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Electronic Signatures in International Contracts



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Introduction

The purpose of this work is to analyze electronic signatures in the context of international contracts. More precisely, the goal is to study the impact of electronic signature legislation on the legal validity of electronic signatures when used in transactions that bring together different legal systems.

Electronic means of communication such as the Internet and e-mail open the possibility for the execution of contracts. However, some types of contracts must fulfill certain formal requirements to be valid or enforceable. One such formal requirement is the signature; then, contracts that require a signature should be capable of being signed electronically.

The irruption of electronic signatures raised questions in the legal field, mainly as to their validity. Since the mid 1990s the law has addressed those issues and, as a result, legislation on the topic has proliferated at a steady pace but not always in the same direction. Electronic signature legislation seeks to ensure the legal validity of electronic signatures. Nevertheless, the question is whether this goal has been achieved in the international sphere. Contracts entered into electronically are likely to be international and to bear contacts with more than one legal system; however, due to divergent electronic signatures statutes, an electronic signature may be regarded as valid under one law but not under another one.

In order to answer the question as to the legal value of electronic signatures in international contracts different topics have to be analyzed. The work is divided into three parts and ten chapters. Part one presents an introduction to the subject of electronic signatures and its legal regulation because the first topic that needs to be addressed concerns the basics of electronic signatures. To this end, the first chapter is devoted to explaining the nature of electronic signatures. This is a topic where law and technology are deeply intertwined; therefore, in order to comprehend the legal issues surrounding electronic signatures it is necessary to understand the technological background. The second chapter deals with the legal issues triggered by electronic signatures as well as the main solutions adopted by different legal systems.

In order to analyze the legal aspects of electronic signatures in international contracts it is necessary to know what the different legal systems understand by electronic signatures and how they regulate them. Therefore, the second part analyzes the current electronic signatures regulation in the United States of America (Chapter 3), the European Union with special attention to Germany (Chapter 4), and Argentina (Chapter 5). Moreover, the work of organizations active in this field will be covered (Chapter 6).

Finally, the third part focuses on how electronic signatures statutes interrelate in international electronic contracts. Parties to an international electronic contract are interested in knowing which electronic signature legislation will apply to their contract and the consequences of having one electronic signature statute or another governing the electronic signature requirements. Therefore, in an international contract it is necessary to know which one of the different laws with which a contract has contacts may be the one governing the form. For that purpose, chapter seven introduces the issues of the determination of the law governing the formal validity of an international contract; that means, establishing which law will be the one setting forth the electronic signature requirements. For a complete analysis of the topic the concept of international contract as well as the determination of the law applicable to the contract will be addressed. In turn, chapters eight and nine address those issues from the perspective of international conventions and domestic law (Argentina, Germany and the United States of America), respectively. Finally, the interrelation of different electronic signature legislation is examined (Chapter 10). The analysis will be conducted from the perspective of national legislation in three different jurisdictions: Argentina, the United States of America and Germany. Nevertheless, the reference point will always remain the Argentine law.