

Business Law

Text & Exercises *6th Ed.*

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Chapter 17: E-Contracts

Learning Outcomes

- LO1** • Discuss whether shrink-wrap agreements are enforceable.
- LO2** • Explain when click-on agreements are enforceable.
- LO3** • Discuss the legal validity of an electronic signature.

Learning Outcomes

- LO4** • Summarize the purpose of a partnering agreement.
- LO5** • Describe important provisions of the Uniform Electronic Transactions Act.

Introduction

- **E-commerce:**
 - Business transacted in cyberspace.
- **E-contract:**
 - A contract entered into in e-commerce.

Online Offers

- **Click-on Agreement:** A clause stating what constitutes the buyer's agreement to the terms, typified by a box stating, "I agree."
- **Forum-Selection Clause:** A provision in a contract designating the court, jurisdiction, or tribunal that will decide any disputes arising under the contract.

Online Acceptances

- **Shrink-Wrap Agreements:**
 - An agreement whose terms are expressed inside a box in which goods are packaged. Sometimes called a shrink-wrap license.
 - Usually, the party who opens the box is informed that he or she agrees to the terms by keeping whatever is in the box.

- **Not all the terms in shrink-wrap agreements have been enforced by courts.**
 - Before or after?
 - “Additional terms”?

Click-on Agreements

- **Formed when a buyer, completing a transaction on a computer, is required to indicate his or her assent to be bound by the terms of an offer by clicking on a button that says, for example, “I agree.”**

Click-on Agreements

Type the characters you see in the picture

Picture:



The picture contains 8 characters.

Characters:

Review and accept the agreements

- [Microsoft service agreement](#)
- [Microsoft online privacy statement](#)

To accept the terms of service, click **I accept**. Clicking "I accept" means that you agree to the terms of the Microsoft service agreement and privacy statement. You understand that you are creating credentials that you can use on other [Windows Live ID](#) sites and services, you agree to receive required notices from Microsoft electronically, and you agree to receive targeted advertisements and periodic member e-mails. If you do not agree to these terms, click Cancel.

Click On: Enforceability?

- Under the UCC, businesses or consumers can make a contract for a sale of goods “in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a contract.”
- The Restatement (Second) of Contracts states that parties may agree to a contract “by written or spoken words or by other action or by failure to act.”

Browse-Wrap Terms

- **Terms and conditions of use that are presented to an Internet user at the time certain products, such as software, are being downloaded but that the user need not agree to (by clicking “I agree,” for example) before being able to install or use the product.**

E-Signatures

- An electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record, According to the Uniform Electronic Transactions Act.

State Laws Governing E-Signatures

- **Uniform Electronic Transactions Act (UETA) 1999:**
 - A signature may not be denied legal effect or enforceability solely because it is in electronic form.

Federal Law on E-Signatures and E-Documents

- **Electronic Signatures in Global and National Commerce Act (E-SIGN Act) 2000.**
 - Expands enormously the possibilities for contracting online.
- **For an e-signature to be enforceable, the contracting parties must have agreed to use e-signatures.**



Federal Law on E-Signatures and E-Documents

- **Agreements governed by UCC.**
- **Certain documents exempt:**
 - Court papers, divorce decrees, evictions, foreclosures, health insurance terminations, prenuptial agreements, wills.

Partnering Agreements

- **An agreement between a seller and a buyer who frequently do business with each other concerning the terms and conditions that will apply to all subsequently formed electronic contracts.**



- **Purpose:**
 - Reduces the likelihood that disputes will arise under the contract because the buyer and the seller have agreed in advance to the terms and conditions that will accompany each sale.
 - A court or arbitrator will be able to refer to the partnering agreement in the event of a dispute.

UETA

- **The primary purpose of the UETA is to remove barriers to e-commerce by giving the same legal effect to electronic records and e-signatures as is given to paper documents and signatures.**



UETA: E-Signature

- **“An electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.”**



UETA: Record

- **“Information that is either inscribed in a tangible medium or stored in an electronic or other medium and that is retrievable.”**



UETA: Scope and Application

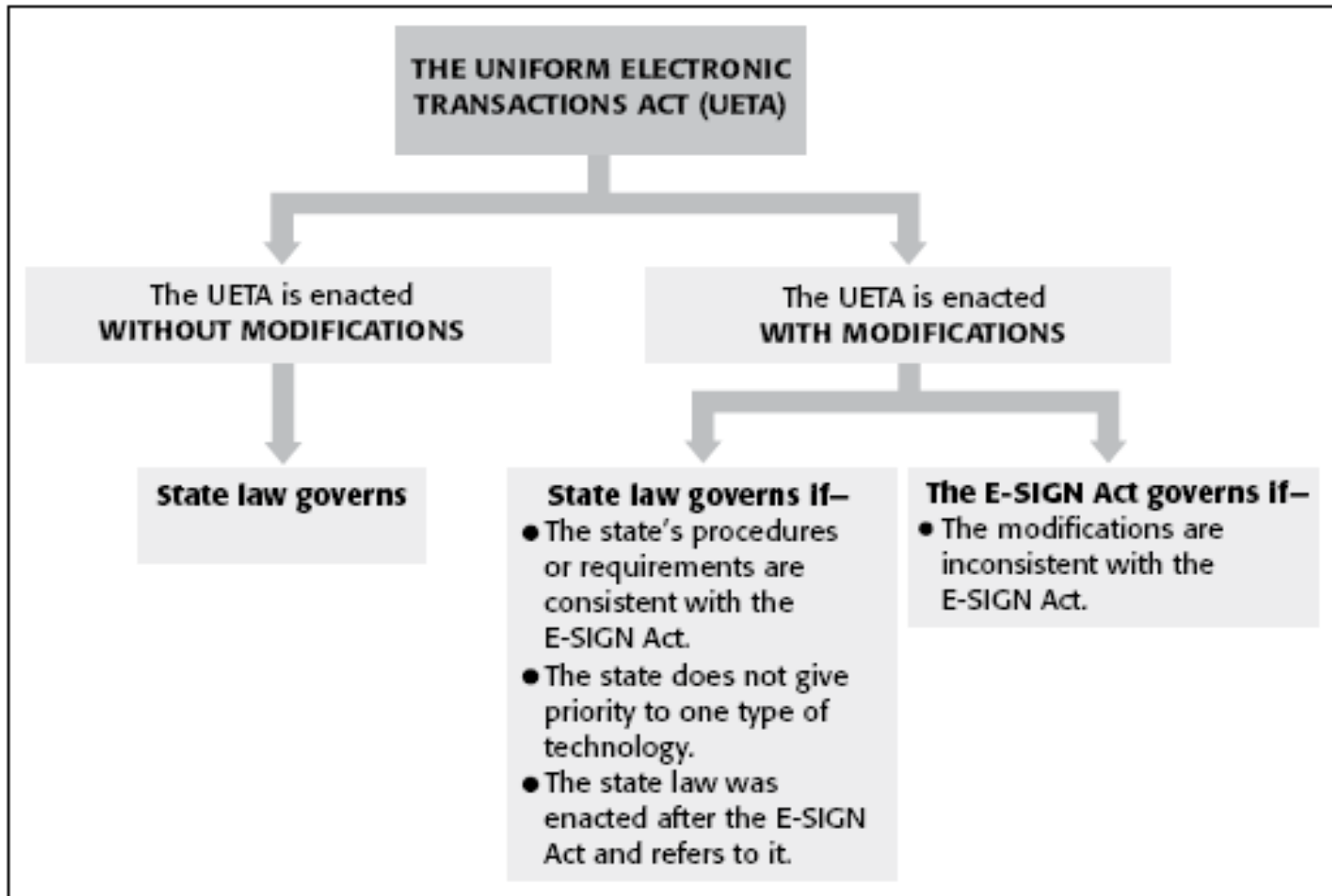
- **The UETA does not create new rules for e-contracts but only supports their enforcement.**
- **Furthermore, the UETA does not apply to all writings and signatures but only to electronic records and e-signatures relating to a transaction.**



E-SIGN and UETA

- **The E-SIGN Act allows states to enact alternative procedures or requirements for the use of electronic records or e-signatures if certain conditions are met.**
- **Generally, the procedures or requirements must be consistent with the E-SIGN Act and not give greater legal status or effect to one type of technology than to another.**

E-SIGN and UETA



UETA Highlights

- **The parties must agree to conduct transactions electronically.**
- **The parties can “opt out.”**
- **Attribution.**
- **Notarization.**
- **Errors.**
- **Timing.**