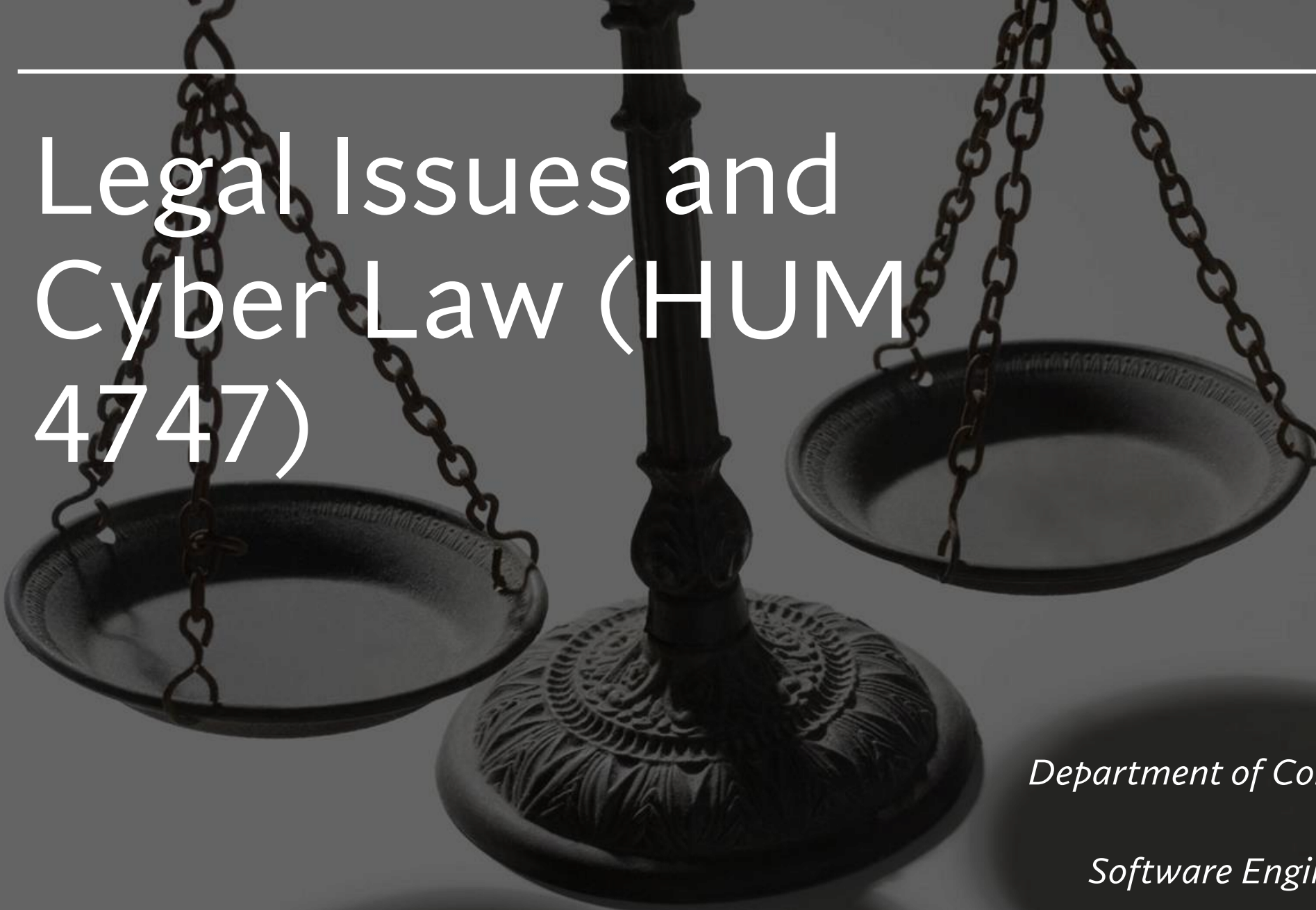# Legal Issues and Cyber Law (HUM 4747)

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Jurisdiction

The authority or power of a court to hear and decide a case. Jurisdiction can be based on various factors, such as location, subject matter, parties involved, etc.

Types of Jurisdiction

- Personal jurisdiction (over the parties)

- Subject matter jurisdiction (over the issue)

- Territorial jurisdiction (over the location)

Unique Jurisdictional issues in e-contracts

Which court has jurisdiction over a dispute arising from an online purchase between a buyer in Bangladesh and a seller in China?

How will the parties determine the currency and exchange rate for payment in an online purchase between a buyer in Bangladesh and a seller in China?

What are the legal implications of using electronic signatures and records in an online contract between a buyer in Bangladesh and a seller in China?

Choice of law clause

A choice of law clause is a provision in an e-contract that specifies which country's or region's laws will apply to the contract in case of a dispute. A choice of law clause can help avoid ambiguity and uncertainty in interpreting and enforcing an e-contract.

For example, an e-contract may state that "This contract shall be governed by and construed in accordance with the laws of India."

Choice of forum clause

A choice of forum clause is a provision in an e-contract that specifies which country's or region's courts will have jurisdiction over the contract in case of a dispute. A choice of forum clause can help avoid inconvenience and unfairness in litigating an e-contract.

For example, an e-contract may state that "Any dispute arising out of or relating to this contract shall be submitted to the exclusive jurisdiction of the courts of Singapore."

Contracts and Licenses

Contract law

Contract: A legally binding agreement between two or more parties that creates rights and obligations for them. A contract can be written or oral, express or implied, formal or informal.

Elements of a valid contract: For a contract to be valid and enforceable, it must have the following elements:

| Offer: A proposal by one party to another party to enter into a contract on certain terms. | Acceptance: An expression by the offeree to agree to the terms of the offer. | Consideration: Something of value that each party gives or promises to give to the other party in exchange for entering the contract. | Intention: The mutual willingness of the parties to be legally bound by the contract. | Meeting of minds: The mutual understanding and agreement of the parties on the essential terms of the contract. |

Software License

A software license is a contract that grants or obtains permission to use or distribute software products or services.

A software license can be classified into different types based on the rights and restrictions that it imposes.

Proprietary license

$ A license that grants limited rights to use or distribute software products or services owned by the licensor. The licensee must pay a fee and comply with certain terms and conditions.
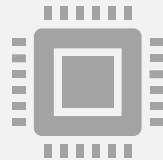
For example, Microsoft Windows is licensed under a proprietary license.

Open-source license

A license that grants broad rights to use, modify, and distribute software products or services owned by the licensor. The licensee does not have to pay a fee but must follow certain rules and obligations.

For example, Linux is licensed under an open-source license.

Freeware license

A license that grants unlimited rights to use software products or services owned by the licensor. The licensee does not have to pay a fee or follow any rules or obligations.

For example, Google Chrome is licensed under a freeware license.

Shareware license

A license that grants limited rights to use software products or services owned by the licensor for a trial period. The licensee must pay a fee after the trial period expires or follow certain rules and obligations.

For example, WinZip is licensed under a shareware license.

E-contract and relevant laws

E-contracts

A contract that is created or executed electronically using digital devices or platforms.

An e-contract can be classified into different types based on how it is formed or presented, such as:

1. click-wrap contracts (e.g., clicking "I agree" on a website)

2. browse-wrap contracts (e.g., accessing a website with terms and conditions),

3. shrink-wrap contracts (e.g., opening a software package with license agreement), etc.

Click-Wrap Contracts

A click-wrap contract is a type of online agreement that requires the user to click a button or check a box that says "I agree" to the terms and conditions of a website or software before accessing or using it.

A click-wrap contract is legally binding and enforceable if the user has reasonable notice of the terms and conditions and manifests their consent by clicking "I agree".

A click-wrap contract is commonly used for software licenses, online transactions, privacy policies, and terms of service agreements.

Examples:

| Signing up for an online account or service | Downloading or installing an app or software | Purchasing a product or service online | Registering for an online event or course |

A browse-wrap contract is a type of online agreement that does not require the user to click a button or check a box to agree to the terms and conditions of a website or software. Instead, the user is deemed to agree to the terms and conditions by merely browsing or using the website or software.

A browse-wrap contract is less likely to be legally binding and enforceable than a click-wrap contract, because the user may not have actual or constructive notice of the terms and conditions and may not have manifested their consent to them.

A browse-wrap contract is often used for websites that do not require registration or login, or that provide free content or information.

Examples

| Visiting a news or media website | Searching for information on a search engine | Reading a blog or forum post | Viewing a video or image online |

Browse-Wrap Contracts

Shrink-Wrap Contracts

A shrink-wrap contract is a type of agreement that is packaged with a physical product, such as a software CD-ROM or DVD. The terms and conditions of the contract are printed on or inside the package and are only visible after the user opens the package.

A shrink-wrap contract is generally binding and enforceable if the user has the opportunity to review the terms and conditions before opening the package, and to return the product if they do not agree to them. However, some courts may invalidate some terms and conditions if they are unfair, unconscionable, or contrary to public policy.

A shrink-wrap contract is typically used for software products that are sold in retail stores or by mail order but may also apply to other products that have license agreements or warranties.

Examples:

| Buying a video game or an antivirus software from a store | Ordering a book or a DVD from an online retailer | Receiving a gift card or a prepaid phone card in the mail | Opening a new device or appliance with a warranty card |

Elements of a valid e-contract:

For an e-contract to be valid and enforceable, it must have the same elements as a traditional contract (offer, acceptance, consideration, intention, meeting of minds), plus some additional conditions, such as:

- Electronic signatures: Any symbols or data that are attached to or associated with an e-contract and that indicate the identity and consent of the parties.
- Data security: The protection of data from unauthorized access, use, modification, or disclosure.
- Authentication: The verification of the identity and validity of the parties involved in an e-contract.
- Admissibility: The ability of an e-contract to be accepted as evidence in a court of law.

Relevant laws regarding E-contracts

Bangladesh has enacted the Information and Communication Technology Act 2006 (ICT Act) to regulate e-contracts. (*See, sections 6 and 7*)

India has enacted the Information Technology Act 2000 (IT Act) to regulate e-contracts. (*See, Section 10A*)

USA has enacted the Electronic Signatures in Global and National Commerce Act 2000 (E-SIGN) to regulate e-contracts. (*See, Section 101 to 106*)

Thanks