

Assignment for Electronic Commerce

Introduction

The most common and traditional way to purchase goods for us is go to the high street stores where we pick up the goods what we like, pay for the prices at the check-out desk. However, the way has changed; 21 century is the world with E-commerce. People can no longer go to stores instead of buying all products at home over the internet. We can't ignore the benefits of e-commerce. For consumers, e-commerce is great as everyone likes the ease and convenience of shopping online. For businesses, e-commerce is also great managing suppliers and conducting business transactions over the Web saves time and money.

Without doubt, e-commerce provides huge convenience for not only consumers, but also the business. Notwithstanding online goods selling makes for consumers a speed, simplicity and variety of goods on offer, for the sellers a ready-made, instant audience that secures them the best price,¹ it involves huge risks. Many buyers complained of sellers' performance for late shipments, no shipments, or shipments of the goods which are not the same quality or description as advertised, insecurity of payment by credit or direct card, etc². As a result, in order to protect consumer's extra rights relating to buying goods online and regulate online business, some directives or regulations came into force in the UK.

eBay as a world's marketplace enables trade on a local, national and international basis. Everyday, a lot of buyers bidding and buying goods via eBay online platform, as well as millions of items traded through eBay. It developed an internet-based community where buyers and sellers are brought together to buy and sell. But eBay is not a real internet auction website, it performances as an online venue through which customers can do trade just as in offline trade transactions.

This essay intends to give a critical analysis for legal relationships among parties created on eBay.co.uk. I will also analyse consumers' protections from purchasing goods in stores and buying on eBay that whether they have the same rights by different means of purchasing goods. Moreover,

¹ www.dti.gov.uk/bestpractice/assets/auctionshubs.pdf

² [/www.ftc.gov/bcp/online/pubs/online/auctions.htm](http://www.ftc.gov/bcp/online/pubs/online/auctions.htm)

some law legislations and regulations will be considered for supporting my views.

Part I

I Participators on eBay

EBay provides a cyberspace for buyers and seller who came together to buy and sell goods. On the other hand, eBay online service permit all users using it service on the basic premise that users must agree the terms and conditions presented on-screen. Therefore, firstly, the relationship between sellers and buyers are created through online sales contract. Secondly, eBay as online service provider provides services to eBay's users and regulate their acts.

1) The legal relationship between eBay buyer and seller

Under English law, the formation of a contract requires four elements: offer, acceptance, consideration and an intention to create legal relations. The traditional offline rules apply to online contracts, that is to say, e-commerce is applied by the same principle as traditional paper-based transaction³, and only the way in which they apply may be different.

Under common law, an offer is a statement by one party of a willingness to enter into a contract with the other party on stated terms, and in turn, if the other party accepts it, the agreement will be legally binding. English contract law does not require an offer is made in a particular form. Thus, offers can be made by distant communications such as fax, e-mail and World Wide Web. However, it is necessary to observe the distinction between an offer and an invitation to treat. Invitations to treat are advertisements where merchants promote the sale of products. English law holds that shop displays goods and price listed are invitations to treat⁴. After the offer has been made, the offeree can choose to accept the offer to buy or refuse. If the acceptance of an offer is made, a contract is then entered into. Acceptance is the unconditional agreement to the presented offer. The general rule is that an acceptance must be communicated to the offeror⁵, but there is no any rule as to which methods of acceptance. Thus, acceptances can generally be made via any communication methods unless the term of the offer has been explicitly specified. In the context of creating contracts online,

³ W. Calkoen (1998), 'Harmonization of Law and the Internet'

⁴ Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd [1951] 2 QB 795

⁵ Entores v Miles Far East Corp [1955] 2 QB 327

electronic mail has become a more faster and reliable communication method used as for the negotiation as to terms or other questions relating to the contract between parties. Moreover, an e-mail can also amount to a valid acceptance for any offer that required to be made in writing.

As traditional contract law is applied in online contracts, thus the display of goods with a price by sellers on eBay are merely an invitation to treat⁶ so that to attract consumers who are interested in these goods to make an offer to buy through bidding the goods. The offer therefore is made by the buyer, not goods supplier. After the offer has been made, the supplier can either accept or refuse the offer. Usually, the highest bidder will be accepted by the seller at the end of auction. The seller must communicate to the 'winner' that he is going to accept it and negotiate further delivery and payment method, it can not be a message merely notify the offeror that the offer has been received. Although the seller can communicate to the buyer via any communication method, in the situation on eBay, the acceptance of the offer is usually through an email from the seller via eBay as a confirm letter arranging delivery and payment method. As a result, both parties then enter into a binding contract once goods supplier send an e-mail as the acceptance to the buyer.

Consideration in a sales contract is that "the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price"⁷. Therefore, consideration in the contract of sales goods on eBay is that an eBay seller deliveries the contracting goods to the buyer in exchange of goods price. Intention is another important element for creating a binding contract, but in the context of electronic commerce, which typically involves commercial contracts, intent will normally automatically exist.

Once the contract is validly formed, both parties are bound to perform their contractual obligations. As an eBay buyer, he must comply with the seller's own terms and conditions displayed on website only they are not in breach of User Agreement or otherwise unlawful⁸. The bidder must also pay for the price to the seller in a reasonable time. As an eBay seller, he must contact the winning bidder for further delivery and payment once he accepts the highest bidding. The effect of breach

⁶ Fisher v Bell [1961] 1 QB

⁷ The Sale of Goods Act Section 2(1)

⁸ www.eBay.co.uk User Agreement on Bidding and Buying

offline sales contract will be the same as online.

2) The legal relationship between eBay Company and eBay users

eBay.co.uk and eBay users also create legal relationships when users consent to terms and conditions by clicking button set out by eBay.

The traditional way before making a contract is that there must have been a bargaining as to contents of the contract between parties. However, when contract is going to make over the internet between parties who are the website users and website owner (or online service providers), there would be impossible and not efficient for website owner to bargain with each persons who intends to use the website. Therefore, website owner places an agreement or contract on its website and requires users to consent the presentation of terms and conditions on web in order to access the website, purchase or sell goods and rules by which users must comply with, and so on. This type of agreement is a so-called "Click-wrap" agreement. The term "click-wrap" is obtained from the practical fact that such online agreements often require users' clicking with a mouse on an on-screen icon or button to signal a party's acceptance of the contract.⁹

The general rule in written contract is that parties typically sign paper documents to signal their assent to be bound by the contract whether he reads it or not.¹⁰ In other words, a document can be regarded as legally binding to parties having contractual effect relied upon the party's signature as evidence of genuine consent. However in the online environment, users can not be possible to sign an agreement, instead, signing a click-wrap agreement is usually replaced by 'Type and Click' or 'Icon Clicking' of ways to let users assent to the terms and conditions of an agreement.

Let us enter into eBay.co.uk as an example. Where before all users can access to the website, we must register with the eBay, but the most importance step is to make sure all users consent to the 'User Agreement' displayed on web-page. If users disagree these terms and conditions, they are not entitled to proceed with further transactions and other services. Consumers or users can read these terms and condition simply by clicking 'here', then the whole page of agreement is opened on a separate page. After read the agreement, users must confirm by ticking in dialog boxes which are located in the bottom of registered form if they are going to agree the agreement.

⁹ Source from; <http://grove.ufl.edu/~techlaw/vol4/issue3/friedman.html>

¹⁰ L'Estrange v F Graucob Ltd [1934]2 KB

Therefore, the contract is concluded on eBay.co.uk by users' clicking 'Continue' along with ticking in dialogue boxes as signals to consent the agreement and indicate that they agree to be bound by eBay. Moreover, eBay has brought the notice to the attention of users that they are not allowed to use or access to eBay unless they agree the agreement¹¹. As a result, the legal relationship between eBay and users created once they click the button to consent to the agreement, users must then comply with the terms and conditions of the agreement. Otherwise, the website may sue users who are in breach of the contract. Whereas, although click-wrap agreement provides a new means for users to consent to an agreement, English courts have not yet deal with click-wrap agreements, but many America cases recognized it's enforceability¹².

Part II

EBay shops are a special site on eBay co.uk where sellers are able to show customers all of their listing and tell us more about their business via their own pages. Buyers, on the other hand, can discover more items from sellers'.¹³. Therefore, eBay shops are similar with a normal shop, where both are dealing as the business to consumers. The distinction is that the internet performances as an online platform for all business selling their products .Whereas, consumers' legal rights in whether online or offline contracts should be same or at least similar under English law.

1) Consumers' legal rights to goods under the Sale of Goods Act 1979

When consumers purchase goods from a trader, such as shops, high street stores, market, etc, they enter into a sales contract with the trader. Under the English Law relating to the sale of goods, which is governed by the Sale of Goods Act 1979(hereafter referred to as the SGA 1979).¹⁴ Goods are defined as "all personal chattels other than things in action or money"¹⁵.The law gives consumers certain key legal rights in sales of contracts. On the other hand, the SGA 1979 is one of the most important laws regulating the seller's legal obligations on eBay.co.uk in the course of a business. .

Once the sales contract between the buyer and goods seller is concluded, the seller must comply with

¹¹ See User Agreement on eBay.

¹² Hotmail Corporation v Van Money Pie Inc, et al, C98 -20064(N.D.Cal, April 20 1998)

¹³ www.ebay.co.uk on eBay shops

¹⁴ The SGA 1979 has been amended by the Sale and Supply of Goods Act 1994 and the Sale of Goods to consumers Regulation 2002

¹⁵ S61(1)

his contractual obligations under the SGA 1979, many consumers however complain that the goods received from goods supplier are not accordance with the description of the seller displayed on the listing site. In this situation, the buyer's right is affected against the seller's defective performance. Consequently, the goods must match the description¹⁶ complied with terms and conditions given in the item listing, which is an implied condition in the sales contract. If the goods supplied do not in accordance with the seller's description, the eBay buyer is entitled to reject the goods and claim from the seller damages for their non-delivery.

Secondly, if the seller sells goods in the course of business, there is an implied term that the goods will be of satisfactory quality¹⁷ (section 14(2)). The indications of quality include fitness for purpose, appearance and finish, freedom from defects, safety and durability. (S14(2B)). As a result, if the goods supplied are not of satisfactory, the sell is in breach of condition and the buyer has the right to reject the goods and claim refund from the seller.

Under the SGA 1979, the consumer has these primary rights against the goods of supplier even the goods are purchased in stores or on eBay website. It should bear in mind that it is the seller's responsibility for the goods, not the manufacturer.

EBay's Item not received and or Significantly Not as Described Policy requires the seller to delivery goods they have sold on eBay and received payment for. If the seller fails to do so or sent goods to the buyer who later found that they are 'significantly not as described' by the seller on items listing, eBay company may restrict the seller's account and suspension. EBay will enforce law authorities to penalize seller's fraud. Further, the buyer may be eligible for reimbursement through eBay's Standard Purchase Protection Programme.¹⁸.

2) Consumer's extra rights when buying goods on the internet under the Consumer Protection (Distance Selling) Regulations 2000¹⁹ and Electronic Commerce (EC Directive) Regulations 2000²⁰

The one fundamental difference between online sales contracts and offline contracts is that the online contract is a no face to face contract between the seller and the consumer. Unlike buying goods in

¹⁶ S 13(1) of Act 1979

¹⁷ S14 (2A): goods are of satisfactory quality if they meet the standard that a reasonable man would regard as satisfactory, taking into account of any description of the goods, the price(if relevant) and all the other relevant circumstances."

¹⁸ The information obtained from www.eBay.co.uk

¹⁹ SI 2000 NO 2334 The Distance Selling Regulations 2000 implement Directive 97/7(the Directive on the Protection of Consumers in Respect of Distance Contracts) in the UK from 31 October ,2000

²⁰ Directive 2000/31, 8 June 2000, OJL 178/1, 17 July 2000

shops, where sales contracts are made face to face that the consumer is not worried about a trader's identification. Moreover, a consumer is able to know there is little risk of non-performance or defective performances from a trade as consumers have opportunity to examine the goods before and even after purchase of the goods in shops or later at home, if they are not satisfied with the goods, the buyer has rights to return goods immediately or in a reasonable time, the refund will be given subsequently. Therefore, the Distance Selling regulation is an important area of law which is to be contrasted with purchases in a shop.

Consumers in the EU benefit from an increasing range of laws and regulations concerning sales and services in respect of distance contracts²¹. The purpose of the Directive is to increase consumer confidence and so strengthen the single European market by providing an agreed minimum level of consumer protection throughout the EC²². The regulations only apply to Business-to-Consumer communications, so that the transaction between Business-to-Business is not covered by these regulations. Moreover, although the regulations do not apply to internet auction sales, this only refers to traditional auctions carried out via the internet, not sales made on eBay's auction-style selling format. Thus, any sales contract made via eBay.co.uk is formed as a normal sales contract concluded via the internet and covered by the Distance Selling Regulations 2000.

Therefore, under the Regulations 2000, consumers must be provided with certain information prior to the conclusion of the contract under Regulations 7 including the name of the supplier, along with their postal address if consumers have to pay in advance; An accurate description of the goods or services, the price, along with any taxes and delivery charges if relevant; Delivery arrangements (usually within 30 days unless consumers agree otherwise); Arrangements for payment; The right to withdraw the order; Information about whether consumers will be liable for the cost of returning goods if they change their minds about them. After the purchase, consumers still have the right to know those information offered by the supplier under Regulations 7 and 8 that the written confirmation of the order by letter, fax or e-mail (which is usually used as a communication method on eBay.co.uk), including information laid out in paragraph (i) to (vi) of Regulation 7(1)(a); The information of how to cancel, a contact postal address of the business and details of any guarantees, warranties or after-sales services, if applicable, and so on.

²¹ 'Distance contract' is defined in regulation 3 that any contract concerning goods or services concluded between a supplier and a consumer under an organised distance sales or service provision scheme run by the supplier who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded;

²² www.dti.gov.uk

This information should be sent to consumer by the time the goods are delivered, or before or soon after the time a service starts.

Consumers have the right to cancel contracts within 7 working days (cooling off period) without penalty and without giving any reason under Regulations 10.11 and 12. The aim of the regulations, the main reason for this is to give consumers an opportunity to exam the goods they received as they would do if they were purchased in local shops. Where the right to cancel contracts applies, the only charge that made to consumers is the cost of return post in the case of goods. If certain information is not given to the consumer set out in section 7 and 8 on time, the period of 7 days cooling off extends to 3 months. If contracts are cancelled, the consumer must be reimbursed any sum paid by the supplier. Reimbursement must be made within 30days of exercising the right of cancellation²³. Whatsmore, where a consumer cancels, any related credit agreement is cancelled automatically; any deposit paid should be refunded to a consumer²⁴.

Consumers who find any breach of this regulation by the supplier can report to the Director General of Fair Trading. Where a breach of the regulations is identified, the Director can ask the Court under the regulation grants an injunction to put right the breach (Regulation 27).

In addition to Consumer Protection Regulations 2000, the Electronic Commerce Regulations which applies regardless of whether the buyer is a consumer or another trader places a number of additional requirements to business who sell goods or services to customers on distance-selling. It should be noticed that on 21st August2002, the Electronic Commerce (EC Directive) Regulations 2002 ²⁵ transposed into English law the main requirements of the E-Commerce Directive (2000/31/EC).

In addition to similar provisions (the regulation of 6 in the E-Commerce Regulations 2002 about the information of goods or services supplier) in the Distance Selling Regulations, under the Regulations, the seller must also clearly provide details of the different steps required to conclude a contract(Reg 9(1)(a));Whether the contract will be filed by the seller and whether or not it will be accessible(Reg9(1)(b)); the languages offered for conclusion of the contract (Reg9(1)(d) and so on.²⁶Regulation 11 deals with placing an order that “Acknowledge receipt of an order without undue

²³ Regulation 14

²⁴ Regulation 15

²⁵ UK SI 2002/2013

²⁶ Regulations 9(1)-(3)

delay. Non-compliance with the Regulations 2002 will give the customers' right to cancel the contract or seek a court order against the supplier, as well as sue the supplier damages for breach of statutory duty unless consumers suffer a loss as a result of supplier's failure to comply with their obligations under the Regulations.

3) Consumer protection on payment by card

In the paper-based contract of sales, standard terms and conditions will specify the specific payment and delivery terms of the transactions. It also the same in electronic contracts, in which online payment methods are compulsory.

The security of payment has become one of the top issues among consumers; many of them are not willing to use the Internet to purchase goods because of concerns of card fraudulently used by other people. Unlike we purchase goods in stores, where the consideration for a sales contract can take payment of cash, by which no risk will be occurred. Even consumers use a card as a payment, the signature of card holders and password input can fully protect consumers' right in case of fraud. In the e-commerce transactions, for example, via eBay.co.uk, payment with card is the most common method as both consumers and the business are reluctant to use cash payment. The traditional view is that cash lost in the post constituted non-payment.²⁷ Thus, in order to satisfy the payment terms of the contract, the other part receives the payment. Applying this rule to e-transaction, digital cash becomes lost *en route* to the online merchant does not constitute payment either. In addition, a merchant could even keep the cash and claim non-payment from the buyer.

As a result, people rarely ever sent cash through the mail, the risk of payment involved in the e-transaction left to the use of credit card. Most of businesses in Ebay.co.uk accept credit payment, which mean we could purchase goods by a card via the internet. Thus, a credit agreement is required. A consumer enters into a credit agreement with the business is generally protected by the Consumer Credit Act 1974(CCA 1974)

The Consumer Credit Act 1974 establishes for the protection of consumer credit and consumer hire agreements for amounts up to £25,000. Its protections apply to "agreements between traders and

²⁷ Lyttges v Sherwood(1895) 11 T.L.R.233

individuals, sole traders, partnerships and unincorporated associations, but not agreements made between traders and corporate bodies such as limited companies.”²⁸ Therefore, under the section 75 of the Act 1974, a card holder(debtor) is able to make claim against both the card issuer(creditor) and supplier for breach the contract or misrepresentation provided the agreement is falling with section (b) and (c)²⁹ But it should bear in mind that this section only available for credit card holders.

Protection on card payment is also realised in the Distance selling Regulation 2000 for distance contracts. The directive provides that where there is fraudulently use of the card, the cardholder will have no liability.³⁰ Although section 84 of the UK CCA 1974 removes any liability of the debtor under a regulated consumer credit agreement where there credit card is used by another person not acting as their agent(fraudulent use), but the cardholder may be made liable to the extent of 50 pounds where the card is out of the possession of an authorized person in the case of card lost or stolen. However, Regulation 21(5) of the directive does not apply part of Section 84 of the Act, that is to say the cardholder will even no liable for 50 pounds; it is changed for distance contracts.

It is true that among users there is an understandable concern of disclosing payment details on the internet although most of sellers accept payment by credit or debit card. Obviously, the application process is more rigorous when sales transactions are to be made on the net rather than face-to-face transactions in shops, for example. As for card fraud protection on eBay.co.uk, where the company states that consumer’s cover can be obtained by their credit card company’s fraud protection programme.

Conclusion

As far as English law concerned, the general rule of contract together with any relevant consumer protection legislations will apply to contracts entered into via the internet. Therefore, four elements (offer, acceptance, consideration and intention to create relation) of requirements of making a legal binding contract are also necessary for forming online contracts. As a result, the legal relationship between eBay seller and buyer is created on the eBay where the sales contract is concluded that

²⁸ www.dti.gov.uk

²⁹ Section 12(b) and (c) refers to a restricted-use credit agreement to finance a transaction between the debtor and the supplier, and a unrestricted-use credit agreement made by creditor and other person(the supplier)

³⁰ Regulations 21(5)

goods supplier accept the highest bidding buyer. However, regarding the creation of legal relationship between eBay and eBay users, the contract is given effective when users agree the terms and conditions contained on web-page through users' clicking the icon button, which is a new way for consumers or users to consent to the click-wrap agreement or contract.

Furthermore, it is getting popular that many of us nowadays buy goods on the internet, which gives us a chance to enjoy time saving and variety of goods rather than shopping in shops. However, the law recognizes that this sort of distant shopping comes with its own problems. Therefore, in addition to give consumer's legal rights as on the internet as in shops, some law legislations and regulations are come into force in the UK giving consumers' extra legal rights to be fully protected. So far, there are two keys of Regulations (Directives) are implemented to protect consumers: the Consumer Protection (Distance Selling) Regulations 2000 and Electronic Commerce (EC Directive) Regulations 2002. As a result, consumers' legal rights from purchasing goods on the internet are extended and much more than shopping in stores.

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Other resources from below websites:

www.businesslink.gov.uk

www.tradingstandards.gov.uk/cgi-bin/callist.cgi

www.dti2.dti.gov.uk

www.grove.ufl.edu/~techlaw/vol4/issue3/friedman.html

www.gsulaw.gsu.edu/lawand/papers/su03/darden_thorpe/#V