

BORDERLESS DEALS, BOUNDLESS DISPUTES: UNTANGLING JURISDICTION AND LEGAL CONFLICTS IN THE GLOBAL E-COMMERCE MAZE*

Abstract

In an era, where a single click can spark a transaction across continents, the age-old principles of jurisdiction and conflict of laws are being stretched to their limits. When a dispute arises from e-commerce involving parties located in different nations, the parties are immediately presented with conflict-of-laws issues such as judicial jurisdiction, applicable law, and extra-territorial impacts of judgments. The paper argues for more harmonized legal mechanisms that reflect the global nature of digital commerce because, in a world where commerce travels at the speed of light, the law must not crawl. This research critically examined the quandaries of trans-border enforcement of electronic contracts and whether there is universality of adequate laws to facilitate a seamless execution of cross border e contracts. The methodology used in this research is the doctrinal research method, which involves a systematic analysis of the primary and secondary source materials, including statutes, decisions of Courts, texts, journals and internet sources. The researcher found that although there is no universality of laws, there exists a unified enforcement mechanism of e contracts under certain circumstances. The researcher recommends that there is an urgent need for more countries to become signatories to strategic e commerce conventions and treaties.

Keywords: Conflict of Laws, E-commerce, E-contract, Globalization, Jurisdiction

1. Introduction

At the heart of every transnational legal dispute lie two fundamental questions: which law governs the matter, and which court possesses jurisdiction to adjudicate it? These questions assume even greater complexity in the digital era, where e-commerce transactions routinely transcend territorial boundaries and involve parties domiciled in multiple jurisdictions.¹ Although domestic courts may assert jurisdiction, the enforceability of their decisions abroad remains fraught with challenges, as foreign judgments are often subject to restrictive recognition regimes.² This tension undermines the effectiveness of dispute resolution in the global digital marketplace. Against this backdrop, the rapid expansion of e-commerce in Nigeria and across the world underscores the urgency of addressing jurisdictional uncertainties and trans-border enforcement mechanisms. Without coherent and predictable rules, businesses and consumers alike face significant legal risks, ranging from unenforceable contracts to inconsistent consumer protection standards. This article, therefore, examines the twin issues of jurisdiction and conflict of laws in e-commerce, with a focus on their implications for Nigeria within the broader framework of globalization

2. Choice of Jurisdiction in E-Contracts

The issue of jurisdiction is a crucial one in e-commerce. A recurring question has been which court assumes jurisdiction in resolving a dispute arising from an electronic contract, particularly in situations where the parties reside in different jurisdictions governed by different legal systems. This issue falls within the ambit of Private International Law. In the European context, the relevant framework is the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968. This was subsequently replaced by Council Regulation (EC) No. 44/2001 (Brussels I Regulation), and later by Regulation (EU) No. 1215/2012 (Brussels I Recast), which became effective on 10 January 2015. Under the Brussels I Recast³, parties are free to designate by agreement the courts of a Member State to have jurisdiction, and such agreement generally prevails even if proceedings are commenced elsewhere. The Recast also abolished the requirement for a declaration of enforceability (exequatur) for judgments within Member States, thereby streamlining cross-border enforcement.

In relation to internet contracts, jurisdiction is generally determined by the place where the contractual obligation is performed, as provided under Article 7(1)(a) of the Brussels I Recast. Where obligations are to be performed in multiple jurisdictions, the court of the place most closely connected to the dispute is competent. Furthermore, Article 4 of the Recast provides that jurisdiction may also be determined by the defendant's domicile. A significant departure from this general rule exists for consumer contracts. Articles 17 to 19 of the Brussels I Recast provide that consumers may sue or be sued in their home state. This principle was affirmed by the Court of Justice of the European Union in *Pammer v Reederei Karl Schlüter*⁴ and *Hotel Alpenhof GesmbH v Oliver Heller*⁵ where it was held that if a trader directs commercial activities via a website to another member State, the consumer may bring an action in their own domicile. To avoid such outcomes, many e-commerce operators attempt to disclaim liability by stating that a mere visit to a website does not constitute an offer. However, courts have consistently held that substance, rather than form, governs the determination of the contractual nature of online transactions.

By Uwadineke C. KALU, LLB, LLM, PhD, BL, Professor of Law, Faculty of Law, Nnamdi Azikiwe University, Awka, Tel: 08037727063, Email: Charlesuwadinekekalu@yahoo.com; and

***Udoka Miriam EMERENINI, LLB, LLM, BL, PhD Candidate**, Faculty of Law, Nnamdi Azikiwe University Awka, Tel: 08069416848. Email: miriamudokanma@gmail.com

¹ P P Dagadu, 'Determination Of Jurisdiction To Adjudicate Cross-Border Electronic Commerce Disputes' 2019 *IJLHSS Journal*, https://www.academia.edu/39700877/DETERMINATION_OF_JURISDICTION_TO_ADJUDICATE_CROSS_BORDER_ELECTRONIC_COMMERCE_DISPUTES accessed 10 August, 2025.

² J K Winn, & Wright, B H 'The Challenges of Electronic Contracting' [2004] 12(2). *International Journal of Law and Information Technology*, 35.

³ Article 25 of

⁴ *GmbH & Co KG* (C-585/08)

⁵ (C-144/09),

For instance, in *Olivaylle Pty Ltd v Flottweg GmbH & Co*⁶, the Australian Federal Court emphasised that contractual classification must be based on the actual terms and substance of the transaction, not the labels attached by the parties. With respect to contract formation, the postal rule⁷ is inapplicable to electronic communications. The English Court of Appeal in *Entores Ltd v Miles Far East Corporation*⁸ established that instantaneous communications such as telex are effective only upon receipt. This was reaffirmed in *Brinkibon Ltd v Stahag Stahl*⁹, where the House of Lords held that the place of acceptance is where the message is received. For website contracts, acceptance is also effective only upon notification being received by the seller, as illustrated in *Thomas v BPE Solicitors*.¹⁰

In Nigeria, jurisdictional questions in e-commerce contracts are guided by both common law principles and statutory enactments. The Cybercrimes (Prohibition, Prevention, etc.) Act 2015, particularly Section 19(1), criminalises electronic fraud and regulates online transactions, thereby allowing Nigerian courts to assume jurisdiction where an element of the transaction or offence occurs within Nigeria. Similarly, the Nigerian Communications Act 2003, especially Section 6(1)(a), empowers the Nigerian Communications Commission (NCC) to regulate electronic communication services, indirectly shaping the jurisdictional framework for online contractual disputes. Judicial precedents in Nigeria also highlight the principle that jurisdiction lies in the place where a contract is made or substantially performed. In *Niger Progress Ltd v North East Line Corporation*¹¹, the Supreme Court underscored the link between contractual obligations and jurisdiction. Likewise, in *Union Bank of Nigeria Ltd v Astra Builders*¹², the court reaffirmed that acceptance and performance are determinative for jurisdictional purposes. Thus, in Nigerian law, as under English common law, an electronic contract is concluded where acceptance is received, and jurisdiction lies in that forum. This alignment with global best practices underscores the inapplicability of the postal rule to e-commerce and reinforces the modern approach to jurisdiction in digital contractual relations.

3. Trans-border Enforcement of E-Contracts

A corollary of the vexed issue of jurisdiction in e-commerce is the choice of law to be applicable in disputes arising from consumer contracts concluded over the internet. The question of choice of law is particularly complex in the case of international computer networks, where dispersed locations, rapid movement of data, and geographically scattered processing activities create multiple connecting factors that may involve legal novelty. Where parties to an internet contract are citizens of countries that have ratified the Rome Convention on the Law Applicable to Contractual Obligations 1980, the provisions of the Convention would apply in determining the governing law. The Rome I Regulation (Regulation (EC) No. 593/2008), which replaced the Convention in the European Union, provides under Article 3 that parties are free to choose the applicable law, while Article 4 stipulates that in the absence of such choice, the law of the country most closely connected to the contract applies. The Privy Council in *F.G. Hemisphere Associates LLC v Democratic Republic of Congo*¹³ affirmed that party autonomy in choice of law is paramount in international contracts. Similarly, in Nigeria, the Supreme Court in *Sokoto State Government v Kamdex (Nig.) Ltd*¹⁴ held that parties are bound by their contractual stipulations unless contrary to public policy.

It is important to emphasize, therefore, that freedom of contract remains an established principle of the law of obligations¹⁵. Accordingly, parties to an internet contract may agree on the terms and conditions of the contract, including the applicable law to govern their transactions. This autonomy is more effective in negotiated contracts than in standard-form “click-wrap” agreements, which often tilt bargaining power in favour of the drafter. Where the parties expressly agree on the applicable law, the complexities of judicial determination are avoided, particularly in commercial e-transactions.

Given the cross-border nature of e-commerce, Alternative Dispute Resolution (ADR) mechanisms are increasingly favoured over litigation. ADR methods include arbitration, mediation, conciliation, negotiation, and expert determination.¹⁶ The global shift towards Online Dispute Resolution (ODR) reflects the need for convergence between ADR and Information and Communication Technology (ICT).¹⁷ The European Union, through its Regulation (EU) No. 524/2013 on Online Dispute Resolution for Consumer Disputes, has established a comprehensive ODR platform for consumer e-commerce disputes. In Nigeria, ODR mechanisms are emerging. The Arbitration and Conciliation Act, Cap A18 LFN 2004 (ACA) provides the statutory framework for arbitration. Section 34 of the Act emphasises judicial non-interference in arbitral proceedings, while Section 51 recognises enforcement of foreign arbitral awards in line with the New York Convention of 1958, to which Nigeria is a signatory. The Lagos State Arbitration Law 2009 modernises arbitration practice and permits virtual proceedings,

⁶ *KGAA* [2009] FCAFC 81

⁷ The postal rule states that acceptance of an offer sent via post is effective upon posting, even if the letter is delayed or lost.

⁸ [1955] 2 QB 327

⁹ [1983] 2 AC 34

¹⁰ [2010] EWHC 306 (Ch).

¹¹ (1989) 3 NWLR (Pt. 107) 68

¹² (*W.A.*) Ltd (2010) 2 NWLR (Pt. 1178) 371

¹³ (2011) UKPC 27

¹⁴ (2007) 7 NWLR (Pt. 1034) 466

¹⁵ See Nnaemeka-Agu, JSC (as he then was) in *African Petroleum v Owodunni* [1991] 8 NWLR (pt 210) 351.

¹⁶ V A Santoso, ‘Legal Protection on E-Commerce Transactions: Problems and Challenges in Global Business’

https://www.researchgate.net/publication/355219293_Legal_Protection_on_ECommerce_Transactions_Problems_and_Challenges_in_Global_Business accessed 12 May, 2025.

¹⁷ K Mayomi, ‘A Case for the Virtual Hearings of Urgent Matters During the COVID-19 Pandemic and Going Forward’ <<http://www.spaajibade.com/re-sources/a-case-for-the-virtual-hearings-of-urgent-matters-during-the-covid-19-pa-ndemic-and-going-forward/>> accessed 17 August, 2025

anticipating the rise of digital dispute resolution.¹⁸ Further support for ODR is provided by the Evidence Act 2011, particularly Section 84, which recognises electronic evidence, and Section 93, which validates electronic signatures. These provisions allow digital records and communications to be admissible in arbitral proceedings. Nigerian courts have applied these provisions in cases such as *Kubor v Dickson*¹⁹, where electronic documents sourced online were admitted in evidence. The proposed Arbitration and Mediation Bill 2022, passed by the National Assembly but awaiting full implementation, explicitly recognises electronic communication and virtual sessions in arbitral practice. This modernisation aligns Nigeria with international best practice under the UNCITRAL Model Law on International Commercial Arbitration (1985, as amended in 2006).

At the global level, WTO negotiations on cross-border e-commerce reached a milestone with a draft framework endorsed by over 80 member states in 2019. The framework draws inspiration from the UNCITRAL Model Law on Electronic Commerce 1996, which guarantees functional equivalence between electronic and paper-based transactions. By recognising the legal validity of electronic contracts, signatures, and transferable documents, the WTO initiative seeks to harmonise global e-commerce standards, reduce regulatory fragmentation, and enhance trust in digital trade²⁰. Thus, integrating dispute resolution clauses into e-commerce agreements and embracing ODR mechanisms provide businesses with structured, efficient alternatives to litigation. For Nigeria, strengthening statutory backing for ODR and aligning with global frameworks will be vital to ensuring trans-border enforceability of e-contracts

4. Conclusion

The absence of a unified and universally binding framework on conflict of laws in e-commerce continues to generate uncertainty in cross-border transactions. Existing approaches remain fragmented, shaped by customary international practice, regional instruments such as the Brussels I Recast and the Rome I Regulation, and domestic legislation like Nigeria's Cybercrimes (Prohibition, Prevention, etc.) Act 2015 and the Arbitration and Conciliation Act 2004. While national consumer protection statutes provide some safeguards, they remain insufficient to address the inherently transnational nature of online commerce. There is, therefore, a compelling need for broader international cooperation through adherence to strategic conventions and model laws, such as the UNCITRAL Model Law on Electronic Commerce, the UNCITRAL Model Law on International Commercial Arbitration, and the New York Convention on the Recognition and Enforcement of Arbitral Awards. These instruments establish a more predictable framework for fair, reliable, and enforceable online transactions by recognising electronic contracts, protecting consumers, and enhancing data security. For developing economies like Nigeria, the rapid growth of e-commerce underscores the urgency of aligning domestic law with international best practices. Nigeria should prioritise legislative reform to incorporate provisions on online dispute resolution (ODR), digital consumer rights, and cross-border enforcement into its legal framework. Strengthening judicial capacity in handling technology-driven disputes and encouraging public-private partnerships to build robust ODR infrastructure are also vital. At the global level, states that are not yet parties to international treaties on e-commerce and arbitration are encouraged to become signatories and domesticate such frameworks. Widespread participation will promote harmonisation, reduce regulatory fragmentation, and ensure that no jurisdiction lags behind in the governance of digital trade. By committing to these frameworks, countries can foster consumer confidence, encourage foreign investment, and support the sustainable development of digital economies worldwide. In sum, while e-commerce presents unparalleled opportunities for growth, its long-term success depends on the willingness of both developed and developing nations to embrace cooperative legal frameworks that guarantee trust, certainty, and fairness in the digital marketplace.

¹⁸ Unini Chioma. 'Analyzing Online Dispute Resolution Of E Commerce Disputes In Nigeria' *The Nigeria Lawyer* 19 August 2022

¹⁹ (2013) 4 NWLR (Pt. 1345) 534

²⁰K Mayomi, 'A Case for the Virtual Hearings of Urgent Matters During the COVID-19 Pandemic and Going Forward' <<http://www.spaajibade.com/re-sources/a-case-for-the-virtual-hearings-of-urgent-matters-during-the-covid-19-pa-ndemic-and-going-forward/>> accessed 17 August, 2025