

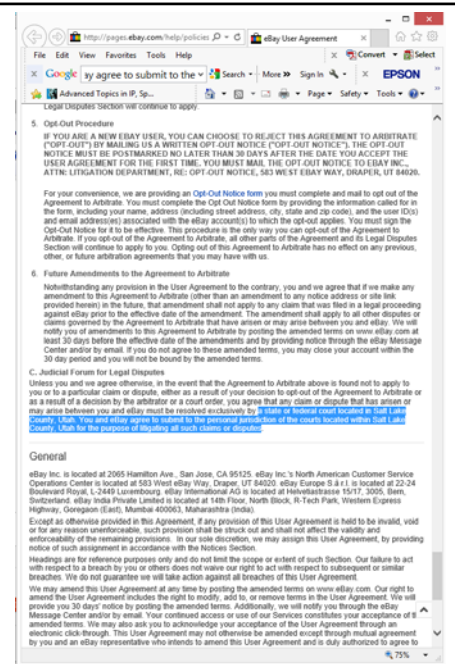
Digital Transactions: Part One: Assignment 2

Contractual Choice of Law

- Interstate Commerce
 - Typically, businesses, among themselves, can choose law for the transaction subject to . . .
 - Chosen state law bears a reasonable relationship to the transaction; or
 - Application of chosen state law would not violate a fundamental policy of the law of the state that would otherwise apply under traditional conflicts principles
- Cross-Border Commerce
- EU – Rome Convention – Article 5 consumer protections mean that
 - “an Internet retailer in the European Union cannot by contract avoid its responsibility to comply with mandatory rules in the jurisdictions from which it receives orders.”

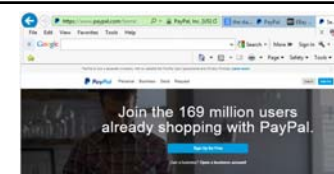
Domestic Tricome v. Ebay, Inc. (E.D. Pa. 2009)

- Forum selection
 - Tricome, as a seller on eBay, sued a customer over “negative feedback” (based on input from eBay), and then eBay terminated Tricome’s eBay account
 - Tricome’s eBay account, in conjunction with its web site, was important; losing the eBay account resulted in substantial reduction in Tricome’s business such that it sold the company at a fraction of its former value, but then sued eBay for this loss in Federal Dist. Ct. in Pennsylvania
 - Procedural unconscionability – contract of adhesion (form contract? not negotiated?) – did Tricome have meaningful choice to accept or not?
 - Substantive unconscionability – overly harsh or one-sided results; shock the conscience
- Transfer to California?
 - Dismiss versus transfer; transfer: private interests; public interests; but forum selection clause is very important factor/interest



Comb v. PayPal, Inc. (N.D. Cal. 2002)

- Potential class action plaintiff; alleging various operational problems for three persons (two are users)
- Inquiry
 - whether under California law (1) a valid agreement to arbitrate exists and, if so, (2) whether the agreement encompasses the dispute at issue
- Arbitration clause
 - [a]ny controversy or claim arising out of or relating to this Agreement or the provision of Services . . .
- Unconscionability and sliding scale between procedural and substantive components
 - Substantive component: mutuality; consolidation of claims; costs to arbitrate; venue



Assignment Two Problems

- 2.1
- 2.2
- 2.3
- 2.4
- Camford Books