

Limitation of existing laws (Today's Situation)

The laws of Kenya at present do not recognise electronic transactions as the following requirements have to be presented in material form:

- Requirement to give information in writing
- Requirement to provide a signature
- Requirement to produce a document
- Requirement to record information
- Requirement to retain a document

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ALL THE ABOVE REQUIREMENTS MUST BE IN MATERIAL FORM

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Origin of Kenya's legal system (How Did We Get Here?)

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- Kenyan law is based on the English Common Law system. Judicature Act Cap 8
- Computer print-outs have always been regarded as hearsay evidence.
- Hearsay rule: an assertion other than one made by a person while giving oral evidence in the proceedings is inadmissible as evidence of a fact asserted: Cross and Taper on Evidence (8th edn, 1995) p 46
- The evidential status of a computer print-out is no different from that of a photocopy of a forged cheque R v Governor of Brixton Prison, ex p Levin [1997] (hl) All ER at 289

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Origin of Kenya's legal system

- The courts have ruled that the law is bound to take cognizance of the fact that mechanical means have replaced human effort. Owners of Motor Ship Sapporo Maru Vs Owners of Steam Tanker Statute of Liberty [1968] 2 All ER at 195
- It seems to this court that the result in the form of the computer print –out was the product of a mechanical device which falls under the category of real evidence. Castle vs Cross QBD [1985] 1 All ER 87
- Computer generated artistic works are artistic works and can be protected as such. Alternative Media Ltd vs Safaricom KLR [2005] 255
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Origin of Kenya's legal system Select case law In all the previous so-called ticket cases, the ticket has been proffered by hand, and there has always been at least the notional opportunity for the customer to say if he does not like the conditions.... But in the case of a ticket which is proffered by an automatic machine there is something irrevocable about the process. There can be no locus poenitentiae. *Thornton vs. Shoe Lane Parking* (C.A.) [1971] 2 QB 163

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The Evidence Act Cap 80 Section 65 (Summary of the current situation)

- Primary evidence means that the document itself must be produced for inspection 5.65 (1)
- A statement contained in a document and included in printed material produced by a computer (computer print-out) shall if the following <u>conditions</u> are satisfied, be deemed to also be a document.....and shall be admissible in any proceedings <u>without further proof or production</u> <u>of the original</u> or of the facts stated therein of which evidence would be admissible. s 65 (5) (c)

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The Evidence Act Cap 80

(Summary of the current situation)

Combination of computers

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All computers used for that purpose during that period shall be treated for the purpose of this section as constituting a <u>single computer</u> and any reference in this section to a computer shall be construed accordingly. s 65 (7) (a)-(d)

Godfrey vs Demon Internet Ltd [1999] 4 All ER 342

The internet is a *worldwide computer network* with three important facilities, amongst others that are provided via the internet,

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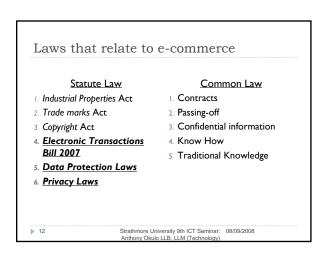
Electronic Transactions Bill, 2007

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- Information shall not be denied legal effect, validity or enforceability solely on the ground that it is in the form of an electronic version. *Electronic Transactions* Bill, 2007 [Part III section B]
- Where the law requires information to be in writing, the requirement of the law is fulfilled if the information is contained in electronic version that is accessible and intelligible so as to be useable for subsequent reference. *Electronic Transactions* Bill, 2007 [part 111 section B]

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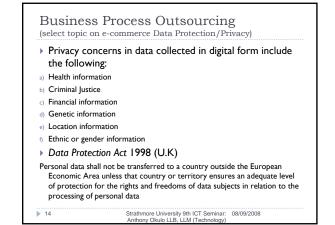


Business Process Outsourcing (select topic on e-commerce- data protection/privacy)

Business Process Outsourcing involves the contracting of

- specific <u>business tasks</u> to a third party service provider
 E-commerce is the use of electronic networks to
- exchange or transfer <u>business information</u> thorough the internet. Electronic Transactions Bill of 2007
- <u>Business tasks or Business information</u> may include the transfer of personal data
- Data Privacy: the legal right to, or public expectation of privacy in the collection of storing of data

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Data Protection in Kenya

- Copyright Act No.11 of 2001
- Literary work means irrespective of the literarily quality, any of the works similar thereto (and include amongst others):
- I) Charts and tables

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2) Computer programs

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- 3) Tables and compilation of data including tables and compilations of data stored and embodied in a computer or a medium used in conjunction with a computer
- ▶ Electronic Transactions Bill 2007
- A record keeper who has possession or control of an electronic record that contains personal information shall ensure....The record is protected against unauthorised access, use, modification, disclosure or loss....

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Data Protection (Privacy) Article 12 Universal Declaration of Human Rights: "No one shall be subjected to arbitrary interference with his [her] privacy, at home or [their] correspondence, nor to the attacks on [their] honour and reputation. Everyone has the right of protection from the law against such attacks"

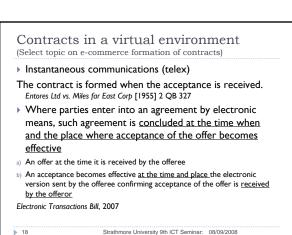
The law of Contracts (Select topic on e-commerce formation of contracts)

- > A contract is a legally binding exchange of promises that form an agreement which the law will enforce
- Contract formation includes:
- 1) Offer and acceptance
- 2) Consideration
- 3) Intention to be legally bound
- 4) Formalities may be reduced in writing
- Postal Rule

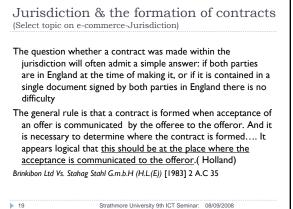
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- a) An offer made by letter is not effective until received by the offeree
- b) Acceptance is effective as soon as it is posted
- Adams vs Lindsel (1818) 106 ER 250

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	ction & the formation of contracts on e-commerce-Jurisdiction)
in the co construed court of internation clauses in	n agreement stated that any dispute arising out of or nnection with the agreement "shall be governed by and in accordance with the law of the state of Kansas" The Appeal held that the courts will not disregard private onal law on the status of law and exclusive jurisdiction in international commercial agreements Raython redit Corporation vs Air Al-Faraj Ltd [2005] 2 KLR 47
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Jurisdiction & the formation of contracts (Select topic on e-commerce-Jurisdiction) (Obiter, Per Githinji JA) There are no rules of the Court prescribing the procedure for challenging the Jurisdiction of the High Court by a foreign defendant who has been sued in Kenya for breach of contractual forum, selection and the exclusive jurisdiction clause. The procedures to be followed in this important area of litigation should no longer be left uncertain and the Rules committee should urgently promulgate appropriate comprehensive rules of procedure to facilitate the administration of justice. Raytheon Aircraft Credit Corporation and another vs Air Al-Faraj Limited [2005] 2 , KLR 47 Strathmore University 9th ICT Seminar: 08/09/2008 Anthony Okulo LLB, LLM (Technology) 21

