A comparative legal research on the contract formation over the electronic communication means
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Abstract
The purpose of the research is to reveal the difference of proportions of some national (UK, USA, Korea and Germany) and international (UNCITRAL, UNIDROIT) regulations in terms of the time of send and receipt of electronic communication which can be used to make an international sales contract. According to the differences, it may be possible to debate between the transactional parties with respect to when and where the contract is legally bound.

One of the traditional arguments is when a message sent by sender reaches a recipient. Analogously, there are some arguments of that issue in electronic environment. For instances, when does an electronic message send from the sender; when does an electronic message reach the recipient; or, when the electronic file arrives at the recipient or his/her server; then, when recipient opens it; what does it mean the sender clicks the send button on his/her computer screen; It is actually very difficult to answer clearly. The answers of those questions are important to consider when a contract is concluded. Conventionally, with respect to the time of contract formation, there may have been adopted two main rules relating to above questions: the postal rule and the receipt rule. Therefore, this research will be compare to some domestic and international regulations relating to those issues.

In terms of those above issues, for example, comparing between UNCITRAL Model Law on Electronic Commerce (“MLEC”) and Uniform Electronic Transactions Act (“UETA”) might appear a little bit differences. In the MLEC the dispatch of a data message occurs when it enters an information system outside the control of the originator or of the person who sent the data message on behalf of the originator.
However, in American law, the UETA provides that an electronic record is sent when it is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; when it is in a form capable of being processed by that system; and when it enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

MLEC makes it the criterion of sending the time when the electronic data get “out of sender's control”. However, UETA provides three additional requirements besides “out of sender's control”: designating (using) system, capability of retrieving, and capability of processing. Construing MLEC without such requirements, it is quite natural to recognize requirements of capability of retrieving, capability of processing except the requirement of designating system which can result in different situation. Therefore, the time of sending in accordance with MLEC can be a little earlier than that in UETA, because the dispatch of an electronic record shall be deemed to occur, if only, it enters a computer under the control of any person other than the originator even though the computer is not used or designated by recipient.

The provisions of those regulations relating to the time of receipt might be much complicated than those of the time of send. Where it would apply to the international sales contract, it must be complicated when and where a contract concluded by electronic means is legally bound. Therefore, this research is trying to examine what the international contract is affected by the differences and how they can be sorted out.