

SUMMER SCHOOL IN
TRANSNATIONAL COMMERCIAL LAW & TECHNOLOGY
(Verona, May 30 – June 1, 2019)

Online Dispute Resolution

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CENTER FOR
INTERNATIONAL
LEGAL EDUCATION



Online Dispute Resolution

Online Dispute Resolution

- 1. What is it?**
- 2. Who does it?**
- 3. What is the legal framework?**
- 4. What are the developing legal issues?**
- 5. What is its future?**

Online Dispute Resolution

What is Online Dispute Resolution?

Online Dispute Resolution

What is Not Online Dispute Resolution?

1) E-Negotiation

-using email to negotiate

2) E-Mediation

-using email with a third-party intermediary for consensual dispute resolution

3) E-Arbitration

-using email with a third-part intermediary for binding dispute resolution

Online Dispute Resolution

What is Not Online Dispute Resolution?

“The virtues of technological advances in the area of dispute resolution have perhaps been overestimated. . . .

Julio César Betancourt & Elina Zlatanska, *Online Dispute Resolution (ODR): What Is It, and Is It the Way Forward?*, 79 *Arbitration* 256, 263 (2013)

Online Dispute Resolution

What is Not Online Dispute Resolution?

“The virtues of technological advances in the area of dispute resolution have perhaps been overestimated. . . . Dispute resolution mechanisms, in general, are a means of maintaining social order. These mechanisms are intended to deal with conflicts and disputes—on the basis of the rule of law—

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Online Dispute Resolution

What is Not Online Dispute Resolution?

“The virtues of technological advances in the area of dispute resolution have perhaps been overestimated. . . . Dispute resolution mechanisms, in general, are a means of maintaining social order. These mechanisms are intended to deal with conflicts and disputes—on the basis of the rule of law—and it is doubtful that such a function can be fully and effectively performed in cyberspace.”

Julio César Betancourt & Elina Zlatanska, *Online Dispute Resolution (ODR): What Is It, and Is It the Way Forward?*, 79 *Arbitration* 256, 263 (2013)

Online Dispute Resolution

When will we have Online Dispute Resolution?

**Should Online Dispute Resolution be
the province of states or of private parties?**

Online Dispute Resolution

eBay “Money back guarantee policy”

<https://www.ebay.com/help/policies/ebay-money-back-guarantee-policy/ebay-money-back-guarantee-policy?id=4210>

-Buyer's claims

- item not received

- item not as described

-Seller's claims

- unpaid item fee

Online Dispute Resolution

eBay “Money back guarantee policy”

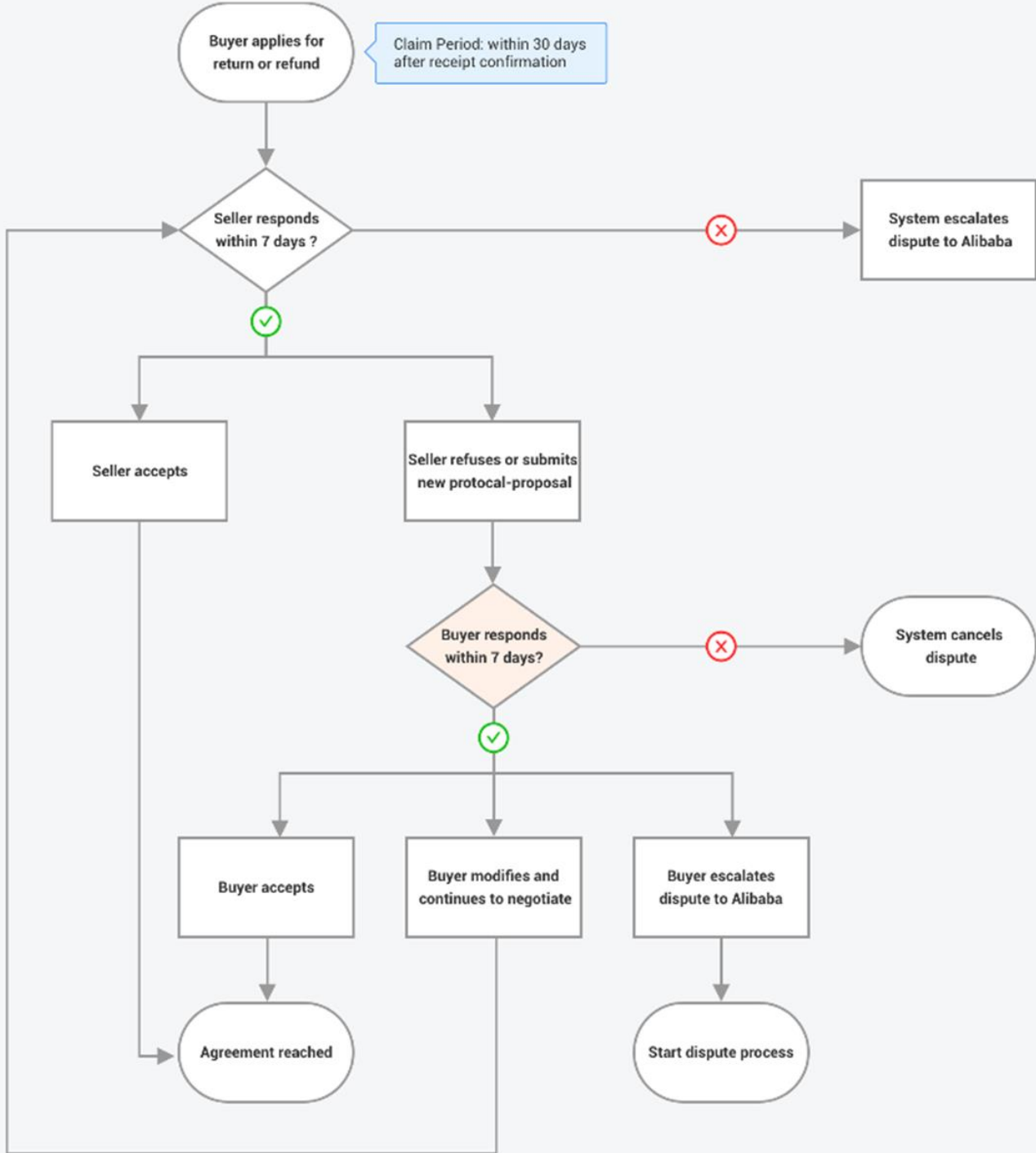
-handles over 60 million e-commerce disputes a year

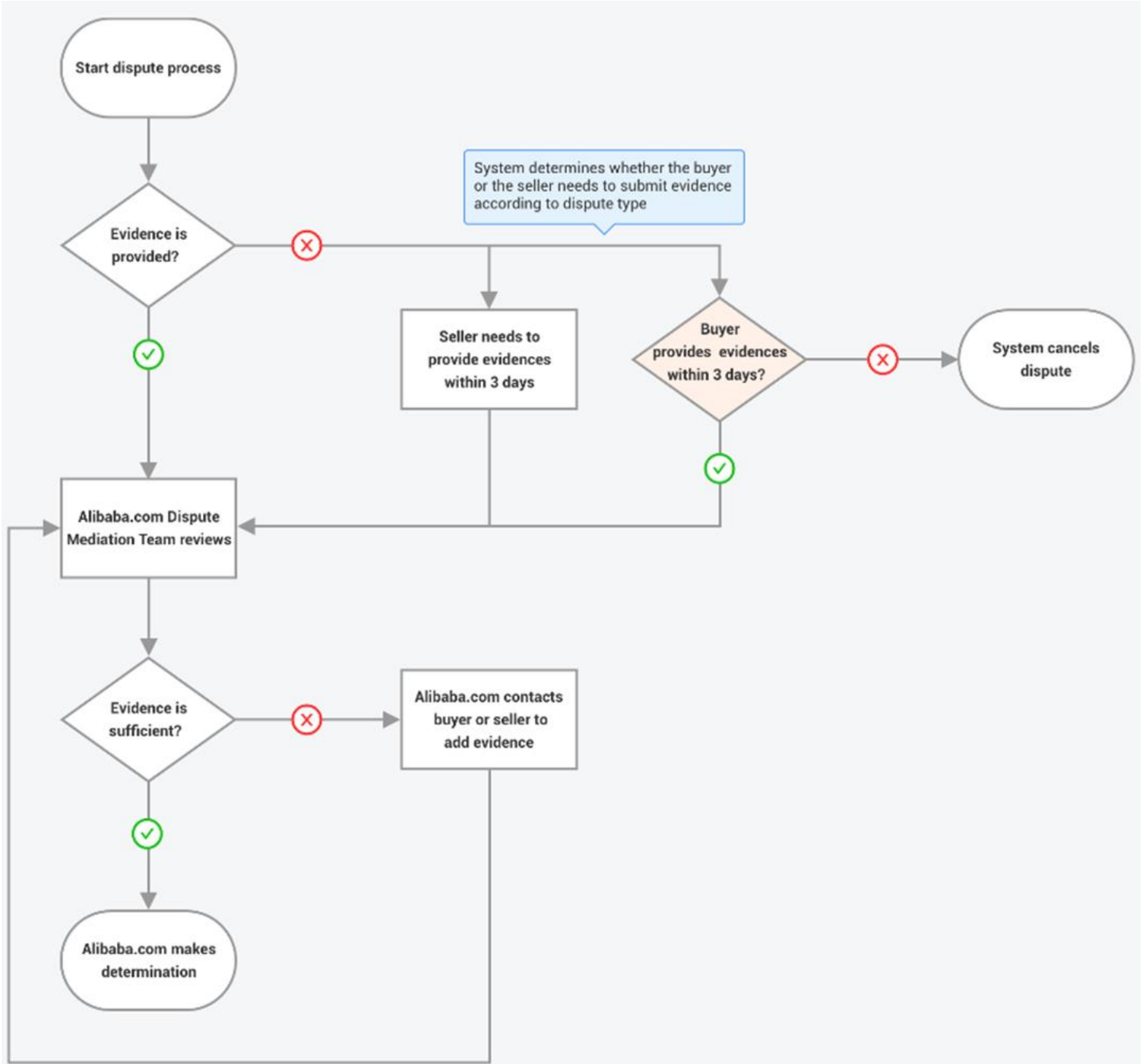
**Louis F. De. Duca, Colin Rule, & Kathryn Rimpfel,
*eBay’s De Facto Low Value High Volume Resolution
Process: Lessons and Best Practices for ODR
Systems Designers*, 6 Yearbook on Arbitration and
Mediation 204 (2014)**

Online Dispute Resolution

Alibaba Dispute Resolution

https://service.alibaba.com/buyer/faq_detail/10609493.htm





Online Dispute Resolution

Colin Rule, *Designing a Global Online Dispute Resolution System: Lessons Learned from eBay*, 13 U. St. Thomas L.J. 354 (2017)

- avoid giving the buyer an open text box: **avoid the natural expression of frustration and negative sentiments**
- use a rating/naming-and-shaming process by which parties can be excluded from the exchange system if they achieve a negative **reputation**
 - this gives the seller an **incentive to post in a more positive tone** when replying to the buyer's claim
- a positive tone enhances the likelihood of success by promoting **"accountability, empathy, and reasonableness"**

Online Dispute Resolution

Colin Rule, *Designing a Global Online Dispute Resolution System: Lessons Learned from eBay*, 13 U. St. Thomas L.J. 354 (2017)

- “The bottom line is the users want the process to be **simple to use, fair to all participants, and easy to understand.**”
- “It’ very important to **pay attention to power differentials** sellers are repeat players.”
- “**Tone matters.** Language shapes the way we see the world and it shapes the way we think about resolutions. . . . If your language promotes empathy and reason, then that’s a big step toward encouraging resolutions.”

Online Dispute Resolution

Colin Rule, *Designing a Global Online Dispute Resolution System: Lessons Learned from eBay*, 13 U. St. Thomas L.J. 354 (2017)

-eBay as a model for

-Airbnb

-Uber

-TaskRabbit

-if users were citizens, eBay would be **the fifth largest country in the world**

-“It may turn out that the justice systems of the future will resemble the designs we crafted for eBay more than the geographically-bound systems of today.”

Online Dispute Resolution

**Should States be involved in
Online Dispute Resolution?**

Online Dispute Resolution

China's Example of State Adoption of ODR

October 2017: President Xi Jinping announced plans at the 19th Communist Party Congress to transform China into a “cyber superpower”

Provisions on Several Issues Concerning the Trial of Cases by the International Courts (Sept. 2018 Supreme People's Court) <http://www.court.gov.cn/zixun-xiangqing-116981.html>

-Internet Courts in Hangzhou, Beijing and Guangzhou focus on disputes involving: the online sale of goods and services, lending, copyright and neighboring rights ownership and infringement, domains, infringement on personal rights or property rights via the Internet, product liability claims, and Internet public interest litigation brought by prosecutors. The litigation process is conducted solely online, including the service of legal documents, the presentation of evidence, and the actual trial itself

Online Dispute Resolution

China's Example of State Adoption of ODR

The **average duration of online trials** in Hangzhou in 2017/18 **was 28 minutes**, and the average processing period from filing to trial and conclusion was 38 days.

But -- the Hangzhou Internet Court has also been **criticized for its lack of impartiality**, since it is technically **supported by Alibaba** and its subsidiaries which are related to most disputes in the region

Online Dispute Resolution

China's Example of State Adoption of ODR

Internet Courts and Blockchain

2019 Forum on China Intellectual Property Protection: the president of **the Beijing Internet Court (established in September 2018, and has since processed 14,904 cases) reportedly said that the court **employs technologies such as artificial intelligence (AI) and blockchain to render judgement****

UNCITRAL ODR Negotiations

The Timeline:

Summer 2009: United States proposes that the UNCITRAL Secretariat “be asked to prepare . . . a study on possible future work that UNCITRAL might engage in on the subject of online dispute resolution in cross-border e-commerce transactions.”

July 2010: UNCITRAL directed “to undertake work in the field of online dispute resolution relating to cross-border electronic commerce transactions, including business-to-business and business-to-consumer transactions.”

UNCITRAL ODR Negotiations

The Timeline:

UNCITRAL Working Group II:

December 2010 - March 2016

-12 Working Group Meetings (22nd – 33rd Sessions of Working Group III)

UNCITRAL ODR Negotiations

The original plan: Four Instruments:

- 1) procedural rules**
phases:
 - 1) negotiation**
 - 2) facilitated settlement**
 - 3) arbitration**
- 2) substantive principles,**
- 3) guidelines and minimum requirements for ODR providers and arbitrators, and**
- 4) a cross-border mechanism for enforcement of the resulting ODR decisions on a global basis**

UNCITRAL ODR Negotiations

The Multinational Goals:

-an **ODR system** that will be

-**simple**

-**efficient**

-**effective**

-**transparent**

-**fair**

-providing a **practical dispute resolution** alternative where none currently exists

The U.S. Goals:

-remaining consistent with existing U.S. law

UNCITRAL ODR Negotiations

The Tough Issues:

- 1) Rules of applicable law (private international law)
- 2) National rules of consumer protection
- 3) Reaching an enforceable decision (working with the existing regime for international arbitration)

UNCITRAL ODR Negotiations

Simplicity requires that the ODR system:

- 1) be **self-contained**, without need for reference to national law through rules of private international law
- 2) be **free of the need to define specific classes of parties** (e.g., consumers)

UNCITRAL ODR Negotiations

Efficiency and Effectiveness require that the ODR system:

- 1) be the subject of **binding pre-dispute choice of forum agreements****
- 2) result in **enforceable awards****

UNCITRAL ODR Negotiations

UNCITRAL Technical Notes on Online Dispute Resolution (2017)

https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf

UNCITRAL ODR Negotiations

UNCITRAL Technical Notes on Online Dispute Resolution (2017)

Overview of online dispute resolution

- 1. In tandem with the sharp increase of online cross-border transactions, there has been a need for mechanisms for resolving disputes which arise from such transactions.**

UNCITRAL ODR Negotiations

UNCITRAL Technical Notes on Online Dispute Resolution (2017)

Overview of online dispute resolution

- 2. One such mechanism is online dispute resolution (“ODR”), which can assist the parties in resolving the dispute in a simple, fast, flexible and secure manner, without the need for physical presence at a meeting or hearing.**

....

ODR represents significant opportunities for access to dispute resolution by buyers and sellers concluding cross-border commercial transactions, both in developed and developing countries.

UNCITRAL ODR Negotiations

UNCITRAL Technical Notes on Online Dispute Resolution (2017)

Principles

7. The principles that underpin any ODR process include **fairness, transparency, due process and accountability.**
8. ODR may assist in addressing a situation arising out of crossborder e-commerce transactions, namely the fact that **traditional judicial mechanisms for legal recourse may not offer an adequate solution for cross-border e-commerce disputes.**
9. ODR ought to be **simple, fast and efficient**, in order to be able to be used in a “real world setting”, including that it should not impose costs, delays and burdens that are disproportionate to the economic value at stake.

UNCITRAL ODR Negotiations

UNCITRAL Technical Notes on Online Dispute Resolution (2017)

Consent

- 17. The ODR process should be based on the explicit and informed consent of the parties.**

UNCITRAL ODR Negotiations

UNCITRAL Technical Notes on Online Dispute Resolution (2017)

Section III — Stages of an ODR proceeding

18. The process of an ODR proceeding may consist of stages including: **negotiation; facilitated settlement; and a third (final) stage.**

UNCITRAL ODR Negotiations

UNCITRAL Technical Notes on Online Dispute Resolution (2017)

Section IX — Final stage

45. If the neutral has not succeeded in facilitating the settlement, it is desirable that **the ODR administrator or neutral informs the parties of the nature of the final stage, and of the form that it might take.**

The Problem of Legal Overlap

Party Autonomy and Consumer Protection:

Using Private International Law Rules To Protect Consumers

U.S. Law on Party Autonomy

Choice of Forum:

Bremen v. Zapata, 407 U.S. 1 (1972) (enforcing a **choice of court** clause between U.S. and German parties choosing a London court)

Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, 473 U.S. 614 (1985) (enforcing an **arbitration agreement** covering antitrust matters in Japan)

Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 972 (1991) (enforcing a small print choice of court clause on the back of a **consumer** cruise ticket).

U.S. Law on Party Autonomy

Choice of Law:

Restatement (Second) Conflict of Laws (1971)

§ 186. Applicable Law

Issues in contract are determined by **the law chosen by the parties**

UCC § 1-105 (1956): reasonable relationship test

UCC § 1-301 (2001): special rules for consumers

UCC § 1-301 (2008): reasonable relationship test

EU Law on Party Autonomy

Choice of Forum:

Brussels I Regulation (Recast)

Article 23

1. **If the parties**, regardless of their domicile, **have agreed that a court or the courts of a Member State are to have jurisdiction**, to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, **that court or those courts shall have jurisdiction**, unless the agreement is null and void as to its substantive validity under the law of that Member State. **Such jurisdiction shall be exclusive** unless the parties have agreed otherwise. . . .

EU Law on Party Autonomy

Choice of Forum:

Brussels I Regulation (Recast)

Article 18

1. **A consumer may bring proceedings** against the other party to a contract either in the courts of the Member State in which that party is domiciled or in the courts for the place where the consumer is domiciled.
2. **Proceedings may be brought against a consumer** by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.

EU Law on Party Autonomy

Choice of Forum:

Brussels I Regulation (Recast)

Article 19

The provisions of this Section may be departed from only by an agreement:

1. which is **entered into after the dispute has arisen;**

EU Law on Party Autonomy

Choice of Law:

Rome I Regulation

Article 3 -- Freedom of choice

1. **A contract shall be governed by the law chosen by the parties.**

EU Law on Party Autonomy

Choice of Law:

Rome I Regulation

Article 6(1) – the basic rule of consumer contracts:

-- the contract shall be governed by “the law of the **country where the consumer has his habitual residence**”

EU Law on Party Autonomy

Choice of Law:

Rome I Regulation

Article 6(1) – the conditions:

provided that the professional:

(a) pursues his commercial or professional activities in the country where the consumer has his habitual residence, or

(b) by any means, directs such activities to that country or to several countries including that country,

and the contract falls within the scope of such activities.

EU Law on Party Autonomy

Choice of Law:

Rome I Regulation

Article 6(2) – the party autonomy rule:

-Article 3 choice cannot deprive the consumer of “the protection afforded to him by provisions that cannot be derogated from by agreement of law is allowed, but it” found in the law applicable under 6(1).

EU Law on Party Autonomy

Choice of Law:

Rome I Regulation

The Article 6 conundrum:

no choice of law clause = the consumer will get the benefit of the provisions of law designed to protect consumers that are in effect in the country of the consumer's habitual residence

a choice of law clause = the consumer will get the benefit of the provisions of law designed to protect consumers that are in effect in both the country of the consumer's habitual residence and the country whose law is chosen in the clause.

The incentive: avoid choice of law clauses in consumer contracts

Directive on consumer ADR

DIRECTIVE 2013/11/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC

Article 5

Access to ADR entities and ADR procedures

- 1. Member States shall facilitate access by consumers to ADR procedures** and shall ensure that disputes covered by this Directive and which involve a trader established on their respective territories can be submitted to an ADR entity which complies with the requirements set out in this Directive.

Regulation on consumer ODR

REGULATION (EU) No 524/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC

Article 1

Subject matter

The purpose of this Regulation is, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market, and in particular of its digital dimension by providing a European ODR platform ('ODR platform') facilitating the independent, impartial, transparent, effective, fast and fair out-of-court resolution of disputes between consumers and traders online.

EU Law on Party Autonomy

Regulation on consumer ODR

REGULATION (EU) No 524/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC

Article 5

Establishment of the ODR platform

- 1. The Commission shall develop the ODR platform (and be responsible for its operation, including all the translation functions necessary for the purpose of this Regulation, its maintenance, funding and data security). The ODR platform shall be user-friendly. The development, operation and maintenance of the ODR platform shall ensure that the privacy of its users is respected from the design stage ('privacy by design') and that the ODR platform is accessible and usable by all, including vulnerable users ('design for all'), as far as possible.**

EU Law on Party Autonomy

<https://ec.europa.eu/consumers/odr/main/?event=main.trader.register#inline-nav-1>

Using the ODR platform

The **ODR platform is designed to facilitate communication** between you, your customer and a dispute resolution body. A dispute resolution body is an impartial organization or individual that helps consumers and traders resolve disputes without going to court.

Under European law, **alternative dispute resolution (ADR) can be used for any dispute arising from a contract between a trader and consumer**, whether the product was bought online or offline or whether you and your customer live in the same or in different EU countries.

The ODR platform only uses dispute resolution bodies approved by their national governments for quality standards relating to fairness , transparency , effectiveness and accessibility.

Complain against a consumer

If you are a trader based in the EU or Norway, Iceland and Leichtenstein, you can also use the ODR platform to send your online consumer dispute to an approved dispute resolution body.

You can only complain against a consumer if they reside in Belgium, Germany, Luxemburg or Poland.

EU Law on Party Autonomy

<https://ec.europa.eu/consumers/odr/main/?event=main.home.howitworks>

How to make a complaint

1. Make a complaint

To create a complaint the consumer and trader both have to be based in the EU or Norway, Iceland, and Liechtenstein.

Start by filling in the online complaint form. Enter a few details about yourself, the trader, your purchase and what your complaint is about. Upload any relevant documents (e.g. invoice, purchase order).

You can submit your complaint right away, or save it as a draft.

You have 6 months to submit your complaint if you do save it as a draft. After that, all drafts are automatically deleted for data protection reasons.

EU Law on Party Autonomy

<https://ec.europa.eu/consumers/odr/main/?event=main.home.howitworks>

How to make a complaint

2. Choose a dispute resolution body

Once the trader has agreed to use the dispute resolution procedure to address your complaint, you will have 30 days to agree on the dispute resolution body that will handle your dispute.

The trader will send you, via the platform, the name(s) of one or more dispute resolution bodies able to deal with it. It's advisable to read the information provided about these dispute resolution bodies (fees, geographical coverage, procedures, etc.) to make sure they handle complaints like yours.

You can agree to one of them to handle your complaint or request a new list. If you created your complaint without registering, you must now sign into the system to register. If necessary, create an ODR account.

If you cannot agree on a dispute resolution body within 30 days, your complaint will not be processed further through the platform.

EU Law on Party Autonomy

<https://ec.europa.eu/consumers/odr/main/?event=main.home.howitworks>

How to make a complaint

3. Get an outcome

Your complaint will be sent to the dispute resolution body you agree to use.

If the dispute resolution body can handle your case and reaches an outcome, you will receive an alert through the platform.

If the dispute resolution body cannot handle your case, you will also receive a notification with the reason why.

You can view our detailed user guide for a step-by-step tutorial for using the ODR platform.

The Private International Law Questions

When and how should jurisdiction and choice of law rules be used to protect specific classes of persons?

What are the interests?

- private interests in freedom of contract
- public interests in protecting “weaker parties”

U.S. Law on Party Autonomy in Consumer Contracts

Carnival Cruise Line, Inc. v. Shute

- upheld a merchant-imposed choice of court clause against the consumer
- justified on the basis of
 - (1) the **merchant's interest** in litigating all similar disputes in a single forum,
 - (2) **joint interests of predictability**, and
 - (3) the **general (public) interest of all consumers of such cruises in the lower price** that results from upholding such clauses on the basis of the first two interests

Defining the Interests of the Consumer

Brussels I and Rome I

- the consumer's interest is in having his own forum and own law when litigation occurs

Carnival Cruise Lines:

- the consumer's interest is in having a lower price at the time of entering into the contract

Consumer Dispute Resolution in the United States

**Fair Credit Billing Act, 15 U.S. C. § 1666i, and
Regulation Z, 12 C.F.R. §226.12(c):**

-Direct consumer redress against credit card issuers

Defining the Interests of the Consumer

Brussels I and Rome I:

- the consumer's interest is in having his own forum and own law and the opportunity to go to court

Fair Credit Billing Act:

- the consumer's interest is in having a simple, low cost method of alternative dispute resolution

Using Private International Law to Protect the Consumer

“[T]he protection afforded to consumers by conflict-of-laws provisions is largely illusory in view of the small value of most consumer claims and the cost and time consumed by bringing court proceedings.”

-European Parliament, Committee on Legal Affairs, Rome I Regulation, Final Compromise Amendments, DT\Rome IEN.doc, Recital 10a (new), 14 Nov. 2007

UNCITRAL ODR Negotiations

The Tough Issues:

- 1) Rules of applicable law (private international law)**
- 2) National rules of consumer protection**
- 3) Reaching an enforceable decision (working with the existing regime for international arbitration)**

UNCITRAL ODR Negotiations

Resolving the Tough Issues:

Rules of Applicable Law

-avoid them by having a self-contained, limited set of available claims and remedies

UNCITRAL ODR Negotiations

Resolving the Tough Issues:

National Rules of Consumer Protection

- avoid them by preventing the problem they are most often designed to address
- the goal is to protect consumers from selection of a bad forum – make sure the forum selected is a good forum

UNCITRAL ODR Negotiations

Resolving the Tough Issues:

Reaching an Enforceable Decision

- design a system that makes the agreement to arbitrate enforceable under Article II of the New York Convention

- Articles III and V then provide the path to enforceability

Reaching an Enforceable Decision: The New York Convention

Article II

1. **Each Contracting State shall recognize an agreement** in writing under which the parties undertake **to submit to arbitration** all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, **concerning a subject matter capable of settlement by arbitration**

Reaching an Enforceable Decision: The New York Convention

Article II

3. **The court of a Contracting State**, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, **shall**, at the request of one of the parties, **refer the parties to arbitration, unless** it finds that **the said agreement is null and void, inoperative or incapable of being performed.**

Reaching an Enforceable Decision: The New York Convention

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards

UNCITRAL ODR Negotiations

The Road Forward: Learning From Existing Rules on Consumer Protection in the Context of Private International Law

The **consumer interests** we have learned how to protect:

The U.S. approach

-reducing the cost and increasing the availability of goods and services

The EU approach

-seeking a fair forum for consumers when disputes arise (with the risk that the forum saved to the consumer is impractical and “illusory”)

UNCITRAL ODR Negotiations

Why not the best of both worlds?

- 1) Allowing pre-dispute arbitration agreements will promote **predictability, risk reduction, and efficiency for merchants**, which (in a competitive market) will **provide consumers with lower prices and enhanced access** to goods and services.
- 2) Providing a state-approved system of dispute resolution that is simple, effective, efficient, transparent and fair will provide consumers with **claims a fair forum when disputes do arise.**

Online Dispute Resolution

ODR - UNCITRAL Working Group III (2010-2016)

CILE Draft Substantive Legal Principles for Deciding Cases Through Online Dispute Resolution (May 2011)

-Review of the dispute resolution systems used by Visa, Master Card, American Express, and Discover

-DR tied to the finance chain

-simple claims

-simple remedies

Online Dispute Resolution

CILE Draft Substantive Legal Principles For Deciding Cases Through Online Dispute Resolution (ODR)

Assumptions on Which these Principles are Based:

1. These Principles **apply only when the contract**, leading to the dispute for which ODR is instituted, **was concluded online**.
2. These Principles **assume that the payment method results in an automatic credit to the seller's account, and a corresponding debit to the buyer's account**, upon the online conclusion of the contract. In other words, at the conclusion of the contract, the seller retains no risk of non-payment. Thus, the Principles are designed primarily to deal with buyer's risks.
3. These Principles **apply to disputes between the seller and buyer**, and not to disputes between a payment card issuer (whether credit or debit) and its customer.

Online Dispute Resolution

Draft Substantive Legal Principles For Deciding Cases Through Online Dispute Resolution (ODR)

Principle 1 – Buyer’s Right to Receive Goods, Services or Other Legal Rights

The seller must deliver the goods, services, or other form of legal rights that are described in the contract.

The buyer has a right to receive the goods, services, or other form of legal rights that are described in the contract.

Principle 2 – Buyer’s Right to Receive Conforming Performance

The seller must deliver goods, services, or other form of legal rights which are of the quantity, quality and description required by the contract.

The buyer has a right to receive goods, services, or other form of legal rights which are of the quantity, quality and description required by the contract.

Principle 3 – No Payment for Cancelled Recurring Transactions

The seller may not receive payment for recurring transactions that have been cancelled by the buyer.

The buyer has a right not be charged for recurring transactions after cancellation by the buyer.

Online Dispute Resolution

Draft Substantive Legal Principles For Deciding Cases Through Online Dispute Resolution (ODR)

Principle 4 – No Duplicate Processing

The seller may not charge a buyer more than once for any single transaction.

The buyer has a right not to be charged more than once for any single transaction.

Principle 5 – Correct Amount Debited/Credited

The seller is entitled to receive the contract price.

The buyer has a right not to be charged more than the contract price.

Principle 6 – Fraudulent and Counterfeit Transactions

The seller has a right to receive payment only for a transaction that was contracted for by the buyer, or a person authorized by the buyer.

The buyer has a right not to pay for a transaction that was not contracted for by the buyer, or a person authorized by the buyer.

Online Dispute Resolution

ODR - UNCITRAL Working Group III (2010-2016)

CILE Analysis and Proposal for Incorporation of Substantive Principles for ODR Claims and Relief (May 2012)

“The ODR system will not work unless it is simple, efficient, effective, transparent, and fair”

“Simplicity, efficiency and effectiveness require that the ODR system be self-contained and avoid the need for reference to national rules of private international law”

“Efficiency, effectiveness, and transparency require that the ODR system encourage dispute resolution that results in a binding decision”

Online Dispute Resolution

Stages of the ODR process:

Negotiation → Facilitated Settlement → Arbitration

CILE Analysis and Proposal for Substantive Principles (May 2012)

“Efficiency, effectiveness, and transparency require that the ODR system encourage dispute resolution that results in a binding decision”

“Efficiency, effectiveness, and transparency require that the ODR system allow ODR providers to incorporate **automatic methods for the enforcement of decisions**”

Online Dispute Resolution

**Access to courts is not
always access to justice**

Online Dispute Resolution

**Access to courts is not
always access to justice**



**We need access to justice
without access to courts**

Online Dispute Resolution

**Access to courts is not
always access to justice**



**We need access to justice
without access to courts**



**ODR can provide access to
justice without going to court**

Online Dispute Resolution

**Access to courts is not
always access to justice**



**Access to justice requires that
certain classes of persons
always have the option to go
to court**



**We need access to justice
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https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf

Where Do We Go From Here?

SUMMER SCHOOL IN
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