

Online Arbitration in Theory and in Practice

Online Arbitration in Theory and in Practice:

*A Comparative Study
of Cross-Border Commercial
Transactions in Common Law
and Civil Law Countries*

By

Ihab Amro

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To the soul of my sister Rania

To my parents

To the olive tree in the holy land

To humanity

To the new generation in this world

TABLE OF CONTENTS

Table of Cases	x
Praise	xiii
Acknowledgements	xv
Introductory Note	xvi
List of Abbreviations	xxiii
Chapter One.....	1
Cross-Border Electronic Commerce Transactions in Theory and in Practice	
A. Introduction.....	1
B. Electronic Commerce Contracts in Comparison to Traditional Commercial Contracts	3
C. Differences between E-Commerce and Other Forms of Commerce	10
D. Legal Problems Facing the Use of E-Commerce in International Contracting.....	13
E. Payment Systems Facilitating E-Commerce Transactions	25
F. Conclusion	29
Chapter Two	32
Legal Framework Regulating Cross-Border Electronic Commerce and its Impact on Electronic Contracting	
A. Introduction.....	32
B. The UNCITRAL Model Law on Electronic Commerce of 1996 ...	35
C. The UNCITRAL Model Law on Electronic Signatures of 2001	43
D. The United Nations Convention on the Use of Electronic Communications in International Contracts of 2005.....	48
E. The United Nations Convention on Contracts for the International Sale of Goods of 1980 (The CISG)	59
F. The UNIDROIT Principles on International Commercial Contracts of 2010	75
G. The OECD Guidelines for Consumer Protection in the Context of Electronic Commerce of 1999	80
H. Conclusion	83

Chapter Three	87
The Use of Online Arbitration in the Resolution of International Commercial Disputes	
A. Introduction.....	87
B. Formation and Validity of an Online Arbitration Agreement	95
C. The Place of Online Arbitration	103
D. The Online Arbitral Process.....	105
E. The Applicability of the Principle of Due Process in Online Arbitration	110
F. Making of an Online Arbitral Award.....	113
G. Conclusion	117
 Chapter Four.....	 120
Enforcement of Cross-Border Online Arbitral Awards and Online Arbitration Agreements in National Courts	
A. Introduction.....	120
B. Mechanisms for the Review of Online Arbitral Awards under the New York Convention of 1958	122
C. Enforcement of Cross-Border Online Arbitral Awards under the New York Convention of 1958	124
D. Enforcement of Cross-Border Online Arbitration Agreements under the New York Convention of 1958	134
E. Obstacles Facing the Enforcement of Online Arbitral Awards in National Jurisdictions.....	138
F. Conclusion	149
 Chapter Five	 152
The Use of Online Arbitration in the Resolution of Consumer Disputes	
A. Introduction.....	152
B. The Legality and Validity of Arbitration Clauses in Consumer Contracts	158
C. The Possible Application of the Rome I Regulation to B2C E-Commerce Contracts and to E-Arbitration	171
D. Conclusion	183
 Appendix A	 187
United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)	

Appendix B.....	193
UNCITRAL Model Law on Electronic Commerce (1996)	
Appendix C.....	204
UNCITRAL Model Law on Electronic Signatures (2001)	
Appendix D	210
United Nations Convention on the Use of Electronic Communications in International Contracts (2005)	
Appendix E.....	222
United Nations Convention on Contracts for the International Sale of Goods (1980)	
Findings	236
Bibliography	246

TABLE OF CASES

L'ORÉAL SA V. EBAY INTERNATIONAL AG (CASE C-324/09 OF 12 JULY 2011), COURT OF JUSTICE OF THE EUROPEAN UNION ('CJEU').....	2
GOOGLE FRANCE SARL AND GOOGLE INC. V. LOUIS VUITTON MALLETIER SA AND OTHERS, JOINED CASES C-236/08 TO C-238/08 OF 23 MARCH 2010, (CJEU)	2
MINNESOTA V. GRANITE GATE RESORTS, INC., 568 N.W.2D 715 (MINN. 1997), (USA).....	13
TY INC. V. CLARK, 2000 WL 51816 (N.D. ILL.), (USA).....	14
<i>RE 351750, RELATOR(A): MIN. MARCO AURÉLIO, RELATOR(A) P/ ACÓRDÃO: MIN. CARLOS BRITTO, PRIMEIRATURMA, JULGADOEM 17/03/2009, DJE-181 DIVULG 24-09-2009 PUBLIC 25-09-2009 EMENT VOL-02375-03 PP-01081 RJSP V. 57, N. 384, 2009, P. 137-143, (BRAZIL)</i>	<i>17</i>
<i>RECURSO ESPECIAL Nº 740.968 - RS 2005/0058525-2, (BRAZIL)</i>	<i>17</i>
<i>RECURSO ESPECIAL Nº 63.981 – SP (1995/0018349-8), (BRAZIL)</i>	<i>17</i>
<i>AGRG NO AGRAVO EM RECURSO ESPECIAL No 582.541-Rs (2014/0240414-7), (BRAZIL).....</i>	<i>17</i>
CASE No. 1149, 2011, THE SECOND INTERMEDIATE PEOPLE’S COURT OF SHANGHAI ON 21 OCTOBER 2011 (CHINA).....	39
<i>ST. PAUL GUARDIAN INSURANCE CO., ET AL. V. NEUROMED MEDICAL SYSTEMS & SUPPORT, ET AL. 2002 WL 465312 (S.D.N.Y. MAR. 26, 2002), (USA).....</i>	<i>66</i>
<i>GERMAN COMPANY V QUOTE FOOD PRODUCTS BV, 253099 / HA ZA 08-1624, DISTRICT COURT OF UTRECHT IN THE NETHERLANDS, RECHTBANK UTRECHT, 2009 (THE NETHERLANDS).....</i>	<i>68</i>
<i>LICENSOR (FINLAND) V. LICENSOR (GERMANY), THE CELLE COURT OF APPEAL, CITED IN YB, VOL. XXXIII-2008, (GERMANY, NO. 112, SUB 15-20).....</i>	<i>98</i>
<i>OCEAN WAREHOUSING B.V.(NETH) V. BARON METALS AND ALLOYS, INC.(US), THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, 157 F. SUPP. 2D 245[2001] (S.D.N.Y.) (2001), CITED IN YB-2001 (UNITED STATES)</i>	<i>102</i>
<i>GLOBAL LTD., V. ADAPVTIVE IMAGING TECHNOLOGIES (CASE NO. 38891-10-11), ADAPVTIVE IMAGING TECHNOLOGIES V.</i>	

GLOBAL LTD., TEL AVIV-JAFFA DISTRICT COURT (CASE NO. 55013-11-11), (ISRAEL).....	103
<i>DENIS COAKLEY LTD. (U.K.) V. STE MICHEL REVERDY (FRANCE)</i> , THE CIVIL CHAMBER OF THE REIMS COURT OF APPEAL IN A DECISION DATED 23 JULY 1981, <i>REVUE DE L'ARBITRAGE-1982</i> , AT PP. 303–309, <i>CITED IN YB</i> , VOL. IX-1984 (FRANCE, NO. 6, PP. 400–402).....	114
<i>SHIPOWNER V. CONTRACTOR</i> , THE SUPREME COURT OF GREECE, ΤΡΑΠΕΖΑ ΝΟΜΙΚΩΝ ΠΛΗΡΟΦΟΡΙΩΝ-ΔΙΚΗΓΟΡΙΚΟΣ ΣΥΛΛΟΓΟΣ ΑΘΗΝΩΝ (ΔΣΑ)-, ΔΙΚΑΣΤΗΡΙΟ: ΑΡΕΙΟΣΠΑΓΟΣ, ΤΟΠΟΣ: ΑΘΗΝΑ, ΑΡΙΘ. ΑΠΟΦΑΣΗ: 1066, ΕΤΟΣ: 2007, <i>CITED IN</i> <i>YB</i> , VOL. XXXIII – 2008 (GREECE).....	114
DECISION OF THE HANSEATIC COURT OF APPEAL (BREMEN), <i>YB</i> , VOL. XXXI-2006 (GERMANY, NO. 84, SUB. 23-27).....	114
DECISION OF THE HAMBURG COURT OF APPEAL DATED 3 APRIL 1975, <i>YB</i> , VOL. II-1977 (GERMANY, NO. 11)	141
DECISION OF THE COURT OF APPEAL OF THURINGIA ON 8 AUGUST 2007, <i>CITED IN YB</i> , VOL. XXXIII-2008 (GERMANY, NO. 11).....	141
<i>IRAN AIRCRAFT INDUS. V. AVCO CORP.</i> , 980 F.2D 141, 145-46 (2D CIR. 1992); <i>GENERICA LTD. V. PHARMACEUTICALS BASICS,</i> <i>INC.</i> , 125 F.3D 1123, 1129-131 (7TH CIR. 1997).....	143
<i>HOTELES CON-DADO BEACH V. UNION DE TRONQUISTAS</i> , 763 F.2D 34, 40 (1ST CIR.1985)	143
<i>MATTER OF ARBITRATION BETWEEN CONTINENTAL GRAIN CO.</i> <i>AND FOREMOST FARMS INC.</i> ; PUBLISHED IN 1998 U.S. DIST. LEXIS 3509, <i>CITED IN YB</i> , VOL. XXV-2000 (UNITED STATES).	145
DECISION OF THE HAMM COURT OF APPEAL ON 27 SEPTEMBER 2005, <i>CITED IN YB</i> , VOL. XXXI-2006 (GERMANY, NO. 90, SUB. 1-3).....	145
<i>PABALK TICARET (TURKEY) V. NORSOLOR (FRANCE)</i> , <i>REVUE DE</i> <i>L'ARBITRAGE</i> , 1983, P.525, <i>CITED IN YB</i> , VOL. VIII-1983)	147
<i>HILMARTON LTD. V. OMNIUM DE TRAITEMENT ET DE</i> <i>VALORISATION-OTV</i>), THE COURT OF APPEAL OF PARIS ON 19 DECEMBER 1991, <i>YB</i> , VOL. XIX-1994 (FRANCE, NO.18).....	147
DECISION OF THE SUPREME COURT IN FRANCE ON 23 MARCH 1994, <i>YB</i> , VOL. XX-1995, (FRANCE, NO. 23).....	147
<i>ELISA MARIA MOSTAZA CLARO V. CENTRO MOVILMILENIUM SL.</i> , THE EUROPEAN COURT OF JUSTICE (CJEU) ON 26 OCTOBER 2006	161

OCEANO GRUPO EDITORIAL AND SALVAT EDITORES OF 2000 AND COFIDIS SA V JEAN-LOUIS FREDOUT OF 2002, JOINED CASES C-240/98 TO C-244/98 (2000), ECR I-4941AT [25]. ALSO, CASE C-473/00 *COFIDIS SA V JEAN-LOUIS FREDOUT* (2002), ECR I-10875 AT [32] 162

PRAISE

“In their ground-breaking book *Getting to Yes*, Roger Fisher and William Ury noted that “conflict is a growth industry.” That was in 1981, and Fisher and Ury’s hope was that *conflict resolution* would also become a growth industry. As the use of alternative dispute resolution (ADR) grew in the 1980s, Fisher and Ury could rightly have been very pleased that much progress had been made toward the outcome they sought.

What Fisher and Ury could not have anticipated was that growing use of new technologies would generate an even greater “growth industry” of disputes. In recent decades, companies like eBay and Alibaba have handled many millions of disputes and many thousands of disagreements involving domain names have been resolved through an online arbitration process. We have a much larger growth industry of disputes than in the 1980s because the new technologies have made possible huge numbers of transactions and relationships. It has been estimated that three to four percent of ecommerce transactions and relationships generate disputes, and this has translated into an unprecedented “growth industry” of disputes.

This book by Dr. Ihab Amro recognizes the need to adapt dispute resolution to a new environment in which constraints of space and time are lifted as cross-border transactions and instant communication become commonplace. It expands our understanding of the role that online arbitration and Online Dispute Resolution can play in resolving disputes that are large in number and that cannot be managed in a face to face setting. The challenge, as Dr Amro recognizes, is to refashion the tools that generate disputes into tools that can be employed to resolve disputes. He recognizes that arbitration is a process in which information is both communicated and processed, and that communicating and processing information are also basic qualities of computers. How informational practices that were initially developed in a physical environment can be translated into a digital environment is both challenging and important. There is much to be learned about this in this volume.

The book covers a lot of territory and will be of use to lawyers, arbitrators, the business community and others. In general, arbitration is a formal process and awards can be enforced only if various requirements are met. Dr Amro looks carefully at rules that need to change and new rules that need to be developed. He describes, in detail, the many successful and

unsuccessful efforts in recent years to build a new infrastructure of rules and institutions for arbitration. As “smart contracts” join traditional contracts and as artificial intelligence is employed to manage enforcement and other processes, Dr Amro’s book will continue to be an important resource.”

Ethan Katsh
Professor Emeritus of Legal Studies, University of Massachusetts;
Director, National Center for Technology and Dispute Resolution

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INTRODUCTORY NOTE

This book, which deals with online arbitration in theory and in practice, is based on post-doctoral research conducted at the Max Planck Institute for Comparative and International Private Law in Hamburg, the Legal Studies Department of Central European University in Budapest, and the United Nations Commission on International Trade Law (“UNCITRAL”) respectively.

Nowadays, technology as part of globalisation and the knowledge economy, plays a very important role in the global economy, including the digital economy. The Internet has become a manifold resource for most people around the world, including academics, researchers, students, consumers, traders, and companies.

In cross-border commercial transactions, the Internet is a major tool (means) for both consumers and businesses, as businesses can use the Internet for marketing and selling their products, while consumers can shop and buy low-cost products online. The Internet has stimulated small, medium and large companies to contribute to free cross-border trade, and also to secure places in global markets, including online ‘digital’ markets. Apart from that, the Internet helps parties, either businesses or consumers, settle any dispute that may arise out of or in connection with their commercial transactions online.

Because of the increasing importance of information technology in the global economy over the last two decades generally and the Internet in particular, a hybrid system that consists of alternative dispute resolution techniques (“ADR”) and information technology has been created, known as, online dispute resolution (“ODR”), which relates directly to online markets. ODR, which is also known as Internet Justice, is the most effective and flexible method for solving e-commerce disputes, including those pertaining to the consumer as the weaker party. The ODR system, which includes e-negotiation, e-mediation and e-arbitration techniques, goes a step farther than the ADR system. ODR is mainly used in the resolution of cross-border electronic commerce disputes. However, ODR techniques can also be used in the resolution of traditional cross-border commercial disputes, if the parties agree in their contract to settle any dispute that may arise through one of the ODR techniques, particularly online arbitration.

Online Arbitration, also known as e-arbitration, is a major component of ODR in which parties can also avail themselves of the provisions of international commercial arbitration such as the UNCITRAL Model Law on International Commercial Arbitration of 1985 as Amended in 2006, and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (“The NYC”), because no specific rules regulating online arbitration have been promulgated yet. Parties may, of course, rely on the UNCITRAL Model Law on Electronic Commerce of 1996, the UNCITRAL Model Law on Electronic Signatures of 2001, and the UNIDROIT Principles on International Commercial Contracts of 2010 as Amended in 2016. In e-arbitration, arbitrators conduct the process by e-mail exchanges and video-conferencing. They rely on documentary evidence to be sent via electronic means (e-documents). In this kind of arbitration, arbitrators may or may not find e-hearing to be conducive.

The topic of this book is very important and relevant to the future of online dispute resolution for solving both traditional and e-commerce disputes, including Business to Business (“B2B”) and Business to Consumer (“B2C”) disputes. It also has numerous benefits for those involved in dispute settlement, either academics or practitioners such as negotiators, mediators, arbitrators, practicing lawyers, legal practitioners advising international trading companies, and corporate counsels. Apart from that, it has benefits for business people or professionals involved in international trade and dispute resolution in both common law and civil law countries who wish to increase their understanding of ODR techniques in general and of online arbitration in particular. Therefore, the topic of this book is one of the heated topics amongst business people and their legal counsels.

In the theory of law, this book has theoretical importance because it deals with salient issues of online arbitration as an ODR technique for solving both traditional and e-commerce disputes that may arise out of the breach of contractual obligations in international commercial contracts, especially e-commerce contracts. These theoretical issues, which have a great impact on the efficacy of e-arbitration include, *inter alia*, the international legal framework that regulates e-commerce and its impact on electronic contracting such as model laws and international conventions, including the UN Convention on the Use of Electronic Communications in International Contracts of 2005 (“The ECC”), known as the UN Convention on E-Contracting, and the UN Convention on Contracts for the International Sale of Goods of 1980 (“The CISG”).

This book also examines whether national laws in both common law and civil law countries deal with issues pertaining to e-contracting, including e-

arbitration agreements, liberally. It also examines to what extent national laws adopt, and national courts apply, model laws and international conventions regulating electronic commerce in their own jurisdictions, including the Model Law on Electronic Commerce, the Model Law on Electronic Signatures, and the UN Convention on E-Contracting. In addition, this book addresses the question of whether the New York Convention applies to the enforcement of e-arbitration agreements and e-arbitral awards. Moreover, the book examines the possibility for the resolution of consumer disputes through online arbitration, comparing relevant U.S. laws and European legislations.

In the practice of law, this book has practical importance, because it examines first-hand how national courts in both common law and civil law countries deal with disputes pertaining to e-commerce transactions, and whether courts apply the provisions of national law strictly, especially in the case of B2C disputes. It also examines how national courts apply both national laws and The NYC when dealing with the enforcement of e-arbitration agreements and e-arbitral awards, and whether courts apply the provisions of national laws of arbitration liberally, and if more procedures are required for such enforcement. That is, it examines whether national courts will recognise and enforce e-arbitral awards and e-arbitration agreements in the same manner and to the same effect as traditional arbitral awards. As such, this book encourages the adoption of a more liberal judicial regime in favour of the enforcement of e-arbitral awards and e-arbitration agreements. Apart from that, it provides an in-depth analysis of how national courts in the European Union, in comparison to U.S. courts, deal with disputes resulting from e-commerce transactions in light of the pertinent directives and regulations, especially those disputes involving the consumer as the weaker party *vis-à-vis* the trader.

The main reason for studying this topic relates to the importance of e-arbitration as an emerging technique for solving international commercial disputes between private contractual parties. Furthermore, this topic involves the applicability of The NYC to the enforcement of e-arbitral awards and e-arbitration agreements, and the differences that may appear in its application in national courts of both common law and civil law countries. An additional reason for studying this topic is the need for more contributions on ODR techniques generally, and on e-arbitration particularly, for those academics and practitioners around the world who are interested in this specific domain. The final reason for studying this topic is that the book will constitute an important source for those involved in international trade who are willing to solve their disputes through e-arbitration, so that they can reinforce their knowledge of the fundamentals

of international commercial law and know the best ways and practices for solving their disputes through an e-arbitration system.

Overall, this book has an added value for the reader because it raises many issues involving online arbitration as an alternative regime for the resolution of both traditional and e-commerce disputes. The primary audience includes law professors from common law and civil law countries, practitioners at international law institutions and at international arbitration institutions, domestic and international arbitrators, academics, researchers and students from all over the world, as well as professionals involved in the resolution of both electronic commerce and traditional commerce disputes. The secondary intended audience includes readers of other areas of law, as well as any other readers interested in this specific domain.

In a thorough review of the previous studies on the topic of this book, I have found that most previous studies have dealt with this topic as a part of ODR techniques, but not in an independent study focusing on the resolution of international commercial disputes through e-arbitration. Apart from that, these studies have dealt with this topic by focusing mainly on technical rather than legal issues, while this book deals mainly with legal issues and only partially with technical issues for the correctness, accuracy, simplicity and completeness of the entire work. Moreover, this book deals deeply and extensively with e-arbitration in both common law and civil law countries, adopting a different approach, which considers the importance of providing a new analysis of online arbitration, including the enforcement of e-arbitral awards, and e-arbitration agreements in national courts. For that reason, the reader, whether a practitioner in the field of international trade law or not, will find both theoretical and practical benefits in this new domain herein.

This book has a substantive scope: it deals only with online arbitration and excludes other techniques of ODR, such e-negotiation and e-mediation. Apart from that, the book focuses on international commercial transactions and excludes domestic commercial transactions. In addition, it primarily focuses on disputes arising out of the breach of contractual obligations between private parties, and excludes disputes arising out of the breach of non-contractual obligations between private parties such as copyright disputes and antitrust/competition law disputes.

The book also has a territorial scope: it deals with online arbitration in both common law and civil law countries, including, but not limited to, the United States, the United Kingdom, Germany, France, Switzerland, Greece, The Russian Federation, Brazil, and China. That is, it focuses on the interplay between common law and civil law systems in online dispute resolution practice, harmony versus clash.

The book depends on the following methods of research:

1. Descriptive (informative) study: this book reflects the descriptive method of research through dealing theoretically with the fundamentals of e-commerce, e-arbitration, the international conventions relating to e-commerce, and with the liberalization of national laws of arbitration in both common law and civil law countries.
2. Case study: through a case-by-case analysis using cases from both common law and civil law countries, this book covers many practical issues relating to e-arbitration. These cases focus, *inter alia*, on the application of national laws of consumer protection in both common law and civil law countries, as well as on the application of both national laws of arbitration and The NYC in national courts, especially in those cases pertaining to the enforcement of e-arbitration agreements. Moreover, these cases focus on the application of the international legal instruments regulating e-commerce and e-contracting, including the Model Law on E-Commerce, the ECC, and the CISG. In addition, these cases concern the application of consumer protection policy inside the European Union by the European Union judicial bodies, namely, the Court of Justice (“CJEU”).
3. Comparative study: this book compares national acts of arbitration and of electronic commerce in common law countries to those in civil law countries. It also compares courts’ decisions that relate to e-arbitration and e-commerce in common law countries to those in civil law countries.
4. Analytical study: this kind of study depends on substance and procedure more than on formality. Therefore, this research mainly focuses on the substantive and the procedural issues of online arbitration.

The book consists of five chapters. The first chapter deals with cross-border electronic commerce transactions from both theoretical and practical perspectives, focusing on the differences between e-commerce and traditional commerce on the one hand, and between e-commerce and distance selling on the other hand. It also compares electronic commerce contracts to traditional commercial contracts, while also highlighting the legal problems arising out of the use of electronic commerce in international contracting. This chapter also deals with the payment systems facilitating electronic commerce transactions.

The second chapter deals with the cross-border legal framework regulating international e-commerce transactions and its direct impact on

electronic contracting, that is, the international legal instruments regulating cross-border e-commerce such as the Model Law on Electronic Commerce of 1996, the Model Law on Electronic Signatures of 2001, the UN Convention on E-Contracting of 2005, the UN Convention on Contracts for the International Sale of Goods of 1980, the UNIDROIT Principles of International Commercial Contracts of 2010 as Amended in 2016, and the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce of 1999.

The third chapter concerns the use of online arbitration in the resolution of international commercial disputes. It provides in-depth analysis of the use of e-arbitration as part of an ODR approach in the resolution of international commercial disputes that may arise between contracting parties, focusing on salient issues relating to the use of e-arbitration in practice, including the formation and validity of e-arbitration agreements, the designation of the place of e-arbitration, the e-arbitral process, the applicability of the principle of due process in e-arbitration, and the rendition of an e-award.

The fourth chapter highlights the enforcement of online arbitral awards and online arbitration agreements in national courts. It deals deeply and extensively with the mechanisms for the review of e-arbitral awards and e-arbitration agreements by national courts, the enforcement of cross-border e-arbitral awards and e-arbitration agreements under The NYC, and the obstacles that may hinder the enforcement of e-arbitral awards in national courts. This chapter provides practical solutions to these obstacles to avoid the refusal of the enforcement of both e-arbitration agreements and e-arbitral awards in national courts of both common law and civil law countries.

The fifth chapter concerns the use of online arbitration for the resolution of consumer disputes. It examines practical issues involving consumer transactions in both common law and civil law jurisdictions. These issues include the legality and validity of arbitration clauses in consumer contracts, as well as the possibility for the application of the Rome I Regulation on the Law Applicable to Contractual Obligations to B2C e-commerce contracts, and to e-arbitration. This chapter also provides an analysis of judicial practices for the resolution of disputes that may arise between consumers and traders in both common law and civil law countries.

The book concludes with notes that include findings regarding the main ideas of the topic and recommendations that encompass mechanisms, policies, and strategies for facing the new challenges of online arbitration, that is, provisions that might be considered in the future for improving the legal framework of online arbitration, either at the international level or at

the national level, including potential amendment of The NYC and national laws of arbitration, *de lege ferenda* as opposed to *de lege lata*, for facing the challenges of emerging new technologies in the field of international commercial arbitration in light of growing cross-border digital economy transactions.

It is the author's hope that those who are involved in or interested in ODR will find this book to be a useful, understandable, and complete guide to the theory and practice of online arbitration in international commercial disputes.

LIST OF ABBREVIATIONS

Art	Article
Arts	Articles
ASA	Arbitration Society of America
AAF	American Arbitration Foundation
AAA	American Arbitration Association
ADR	Alternative Dispute Resolution
AC Opinion	Advisory Council Opinion
AI	Artificial Intelligence
ATM	Automated Teller Machine ‘Cash Machine’
B2B	Business to Business
B2C	Business to Consumer
BGB	German Civil Code
BAC	Belgrade Arbitration Centre
BAC	Beijing Arbitration Commission
C2B	Consumer to Business
C2C	Consumer to Consumer
CCP	Code of Civil Procedure in France
CCI	Chambre de Commerce Internationale
CIETAC	China International Economic and Trade Arbitration Commission
CJEU	Court of Justice of the European Union
CISG	United Nations Convention on Contracts for the International Sale of Goods
CIF	Cost, Insurance and Freight
CIR.	Circuit
DIS	German Arbitration Institute
E-Arbitration	Online Arbitration
E-Arbitration Agreement	Online Arbitration Agreement
E-Arbitral Award	Online Arbitral Award
E-Arbitral Process	Online Arbitral Process
EC	European Community
EU	European Union
E-Commerce	Electronic Commerce
E-Court	Electronic ‘Online’ Court
ECC	Electronic Communications Convention

ECAF	Electronic Case Filing
EDI	Electronic Data Interchange
E-Hearing	Electronic ‘Online’ Hearing
E-Mail	Electronic Mail
E-Markets	Electronic ‘Online’ Markets
E-Shop	Electronic ‘Online’ Shop
E-Service	Electronic ‘Online’ Service
E-Signature	Electronic Signature
ESIGN	Electronic Signature in Global and National Commerce Act in the USA
E-Notification	Electronic ‘Online’ Notification
E-Banking	Electronic ‘Online’ Banking
E-Payment	Electronic ‘Online’ Payment
E-Checks	Electronic Checks
E-Document	Electronic Document
E-Terms	Electronic Terms
ECF	Electronic Court Filing
E-Communications	Electronic Communications
ECOSOC	United Nations Economic and Social Council
E-Discovery	Electronic Discovery
Et al	And Others
E-STJ	System for Electronic Filing of Law Suits and Submissions in Brazilian Courts
E-Filing	Electronic Filing
EEA	European Economic Area
Fax	Facsimile Machine
FAA	Federal Arbitration Act
F.R.	Federal Republic
Fintech	Financial Technology
G2C	Government to Consumer
G2B	Government to Business
GLICA	Greek Law on International Commercial Arbitration
GCCP	Greek Code of Civil Procedure
GCC	Greek Civil code
GTC	General Terms and Conditions
ICCA	International Council for Commercial Arbitration
ICANN	Internet Corporation for Assigned Names and Numbers
IBA	International Bar Association

ICA	International Commercial Arbitration
ICDR	International Centre for Dispute Resolution
ICSID	International Centre for the Settlement of Investment Disputes
ICC	International Chamber of Commerce
IBAN	International Bank Account Number
ICAC	International Commercial Arbitration Court in the Russian Federation
Infra	Below
Int'l Law	International Law
IT	Information Technology
IP	Intellectual Property
LCIA	London Court of International Arbitration
M-Payment	Mobile Payment
MLEC	Model Law on Electronic Commerce
MLES	Model Law on Electronic Signatures
Med/Arb Clause	Multi-Tiered Dispute Resolution Clause
NCCP	New Code of Civil Procedure in France
NYC	New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards
No.	Number
NSCGJ	Set of Rules on Internal Affairs and Judicial Communications in Sao Paulo State/Brazil
ODR	Online Dispute Resolution
ODRPs	Online Dispute Resolution Providers
OECD	Organization for Economic Co-operation and Development
PCA	Permanent Court of Arbitration
P	Page
Para	Paragraph
PR	People Republic
RAA	Russian Arbitration Association
R\$	Brazilian Real
RICO	Racketeer Influenced and Corrupt Organizations Act in the USA
Sec	Section
§	Section
Supra	Above
SMS	Short Message Service
SHIAC	Shanghai International Arbitration Centre

STJ	Superior Tribunal de Justiça, Superior Court of Justice in Brazil
SMEs	Small and Medium Enterprises
SZAC	SHENZHEN Arbitration Commission in China
TOR	Terms of Reference
UNCITRAL	United Nations Commission on International Trade Law
UNIDROIT	International Institute for the Unification of Private Law
UDRP	Uniform Domain Name Dispute Resolution Policy
UETA	Uniform Electronic Transaction Act
UAE	United Arab Emirates
U.N.T.S	United Nations Treaty Series
U.S. A	United States of America
U.K.	United Kingdom
Vol.	Volume
VIAC	Vienna International Arbitration Centre
WTO	World Trade Organization
WIPO	World Intellectual Property Organization
WU	Western Union
YB	Yearbook Commercial Arbitration
ZPO	Zivilprozeßordnung “German Code of Civil Procedure”

CHAPTER ONE*

CROSS-BORDER ELECTRONIC COMMERCE TRANSACTIONS IN THEORY AND IN PRACTICE¹

A. Introduction

The use of the Internet has become one of the main features of international commercial transactions. Electronic commerce, also known as (“e-commerce” or “e-business”) combines both technology and commerce. E-commerce is one of the main attributes of the knowledge economy, as well as one of the main applications of information and communication technologies (“ICTs”). Additionally, e-commerce is an integral part of the digital economy,² which is based on both e-commerce and ICTs. For example, e-commerce includes: advertising and selling products online, i.e., a commercial transaction is concluded and performed, in most cases, over the Internet. These kinds of transactions are called “e-commerce transactions” and include Business to Business (“B2B”) and Business to Consumer (“B2C”) transactions.

The world has evolved in the last three decades towards using e-commerce instead of traditional commerce. E-commerce helps parties from different countries to agree via the Internet on their commercial

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¹ This chapter mainly focuses on electronic commerce from a legal perspective. It partially highlights electronic commerce from both managerial and technological perspectives. For more information on electronic commerce from managerial and technological perspectives see Efraim Turban, David King, and Jae K. Lee, *Electronic Commerce 2004: A Managerial Perspective*, 3rd edition, New Jersey, Pearson Education, Inc., 2004.

² On the digital economy and the impact of the digital technologies on changing the economy see: *Information Economy Report 2017: Digitalisation, Trade and Development*, United Nations Conference on Trade and Development (United Nations, UNCTAD/IER/2017/Corr/1).

transaction, especially through online markets (“e-markets”) such as eBay³ where traders, individuals, companies, sellers, brokers or buyers can communicate and transact online.

Traders, therefore, must have online shops (“e-shops” or “e-stores”) where they can advertise, sell and distribute their products to consumers. The payment of a transaction is possible and admissible via e-payment systems, including credit, debit, or pre-paid cards which can be either real or virtual, as we will see later.

In this context, e-commerce transactions, which include all kinds of transactions such as advertising, sale and distribution of services and

³ For example, eBay is deemed as “information society service” in accordance with EU’s Electronic Commerce Directive of 2000. This term ‘information society service’ is defined as “any service normally provided for remuneration at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, at the individual request of a recipient of the service”, available at: <<http://www.ebay.com>>. In practice, in *L’Oréal SA v eBay International AG (Case C-324/09 of 12 July 2011)*, L’Oréal commenced litigation against eBay (UK) and sellers on eBay for selling L’Oréal products without L’Oréal’s consent. One question considered by the court concerned eBay’s potential liability. The UK High Court accepted that eBay is the operator of an online marketplace, an information society service. The UK High Court in 2009 asked the Court of Justice of the European Union (“CJEU”) to provide a preliminary ruling on several questions that relate to the above case. The CJEU concluded, *inter alia*, that: “The third sentence of Article 11 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights must be interpreted as requiring the Member States to ensure that the national courts with jurisdiction in relation to the protection of intellectual property rights are able to order the operator of an online marketplace to take measures which contribute, not only to bringing to an end infringements of those rights by users of that marketplace, but also to preventing further infringements of that kind. Those injunctions must be effective, proportionate, and dissuasive and must not create barriers to legitimate trade”. The CJEU decision is available at: <<http://curia.europa.eu/juris/document/document.jsf?docid=107261&doclang=en>>. (Accessed 04.05.2018). Also, in *Google France SARL and Google Inc. v. Louis Vuitton Malletier SA and others (Joined Cases C-236/08 to C-238/08 of 23 March 2010)*, the Court of Cassation of France asked the CJEU whether Google Search fell within the definition of an “information society service”. In its ruling, the CJEU concluded, *inter alia*, that: “an internet referencing service constitutes an information society service consisting in the storage of information supplied by the advertiser”. The CJEU also held that: “For a service to fall within the definition of an information society service there must be evidence that that service features all of the elements of that definition”. On this decision see: <<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008CJ0236:EN:PDF>>. (Accessed 04.05.2018).

products via the Internet,⁴ relate to technology, i.e., e-commerce includes all forms of commercial transactions involving both companies and individuals that are based upon the processing and transmission of digitalised data. E-commerce may also include some free services that companies, or banks provide for clients, including online banking services provided by banks to clients, also known as “Internet banking” or “e-banking”.

Through this e- banking service, clients can have an online bank account where they can:

- Perform some transactions such as transfer money online, either domestically or internationally through foreign currency transfer.
- Make payment through cheques online.
- Purchase products online using their bankcards.
- Top-up their prepaid mobile telephone balance.
- Access and modify the purchasing limits and ATM cash withdrawal limits for their bankcards.
- Pay specified utility bills online using simplified transfer from their accounts.
- Pay varying-amount monthly bills through online banking service, i.e., clients can authorise their service providers such as their mobile phone service provider to collect the amount from their accounts when payment is due, and for this purpose, they instruct the bank to permit the service provider to do so.

The number of e-commerce transactions has increased over the last three decades in most developed countries, as well as in some developing countries. This is because of the growth of the use of the Internet and other means of technology in commercial transactions.

B. Electronic Commerce Contracts in Comparison to Traditional Commercial Contracts

The formation of a traditional commercial contract is based on an offer made by one of the parties and an acceptance by the other party. Likewise, an electronic commercial contract has the same legal requirements applicable to a traditional commercial contract, including formation of a contract, obligations of parties to a contract, and termination of a contract. In an e-commerce contract, however, the form requirement is unimportant

⁴ Examples of products distributed electronically: electronic books and music.

if the electronic document sufficiently defines and sets up clear signs which can be read in the future,⁵ provided that the manner in which the e-document was generated, stored or communicated is reliable, as we will see below in detail.

Moreover, e-commerce contracts differ from traditional commercial contracts in other aspects, including time and place of conclusion of an e-contract, proof of an e-contract and of an e-signature, means of payment relating to an e-contract, and the applicable law and jurisdiction of e-contracts.

In e-commerce contracts, parties may agree when they conclude their contract to settle any future e-commerce dispute by arbitration.⁶ Alternatively, they may agree to settle their dispute by e-arbitration after concluding their e-commerce contract because of their exchange of letters or telecommunications, including e-mail communications.

E-commerce contracts encompass, *inter alia*, B2B e-commerce contracts, B2C e-commerce contracts, consumer to business (“C2B”) e-commerce contracts, consumer to consumer (“C2C”) e-commerce contracts, government to consumer (“G2C”) e-commerce contracts, and government to business (“G2B”) e-commerce contracts.⁷

Finally, e-commerce contracts differ from smart contracts, which are defined as follows: “smart contracts are software codes that embed the terms and conditions of a contract and that run on a network leading to a partial or full[y] automated self-execution and self-enforcement of the contract”.⁸ Smart contracts are also defined as “a set of promises, specified

⁵ Van Cutsem, Jean-Pierre, Viggria, Arnaud, and Güth, Oliver, *E-Commerce in the World –Aspects of Comparative Law–*, Bruxelles, Bruylant, 2003, at p. 95

⁶ See Amro, Ihab, “The Use of Online Arbitration in the Resolution of International Commercial Disputes”, *Vindobona Journal of International Commercial Law and Arbitration*, (2014) 18 VJ (2), at p. 129.

⁷ See Schulze, Christian, “Electronic Commerce and Civil Jurisdiction, with Special Reference to Consumer Contracts”, *South African Mercantile Journal*, Volume 18(1), 2006, at p. 32. On some of these kinds of e-commerce contracts see also, Edwards, Lilian and Wilson, Caroline, “Redress and Alternative Dispute Resolution in EU Cross-Border E-Commerce Transactions”, *International Review of Law, Computers & Technology*, Volume 21 (3), 2007, at pp. 315–333.

⁸ Hourani, Sara, “Cross-Border Smart Contracts: Boosting International Digital Trade through Trust and Adequate Remedies”, ‘Modernizing International Trade Law to Support Innovation and Sustainable Development’, *Proceedings of the Congress of the United Nations Commission on International Trade Law, Vienna – 4-6 July 2017, Volume 4: Papers presented at the Congress*, available at: <http://www.uncitral.org/pdf/english/congress/17-06783_ebook.pdf>, at pp. 118-119. (Accessed 04.05.2018).