be price fixing or tacit collusion or anti-competitive discrimination or refusal of access to third parties due to such high and multiplying competition.

7) **Issues related to Taxation**

These include identification of criteria may be used to associate on line transactions with the territory of a country, application of general taxation, VAT and custom duties regimes to electronic transactions and compliance of digital documents with existing administrative requirements to keep written evidence of commercial operation and registration in accountancy.

Legislative developments are facing a new challenge brought on by the rapid development of the on-line technology and difficulty of applying existing regulations in a networked environment. Simultaneously, technology provides solutions to the threats created by the emergence of this new technology. Thus, technology and law must develop along with each other's progress.

Conclusion:

Therefore, if you are starting a e-commerce business, it is important to keep in mind above points

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from legal perspective. Any negligence on above points may lead to reputation and business risks including regulatory ban on such services.

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