

THE UNIVERSITY OF SHEFFIELD

R. A. KADIR

ISSUES IN RELATION TO CONTRACT FORMATION AND FORM
REQUIREMENTS IN INTERNET CONTRACTING : A COMPARATIVE
ANALYSIS OF THE MALAYSIAN AND ENGLISH LAWS

SUBMITTED FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

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Abstract

The thesis compares and contrasts the formation and form requirement rules of England and Malaysia, and the ultimate objective is to suggest reform for the Malaysian law which does not work well with the facilitation of electronic commerce.

The study first identifies the most appropriate and effective policies in relation to the two issues with specific emphasis on the distinct feature of internet communication i.e. electronic mail, the web and EDI. Focusing on the identified policies, and drawing from the experiences of England, the study then evaluates the position in Malaysia with regard to the issues of formation and form requirements. The study concludes that the laws are not fully receptive towards the promotion of electronic commerce. The position of the communication of acceptance via electronic mail and the common law's approach with regard to the issue of the determination of the place of acceptance constitute the most inappropriate rules in relation to formation issues. With regard to the form requirements, the attestation, the stamping and the postal requirements create impeding factors to internet contracting. Finally the Digital Signature Act 1997 does not support the policy choice recommending the acceptability of all types of electronic signature in executing contracts with the signature requirement.

The study finally proposes recommendations to enhance the position under the Malaysian law.