

GƏNC HÜQUQŞÜNASLAR MÖVQEYİ

RESPONSIBILITY IN TRADITIONAL CONTRACTS AND REMOTE CONTRACTS

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Abstract

This paper provides a comprehensive examination of responsibility in traditional and remote contracts. Traditional contracts, formed through direct interaction and written documents, are juxtaposed with remote contracts, which are established online without the physical presence of the parties. While both forms adhere to the fundamental principles of contract law, the unique context of remote contracts introduces additional responsibilities related to technical issues, jurisdictional complications, and data security. Despite the challenges, remote contracts remain bound by the underlying principle of responsibility consistent in contract law, necessitating awareness from all parties involved to ensure fair and secure transactions. This paper underscores the need to understand and adapt to these evolving contractual responsibilities in the digital age.

Keywords: *traditional contracts, remote contracts, contractual responsibility, contract law, jurisdictional issues, data privacy, data security.*

Historically, contract law has been a fundamental component of commercial relationships, providing a framework that allows parties to voluntarily undertake obligations and define the consequences for failing to uphold those obligations. [1] The essence of a traditional contract lies in the mutually agreed-upon terms, with the parties involved bearing specific responsibilities and obligations.

However, the advent of the internet has reshaped this landscape significantly. As more transactions occur in the digital space, contract law has had to adapt and evolve to maintain its relevance and efficacy. The manifestation of this evolution is evident in remote contracts, which reflect the increasing digitization of commercial transactions. [2]

Yet, while contract law continues to adapt to these changes, the bedrock of responsibility within contractual agreements remains unaltered. Whether a contract is traditional or remote, the parties involved are legally bound to fulfill their contractual obligations or face potential consequences. [3]

In the modern, fast-paced and digitized world we live in today, the landscape of contractual agreements has evolved considerably. The traditional contracts that dominated the business landscape have now been supplemented by an alternative form, known as remote contracts. Both traditional and remote contracts have the common purpose of establishing a legally binding agreement between two or more parties. However, they differ significantly in their execution, formation process, and the responsibilities that they entail. This paper aims

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to delve deep into the nature of responsibility in both traditional and remote contracts, drawing out similarities, differences, and unique legal implications.

Traditional contracts, typically represented in written documents, have long served as the primary instrument for enshrining legal agreements between parties. These contracts are characterized by mutual assent, a necessary element where both parties agree upon the same thing in the same sense. Other prerequisites include a consideration, legality of purpose, and capacity to contract. [4]

The formation of traditional contracts often involves direct interaction, where the parties are physically present to discuss, negotiate, and eventually sign the agreement. This face-to-face interaction allows the parties to exchange views and gain a comprehensive understanding of the contracts terms and conditions. This clear delineation and understanding of contractual obligations play a crucial role in establishing responsibility in traditional contracts. [5]

In the context of traditional contracts, responsibility primarily stems from the duty to perform according to the agreed terms of the contract. Every clause and stipulation in the contract carries its own responsibility for the party it applies to. When a party fails to fulfill its contractual obligations, it is said to be in breach of the contract, and can be subject to legal consequences.

For example, suppose a contract has been signed between a service provider and a client, in which the service provider commits to deliver certain services by a specified deadline. If the provider fails to meet this commitment, the client has the legal recourse to sue for breach of contract. Here, the service provider bears the responsibility for the non-performance and may have to compensate for any loss suffered by the client as a result. [2] Remote contracts have emerged as a modern counterpart to traditional contracts, powered by the sweeping digital revolution. These contracts, also known as online or electronic contracts, are agreements made and entered into via the Internet, without the physical presence of the contracting parties. Remote contracts come into play when a buyer agrees to purchase a seller's goods or services online. The formation of remote contracts is considerably different from traditional contracts. These contracts often involve a “click-to-accept” mechanism, where users demonstrate their assent by clicking on an “I Agree” or “Accept” button. This mechanism effectively replaces the traditional signature used in physical contracts. [6]

Similar to traditional contracts, responsibility in remote contracts arises from the contractual obligations. However, the digital platform introduces a range of unique challenges, such as technical issues, jurisdictional complications, and ensuring comprehension of the terms. Online vendors bear the responsibility of providing accurate and complete product or service information, adhering to privacy norms, and ensuring secure payment methods. If a vendor fails to meet these responsibilities, they may be held liable for any consequential losses suffered by the consumer. Conversely, consumers also have a responsibility to read, understand, and accept the contract's terms before making a purchase. [3]

The impact of technology on contractual responsibility is most evident in the case of remote contracts. As technology enables the rapid exchange of goods and services, it also necessitates the creation of contractual frameworks that can keep pace with these transactions. Remote contracts are a product of this necessity, their formation, execution, and enforcement being largely facilitated by digital platforms. [6] Yet, while technology has made contractual processes more efficient, it has also introduced new layers of complexity. Issues such as data security, privacy, and jurisdictional concerns are now integral to the contractual responsibility landscape. Online vendors, for instance, are not only responsible for the accurate representation of products or services but also for ensuring the security of customer data. Similarly, consumers bear the responsibility of understanding the terms and conditions presented in digital formats, often necessitating a level of technological literacy. [2]

Despite their inherent differences, traditional and remote contracts share some commonalities in terms of responsibility. They both adhere to the general principles of contract law, in that the parties involved are bound by the terms agreed upon, irrespective of whether the contract was physically signed or affirmed with a click of a button. The duty to perform, the obligation to provide accurate information, and the commitment to uphold agreed-upon terms form the cornerstone of responsibilities in both contract types. For instance, a supplier in a traditional contract must provide goods as described, just as an online seller must accurately represent their product. If either party fails to meet these responsibilities, they would be in breach of the contract and could face legal consequences. [6]

While the broad principles of responsibility in contractual agreements remain the same, the unique nature of remote contracts introduces certain differences. First, jurisdictional issues come to the fore in remote contracts due to the global nature of the internet. If a dispute arises, determining the appropriate legal jurisdiction can be complex. In contrast, jurisdiction is generally straightforward in traditional contracts, as they are often governed by the law of the place where the contract is made or executed. [2]

Second, unlike traditional contracts where terms can be negotiated face-to-face, remote contracts often involve standard form contracts with non-negotiable terms and conditions. The responsibility here falls on the user to read and understand these terms, even if they are lengthy and complex. This is often referred to as the “duty to read”. [3]

Finally, remote contracts involve additional responsibilities concerning data privacy and security due to the digital nature of the transaction. Online vendors are responsible for ensuring the security of personal and financial data provided by the user. Failure to do so can result in serious legal and reputational repercussions [6].

Looking ahead, the influence of technology on contractual responsibility is likely to grow even further. As more aspects of commercial transactions become

digitized, and as technology itself becomes more sophisticated, the contractual landscape will inevitably continue to evolve. The emergence of concepts such as smart contracts, which leverage blockchain technology to automate and self-execute contractual obligations, offers a glimpse into this future. Despite these ongoing transformations, the core principle of responsibility within contracts remains constant. Parties entering into a contract, whether traditional or remote, are bound by the obligations they undertake. The method of execution may change, and the nature of the responsibilities may expand, but the essence of contractual responsibility - the duty to fulfill one's obligations - remains unchanged. As we move forward, it will be increasingly important for all parties to stay abreast of these developments and understand their implications. Ensuring awareness and comprehension of contractual responsibilities, in whatever form they may take, will remain a critical factor in ensuring the fairness and integrity of contractual transactions.

The dimension of contractual disputes and their resolution varies considerably between traditional and remote contracts. In traditional contracts, disputes often stem from disagreements about the terms of the contract, non-fulfillment of obligations, or the interpretation of contractual provisions. Resolving these disputes typically involves face-to-face discussions, mediation, arbitration, or litigation in a physical courtroom. [1] In the digital realm of remote contracts, disputes can arise due to various reasons such as misrepresentation of goods or services, non-performance, or data breaches. However, the resolution of these disputes is more complex due to factors such as jurisdictional challenges, varying international laws, and the impersonal nature of online transactions. Online dispute resolution (ODR) mechanisms, including virtual mediation and arbitration, have emerged as effective tools for resolving such disputes. These digital platforms are capable of transcending geographical barriers, thus providing a more accessible and cost-effective alternative to traditional dispute resolution methods. [8]

Ethics play a crucial role in both traditional and remote contracts. Honesty, fairness, and integrity form the backbone of ethical conduct in contractual dealings. In traditional contracts, ethical conduct involves open communication, fair negotiation, and adherence to agreed-upon terms. Any attempt to deceive, exploit, or unfairly gain an advantage over the other party is considered unethical. [7] In remote contracts, ethical considerations extend beyond these principles. Due to the inherent anonymity and distance in digital transactions, there's a higher risk of deceptive practices such as hidden terms, misleading advertisements, and unauthorized data usage. Thus, online vendors have an ethical obligation to clearly communicate the terms and conditions, provide accurate product or service information, and respect user privacy. On the other hand, consumers should behave ethically by not exploiting system vulnerabilities, using false identities, or engaging in fraudulent transactions. [9]

It should be highlighted that, both traditional and remote contracts require the parties involved to adhere to ethical standards, in addition to their legal responsibilities. Only then can a climate of trust be nurtured, ultimately leading to successful contractual relationships.

As the digital world continues its relentless expansion, remote contracts are becoming an increasingly common part of our lives. Despite the unique challenges they present, the principles of traditional contract law largely apply. However, the digital context introduces new dimensions of responsibility, such as data privacy, data security, and jurisdictional issues. In this new digital landscape, both parties in a remote contract need to be aware of their responsibilities and potential liabilities. Vendors must provide accurate information, secure payment gateways, and respect user privacy. On the other hand, consumers must exercise due diligence by reading and understanding contract terms before making a purchase. To sum up, while the format of contracts may change with technological advancements, the underlying principle of responsibility remains constant. By understanding and upholding these responsibilities, parties to both traditional and remote contracts can ensure fair and secure contractual transactions.

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ƏNƏNƏVİ MÜQAVİLƏLƏRDƏ VƏ UZAQDAN MÜQAVİLƏLƏRDƏ MƏSULİYYƏT

Fəraim Hüseynzadə*

Xülasə

Bu məqalə ənənəvi və uzaq müqavilələrdə məsuliyyətin hərtərəfli araşdırılmasını təmin edir. Birbaşa qarşılıqlı əlaqə və yazılı sənədlər yolu ilə formalaşan ənənəvi müqavilələr, tərəflərin

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fiziki iştirakı olmadan onlayn olaraq qurulan uzaq müqavilələrlə yanaşı qoyulur. Hər iki forma müqavilə hüququnun fundamental prinsiplərinə uyğun gəlsə də, uzaqdan bağlanmış müqavilələrin unikal konteksti texniki məsələlər, yurisdiksiya ilə bağlı çətinliklər və məlumatların təhlükəsizliyi ilə bağlı əlavə məsuliyyətlər təqdim edir. Çətinliklərə baxmayaraq, uzaqdan bağlanan müqavilələr ədalətli və təhlükəsiz əməliyyatları təmin etmək üçün bütün iştirakçı tərəflərin məlumatlı olmasını tələb edən müqavilə qanunvericiliyində ardıcıl olan əsas məsuliyyət prinsipi ilə bağlıdır. Bu sənəd rəqəmsal əsrdə bu inkişaf edən müqavilə öhdəliklərini başa düşmək və onlara uyğunlaşma ehtiyacını vurğulayır.

Açar sözlər: Ənənəvi Müqavilələr, Uzaqdan Müqavilələr, Müqavilə Məsuliyyəti, Müqavilə Qanunu, Yurisdiksiya Məsələləri, Məlumat Məxfiliyi, Məlumat Təhlükəsizliyi.

ОТВЕТСТВЕННОСТЬ В ТРАДИЦИОННЫХ КОНТРАКТАХ И УДАЛЕННЫХ КОНТРАКТАХ

Фараим Гусейнзаде**

Резюме

В данной статье представлен всесторонний анализ ответственности в традиционных и дистанционных контрактах. Традиционным договорам, заключаемым посредством прямого взаимодействия и письменных документов, противопоставляются дистанционные договоры, которые заключаются в режиме онлайн без физического присутствия сторон. Хотя обе формы соответствуют фундаментальным принципам договорного права, уникальный контекст удаленных контрактов налагает дополнительные обязанности, связанные с техническими проблемами, юрисдикционными сложностями и безопасностью данных. Несмотря на проблемы, дистанционные контракты по-прежнему связаны основополагающим принципом ответственности, соответствующим договорному праву, что требует осведомленности всех участвующих сторон для обеспечения справедливых и безопасных транзакций. В этом документе подчеркивается необходимость понимать и адаптироваться к этим меняющимся договорным обязанностям в эпоху цифровых технологий.

Ключевые слова: традиционные контракты, дистанционные контракты, договорная ответственность, договорное право, вопросы юрисдикции, конфиденциальность данных, безопасность данных.

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