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Justin Lim

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Book Note

ELECTRONIC CONSUMER CONTRACTS IN THE CONFLICT OF LAWS, by Zheng Sophia Tang¹

JUSTIN LIM

WITH RAPIDLY DEVELOPING TECHNOLOGY and the increasing use of e-commerce, the application of private international law (or conflict of laws) to electronic consumer contracts is an emerging and complex topic that raises unique issues and challenges. In this book, Zheng Sophia Tang conducts a comparative analysis on approaches to jurisdiction and choice of law in electronic consumer contracts. Specifically, Tang examines the two prevailing approaches—the protective model and the neutral model—before ultimately proposing two models of her own that provide the appropriate balance between facilitating the needs of businesses and protecting the interests of consumers.

The book is split into four parts and twelve chapters. Part I, comprising the first two chapters, outlines the background and theoretical basis for the author's research. Here, Tang explains the difficulties of applying ordinary conflicts rules to electronic consumer contracts. Traditional conflicts rules such as party autonomy, *actor sequitur forum rei*, *forum non conveniens*, and the designation of jurisdiction and/or applicable law based on a “real and substantial connection” do not adequately take the challenges of e-commerce or the concerns of consumers into account.

Part II, consisting of chapters three to seven, assesses the current jurisdiction rules and their function in e-consumer contracts. Tang compares the rule-based approach reflected in the European Union's Brussels I Regulation² with the discretion-based approach found in English common law. The rule-based approach provides protective rules for consumers by allowing them to bring a

1. (Oxford: Hart, 2009) 317 pages.

2. EC, *Council Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*, [2001] OJ L 12/1.

proceeding against a business in either the business's or the consumer's jurisdiction. However, the Brussels I Regulation faces difficulties adapting the rules to the unique challenges posed by electronic consumer contracts. The discretion-based approach, on the other hand, looks at electronic consumer contracts on a case-by-case basis, allowing courts to consider all of the relevant circumstances. However, this method primarily benefits businesses in practice, since businesses are more likely to have control over the discretionary factors that courts use to determine jurisdiction.

Part III, which spans chapters eight to eleven, compares the choice of law rules in the European protective model to the neutral model used in the United States. The protective model, reflected in the Rome I Regulation,³ provides that the default applicable law is that of the consumer's habitual residence. However, this preferential law approach does not adequately address the unique challenges of e-commerce. The neutral model, reflected in the Second Restatement,⁴ stipulates that the law of the country that holds the most significant connection with the contract is the one that generally applies. While this model provides flexibility, it also lacks certainty and specific protection for consumers.

In part IV, or chapter twelve, Tang proposes two models for conflicts rules relating to electronic consumer contracts. Tang's first proposal—the protective model—continues to apply the consumer's jurisdiction and applicable law as the default, provided that the contract in question falls under the scope of protection. A jurisdiction or choice of law clause between the parties would generally be considered valid, though a jurisdiction or choice of law agreement is *prima facie* ineffective. The second proposal—the mixed model—also allows a consumer to bring an action against a business in either the business's or the consumer's jurisdiction. Additionally, in the absence of an agreement between the parties, the applicable law is that of the habitual residence of the consumer. Unlike the protective model, however, the mixed model allows for the adoption of jurisdiction or choice of law agreements.

Electronic Consumer Contracts in the Conflict of Laws provides a comprehensive overview and analysis of the limitations of the existing conflicts system, particularly with regard to electronic consumer contracts. While the author stresses the need to achieve balance, it is clear from her two proposals that she believes that the conflict of laws model with regard to e-commerce must ultimately protect the consumer. Regardless of whether her proposals are ever adopted, Tang's work

3. EC, *Regulation (EC) 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I)*, [2008] OJ L 177/6.

4. Restatement (Second) of Conflict of Laws (1971).

serves as an invaluable contribution to the literature and discourse in an area of the law that has grown in prevalence and importance since the mid-1990s and will surely continue to do so.

