

**E-COMMERCE CONSUMER CONTRACTS AND CONFLICT OF
LAW ISSUES**

By

Arni Roswani binti Sa'bar Noralamin (2009427686)

Farah Syifaa binti Mohd Fadzil (2009829244)

Hani Yusra binti Rusling (2009887718)

Norazila binti Hamzah (2009296732)

Submitted in Partial Fulfillment of the Requirements
for the Bachelor in Legal Studies (Hons)

Universiti Teknologi MARA

Faculty of Law

December 2011

The students confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others.

ACKNOWLEDGEMENT

Words cannot express our gratitude towards our supervisor, Dr. Sheela Jayabalan for her patience, humble supervision and motherly advices we received from her in the course of this project paper. We would have never been able to finish this project paper without her help and guidance.

We would also like to thank our parents for their continuous support and encouragement as well as their monetary support to enable us to complete the project paper successfully.

Last but not least, thanks to the Almighty in giving us the strength to complete this project together as a team.

ABSTRACT

This research analyzed conflict of law issues arising in e-commerce. The aim of this research is to analyze whether the private international law in Malaysia protects consumers in e-commerce consumer contracts namely jurisdiction, choice of law and enforcement of foreign judgment.

Applying content analysis, the conflict of law in Malaysia is just a general law governing the three component of conflict of law which is jurisdiction, choice of law and enforcement of foreign judgment. Hence it does not place any significance in protecting consumers whereas 'e-commerce' transaction which is cross border in nature needs specific attention. Consumers will be confident if;

- i. the court of their home country has jurisdiction to hear the case;
- ii. the choice of law is of the consumers home country and is legislated;
- iii. reciprocity principle must be opened up to more countries.

It will be more effective if a consensus can be reached among the ASEAN countries on conflict of law as the law in the EU countries. Comparing the conflict of law of the UK as it is one of the members of the recommendation have been suggested as to how the conflict of law in Malaysia should be attuned to e-commerce transaction with special attention in protecting consumers.

TABLE OF CONTENTS

Acknowledgment	ii
Abstract	iii
Contents	iv
Table of Cases	vi
Table of Legislation	vii
CHAPTER 1: INTRODUCTION	
1.1 Title.....	1
1.2 Introduction.....	1
1.2.1 What is e-commerce?.....	1
1.2.2 The Rise of Cross-border Consumer Contract in Malaysia.....	2
1.3 Problem Statement.....	2
1.4 Objective of the Study.....	3
1.5 Literature Review.....	3
1.6 Research Methodology.....	17
1.7 Significance of the Study.....	18
1.8 Scope and Limitation.....	18
CHAPTER 2: JURISDICTION	
2.1 What is Jurisdiction?.....	19
2.2 The Jurisdiction of the Court in Malaysia.....	19
2.3 Are consumers protected under the national law?.....	26
2.4 Conclusion.....	28
CHAPTER 3: CHOICE OF LAW	
3.1 Meaning of Choice of Law.....	29
3.2 The Law in Malaysia.....	29
3.3 Conclusion.....	39

CHAPTER 1

1.1 Title

E-COMMERCE CONSUMER CONTRACTS AND CONFLICT OF LAWS ISSUES

1.2 Introduction

1.2.1 What is E-commerce?

Electronic Commerce or e-commerce has received much attention from governments, businesses and regional bodies. The importance has been attributed to several converging factors. These factors include: first, the development of the use of the Internet as a means by which information is disseminated and through which communication and connectivity is enabled; and second, the affordability of personal computers, increase in their computing capability, and the wide use of open standards.¹ Electronic commerce or e-commerce is a term for any type of business, or commercial transaction that involves the transfer of information across the Internet². It covers a range of different types of businesses, from consumer based retail sites, through auction or music sites, to business exchanges trading goods and services between corporations. E-commerce allows consumers to electronically exchange goods and services with no barriers of time or distance. It is currently one of the most important aspect of the Internet to emerge. In simple terms, e-commerce is the creation of commercial transaction between the parties which are done electronically.³

¹ Kiranjit Kaur, "Consumer Protection in E-Commerce in Malaysia: An Overview", (2005) 10 Journal of the UNE Asia Centre

² <http://www.networksolutions.com/education/what-is-ecommerce/> accessed on 12 November 2011.

³ Julian Ding, *E-Commerce Law & Practice* (Sweet & Maxwell Asia Selangor 1999) p 21