

**ENFORCEABILITY OF ELECTRONIC CONTRACT TERMS DISPLAYED
ON SOCIAL MEDIA IN TANZANIA: A CRITICAL ANALYSIS OF THE
EXISTING TANZANIAN LEGAL FRAMEWORK FOR ONLINE AND
OFFLINE TRANSACTIONS PERFORMED THROUGH INSTAGRAM**

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**A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE
REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS IN
INFORMATION COMMUNICATION TECHNOLOGY (LL.M - ICTL)**

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CERTIFICATION

The undersigned certify that they have read and hereby recommend for acceptance by the Open University of Tanzania, a dissertation entitled, Enforceability of Electronic Contract Terms Displayed on Social Media in Tanzania: A Critical Analysis of the Existing Tanzanian Legal Framework for Online and Offline Transactions performed through Instagram. In partial fulfillment of the requirements for the degree of Master of Laws in Information Communication Technology Law (LL. M in ICTL).

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Date

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ABSTRACT

This dissertation explores the enforceability of electronic contract terms displayed on social media platforms in Tanzania, focusing specifically on transactions conducted on Instagram. The research objectives are to analyze the existing Tanzanian legal framework regarding electronic contracts, examine the challenges and opportunities presented by online transactions, and assess the implications of legal provisions on the enforceability of contractual terms on social media. The study investigates the problem of ensuring legal certainty and protection for parties engaging in online transactions, considering the dynamic nature of digital platforms and the evolving expectations of users. Data collection methods include a comprehensive review of relevant literature, analysis of Tanzanian legal statutes, and examination of case law pertaining to electronic contracts. Data analysis employs qualitative methods, including thematic analysis and comparative analysis of legal provisions in Tanzania and other jurisdictions. The sample size consists of legal documents, scholarly articles, and court rulings related to electronic contracts and social media transactions. The main findings of the study reveal the need for updated legislation and regulatory frameworks to address the unique challenges posed by electronic contracts on social media platforms. Despite the potential risks, such transactions offer opportunities for innovation and economic growth. The implications of the study findings underscore the importance of legal clarity, consumer protection, and technological advancements in shaping the future of electronic commerce in Tanzania. Addressing these issues can foster trust, facilitate business transactions, and promote digital inclusion in the evolving landscape of online interactions.

Keywords: *Electronic contracts, Social media, Enforceability, Tanzania, Instagram.*

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The Electronic Transactions Act [Cap 422, R.E. 2022]

The Law of Contract Act [Cap 345, R.E. 2019]

The Evidence Act, [Cap 6, R.E. 2022]

The Electronic Signatures in Global and National Commerce Act (E-Sign Act)
enacted in 2000

The Uniform Electronic Transactions Act, enacted in 1999

Contract Law of the People's Republic of China, enacted in 2020

Electronic Signature Law of the People's Republic of China, enacted in 2005

Civil Code of the People's Republic of China, enacted in 2021

National Information and Communications Technology Policy, 2003

LIST OF INTERNATIONAL CONVENTIONS AND TREATIES

Electronic Commerce Directive 2000/31/EC of the European Parliament and of the Council of 2000

Electronic Identification, Authentication and Trust Services Regulation (EU) No. 910 of 2014

United Nations Convention on Contracts for the International Sale of Goods of 1980

LIST OF CASES

Carlil v Carbolic Smoke Ball Company [1893] 1 QB 256

Dialogue Consulting Pty Ltd. vs Instagram, Inc. 2020 FCA [1846]

Felthouse vs Bindley [1862] EWHC CP J35

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[1953] 1 QB 401

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2022)

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TZCA 742

T. G. World International Ltd. vs Carrier Options Africa (T) Ltd. (Civil Appeal No.
40 of 2022) [2023] TZHC 2329

Trust Bank Tanzania Ltd vs Le - marsh Enterprises Ltd. and 2 Others Commercial
Case 4 of [2000] TZHC Commercial Division

Zanj Spice Limited vs Zuri Organics Ltd and Another (Civil Case No. 1 of 2023)
[2023] TZHC 19416 (31 July 2023)

LIST OF ABBREVIATIONS

CISG	Contracts for the International Sale of Goods
E-Commerce	Electronic Commerce
EIDAS	Electronic Identification, Authentication and Trust Services
ETA	Electronic Transactions Act
EU	European Union
ICC	International Chamber of Commerce
OECD	Organization for Economic Co-operation and Development
UETA	Uniform Electronic Transactions Act
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
US	United States

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

The main aim of this research is to examine critically how the existing legal framework in Tanzania approaches the issue of contract formation on social media platforms such as Instagram through an analysis of the concept of offer and acceptance online and offline on social media and their enforceability thereof. As a result, the research aims at providing insight into the existing gaps in the governing Tanzanian legal framework¹ and to give recommendations on its improvement to facilitate smooth enforceability of contractual terms formed on Instagram as one of the more popular social media platforms.

1.2 Background of the Study

Before the dawn of the e-commerce era, the traditional contractual terms were easily enforceable in courts of law due to the ease and transparency in transactions between the two parties to the contract who were mostly physically present and the contract tangibly available. Hence the ease in enforceability of the terms of contract when necessary. However, the contrary holds true when enforceability of online contractual terms formed on social media platforms such as Instagram is concerned, particularly in Tanzania where the law is yet to develop fully in this area. In Tanzania, the enforceability of electronic contract terms displayed on social media, including transactions on Instagram, is subject to the Electronic Transactions Act.. Analyzing how this legal framework applies to online and offline transactions on

¹ Electronic contracts in Tanzania are governed by the Electronic Transactions Act Cap 442 R.E. 2022.

Instagram involves considering issues like consent, authentication and record keeping. Additionally examining case law or legal opinions on electronic contracts in Tanzania can provide insights into the practical application of these regulations.

Among the challenges present in the performance of online transactions in Tanzania apart from enforceability of the contractual terms on social media platforms such as Instagram, include poor internet penetration, low levels of computer literacy, lack of skill and training and user security, data privacy and protection to mention a few. Previous studies have proposed the enactment of legislation to give recognition to evidence generated in electronic form in order to create legal coverage for online transactions and thus creating room for the legal recognition of electronic transactions hence various amendments to the Evidence Act Cap 6 R.E. 2022, the Law of Contract Act Cap 345 R.E. 2019 as well as enactment of the Electronic Transactions Act Cap 442 R.E. 2022.

The nature of the online contracts taking place on social media platforms such as Instagram are first bound by the user agreements entered by both the seller and the buyer. The user is deemed to accept the terms and conditions of the website through giving his/her consent upon creating an Instagram account. Instagram Terms and Policies provide the Instagram Purchase Protection Policy which aims to protect purchasers who partake in trade on the website but only those who are eligible under the policy otherwise no recourse will be gained from the media platform in the event of breach of any of the contractual terms. This leaves the task of enforcement of contractual terms on Instagram outside the platform's protection policy to the courts of law with competent jurisdiction.

The Instagram Purchase Protection Policy is designed to offer protection to purchasers engaging in transactions on the platform, but this protection is only available to those transactions deemed eligible under Instagram's specific terms. For a transaction to qualify, it must meet predefined criteria set out by Instagram, often focusing on purchases made through verified, in-app purchasing systems, or certain types of goods and services. However, many vendors and purchasers who engage in informal or direct transactions, such as those initiated through comments or direct messages outside of Instagram's official purchasing channels, fall outside this protection scope.

Consequently, when disputes arise or if any contractual terms are breached, Instagram assumes no responsibility for enforcing these agreements. This policy framework leaves both vendors and purchasers vulnerable, as it shifts the burden of enforcement to the individual parties, requiring them to seek legal recourse through the courts. This limitation highlights a significant gap in the protection policy, as users may not have sufficient legal remedies or resources to enforce the terms of informal agreements, especially in cross-border or informal transactions common on social media².

It is to be established whether or not the contractual terms formed on Instagram are enforceable in law and whether the existing Tanzanian Law of Contract read together with the Electronic Transactions Act contain the necessary specific provisions sufficient to provide for enforceability of contractual terms formed on Instagram considering the uniqueness of the contract formation on this social media platform.

² https://help.instagram.com/300557977301126/?helpref=uf_share; Instagram Purchase Protection Policy

1.3 Statement of the Problem

Instagram is an internet application, a form of social media, providing users free access to share photographs and videos, it is intended to be “an authentic and safe place for inspiration and expression”.³ Its use has also become very popular for businesses that are both informal and formal. While Instagram Terms and Policies provide community guidelines, privacy policy terms of use, platform policy, cookies policy, community payment terms and Instagram purchase Protection policy⁴, the issue of contract formation and enforceability of the contract terms arising from informal trade on Instagram remains to be largely regulated by domestic laws due to the fact that purchases made through third party sites, local pick-ups, messenger transactions or through other messaging services do not qualify for protection under the Instagram Purchase Protection Policy.

Informal traders on Instagram cannot enjoy the protection of the Instagram Purchase Protection Policy because the goods that are sold do not qualify for that protection under the Instagram policy on Protected Purchases.⁵ For this reason alone, both vendors and purchasers are exposed to legal risks when it comes to enforceability of the terms of the electronic contracts. Contracts under common law must contain some essential terms; those terms include mutual consent or intention to enter into a binding agreement, a received offer and communicated acceptance of the offer, consideration, capacity and legality of the contract. These terms determine whether a contract is valid and enforceable or not.

³ <https://help.instagram.com/424737657584573>; About Instagram

⁴ https://help.instagram.com/300557977301126/?helpref=uf_share; Instagram Purchase Protection Policy

⁵ Ibid

In Tanzania the Law of Contract Act provides for the law relating to contracts⁶, and through her enactment of the Electronic Transactions Act the law recognizes electronic contracts as a legally enforceable contract.⁷ Do the Law of Contract Act read together with the Electronic Transactions Act provide adequate legal provisions to ensure that contractual terms formed on social media platforms such as Instagram are enforceable in law? The answer to this question can be provided from a critical analysis of online and offline transactions taking place on a social media platform, particularly Instagram, hence establishing whether the existing legal framework in Tanzania governing electronic transactions on social media sufficiently caters to enforceability of the e-contract terms and what needs to be done to ensure that it does so harmoniously with existing Instagram policies taking into consideration that Instagram is an international social media platform.

1.4 Research Objectives

1.4.1 General Objective

To determine whether the Law of Contract Act read together with the Electronic Transactions Act provide adequate legal provisions to ensure that contractual terms formed on Instagram are enforceable in law.

1.4.2 Specific Objectives

- i) To describe the legal nature of offer and acceptance in online and offline transactions on Instagram in Tanzania and whether such transactions give rise to a contractual relationship.

⁶ [Cap 345 R.E. 2002]

⁷ S 21 [Cap 422 R.E. 2022]

- ii. To examine whether the terms reached by parties in online and offline transactions on Instagram in Tanzania give rise to enforceable contracts.
- iii. To identify areas in need of improvement in the existing legislation governing electronic contracts on social media in Tanzania.

1.5 Research Questions

- i. How does the legal nature of offer and acceptance in online and offline transactions in Tanzania give rise to a contractual relationship between parties involved?
- ii. Do the terms reached by parties in online and offline transactions on Instagram in Tanzania give rise to enforceable contracts?
- iii. What areas in the law are in need of improvement to ensure adequate protection of the rights of purchasers and vendors in electronic contracts formed on Instagram in Tanzania?

1.6 Literature Review

The Common Law has laid down persuasive precedent which lays down some principles to aid in the determination of whether or not online contracts on Instagram are enforceable. Through the Australian Federal Court in the case of *Instagram Inc. v Dialogue Consulting Pty. Ltd.*⁸, it was established that the Instagram Terms of Use fell into the sign-wrap category of online agreements and were therefore enforceable; a decision reached on appeal upholding a lower court's decision, and which considered a number of U.S decisions in addressing the validity of online contracts.

⁸ *Dialogue Consulting Pty Ltd. vs Instagram, Inc.* 2020 FCA [1846]

The enforceability of online agreements such as the one created by Instagram through its Terms of Use is dependent on eligibility of the parties to conditions in the policies in place intended to provide for online contracts created by users through their use of the social platform, particularly contracts for purchase. The terms of use however cannot be said to be exhaustive due to the conditions contained therein that do not give room for enforcement of the online contractual terms arising from the informal trade within the platform. Nevertheless, the position in Tanzanian courts has so far been surrounding the admissibility of electronic evidence⁹ and recognition of electronically formed contracts through amendments of the Evidence Act and enactment of the Electronic Transactions Act.

In addition to the Terms of Use found on Instagram, there are the traditional rules governing formation of contracts, essentially, the concept of offer and acceptance. Ndunguru, A.F, provides an assessment of the legal challenges in the formation of online contracts in his article titled “Legal Challenges of the Formation of Electronic Contracts in Tanzania: A Case of Tanzania - Japan Trade Exchange Relationship” in which he concludes that in spite of the National ICT Policy in place, the Tanzanian Law of Contract does not contain provision to address formation of online contract and therefore recommends reforms¹⁰. In this article the author’s main objective was to examine the legal challenges associated with the formation of online contracts and the role played by the Law of Contract Act in providing for the same. This position can also be seen in an analysis by Humphrey Chuwa, in which he suggests that the

⁹ Trust Bank Tanzania Ltd vs Le - marsh Enterprises Ltd. and 2 Others Commercial Case 4 of [2000] TZHC Commercial Division

¹⁰ Adrian F. Ndunguru (2018), Paper Title: Legal Challenges of the Formation of Electronic Contracts in Tanzania: A Case of Tanzania-Japan Trade Exchange Relationship. Business Education Journal (BEJ), Volume II, Issue I, 15

rapid changes arising from e-commerce needed an equally rapid regulatory transition and also concludes that this is an area of the law in need of reform¹¹.

As Instagram has now evolved from a mere social network to a place where many Tanzanians upload and advertise goods and services for trade, the formation of contracts in this particular context differs from the regular electronic contracts falling under the click-wrap, browse-wrap and sign-wrap categories; and therefore, has prompted scholars to focus on the most fundamental element in contract formation; the concept of offer and acceptance online. Shaw Bayern, proposes that the concept of offer and acceptance should be analysed using the same “general interpretive inquiry used to govern other questions concerning the intent of the contracting parties”.¹² Shaw Bayern asserts that enforceability of online contractual terms should not only focus on the unchanging essential offer and acceptance, but rather on the actions of parties following that initial stage of offer and acceptance.

Ekaterina Pannebakker in her paper on “The UNIDROIT Principles of International Commercial Contracts” emphasized that the negotiation phase following offer and acceptance provides the necessary concepts in determining the formation of online contracts. The perspective of the US, the EU and China show the different approaches taken to determine formation of online contracts. An article by Sylvia Kierkegaard¹³ illustrates the regulatory approach that has been taken by the EU in comparison to the US approach. The EU E-Commerce Directive provides some

¹¹ Chuwa, Humphrey (2014) Analysis of the Law Governing E-Commerce in Tanzania. Masters thesis, The Open University of Tanzania

¹² Shaw, J. Bayern: Offer and Acceptance in Modern Contract Law; A needless Concept. California Law Review

¹³ Sylvia M. Kierkegaard, E-Contract Formation: U.S. and EU Perspectives, 3 Shidler J. L. Com. & Tech. 12 (2007)

facilitation in governing the formation of online contracts in all member countries in the EU¹⁴.

The UETA in the U.S. is similarly imposed to ensure that electronic records and “signatures on which contracts may be based are validated”¹⁵. This came before Tanzania’s recent enactment of the Electronic Transactions Act which validated the use of electronic signatures in Tanzania. A more recent study gives a clearer picture of Instagram as a marketing and trading platform for those trading informally in Tanzania. The Article by Mramba, N. and Rumanyika J. titled “Instagram as a New Marketing Platform for the Informal Traders in Tanzania” was able to illustrate the modalities used by informal traders on Instagram and the effects of lack of awareness of all parties involved¹⁶. This article contains some useful findings on the informal trade on Instagram in Tanzania, and is therefore a good point to proceed with the study on the legal aspects of the informal traders on Instagram to find out the enforceability of the contractual terms and particularly how offer and acceptance is established.

1.7 Research Methodology

This research assesses whether the Law of Contract Act, read together with the Electronic Transactions Act, provides adequate legal provisions to ensure that contracts formed on Instagram are enforceable in Tanzania. The focus is on doctrinal legal research, as the central question is the law's application against other existing

¹⁴ Art. 9 of the E.U. E-Commerce Directive

¹⁵ The Uniform Electronic Transactions Act, 1999

¹⁶ Nasibu Mramba, Joel Rumanyika, Instagram as a New Marketing Platform for the Informal Traders in Tanzania, IST Africa, 2020

facts. First and foremost, the researcher examines primary sources governing offer and acceptance in online transactions in Tanzania by analyzing the legal requirements to determine what constitutes offer and acceptance. The research assesses legal concepts, principles, case law, statutes (both principal and subsidiary), and established rules and regulations, exploring their development and application in contract formation and enforceability of terms in Instagram transactions in Tanzania. By sampling available data on Instagram, the research illustrates how goods and services are advertised, leading to online and offline contractual transactions and the resulting legal rights and obligations.

To provide the research with the required rigor, priority is given to primary sources of data, as mentioned above. The research data is analyzed using statutory interpretation techniques, including the plain meaning rule, purposive rule, and rules of logic and reasoning, as well as inductive and deductive techniques. Additionally, secondary data, such as books, journal articles, commentaries, and official institutional reports, is collected and analyzed through documentary review.

In summary, the choice of a doctrinal methodology for this research is justified by its suitability for systematically analyzing legal frameworks, interpreting legal texts, and evaluating the enforceability of contractual terms within the Tanzanian context. By employing this methodological approach, the research generates valuable insights, informs evidence-based policy recommendations, and contributes to scholarly discourse on the intersection of law, technology, and commerce in the digital age.

In addition to a doctrinal methodology, this research incorporates a comparative approach to analyze the legal frameworks governing contractual transactions on social media platforms. By examining how similar issues are addressed in different jurisdictions, including international standards and best practices proposed by organizations such as the United Nations and the European Union, the study provides a comprehensive understanding of the complexities surrounding electronic commerce in Tanzania. Through comparative analysis, insights into the strengths, weaknesses, and potential adaptations of Tanzanian laws and regulations are obtained, contributing to a broader discourse on the efficacy and adaptability of legal frameworks in the digital age.

1.8 Scope of the Study

The scope of the study has the purpose of indicating the boundaries or limits of the proposed study in terms of the contents, sample geographical spread and the duration of the intended study. The proposed study will be carried out in Tanzania using the selected research methodology expounded herein, data will be collected and analysed.

1.9 Limitation of the Study

While employing a doctrinal methodology for researching contractual transactions on Instagram in Tanzania offers significant insights into legal principles and doctrines, several limitations must be acknowledged. These include potential constraints related to the availability and accessibility of legal data, the dynamic nature of social media platforms, interdisciplinary considerations, variations in legal interpretation, contextual specificity across jurisdictions, ethical and privacy

concerns, and temporal constraints. Despite these challenges, each limitation was addressed to enhance the rigor and validity of the research findings.

Availability and accessibility of legal data specific to social media contracts in Tanzania posed a challenge, as information on informal social media transactions is limited. To mitigate this, the study relied on publicly available case studies, statutory provisions, and academic sources. Comparisons were also made with jurisdictions where legal frameworks for digital transactions are more developed, providing insight into gaps within the Tanzanian context.

The dynamic nature of social media, particularly the rapidly evolving features and policies on Instagram, created challenges in capturing a static view of contractual practices. The study addressed this by referencing the most recent platform policies and analyzing current trends in social media commerce. This approach helped ensure that the findings reflect the contemporary landscape of social media transactions. Contractual transactions on social media intersect with various disciplines, such as technology and communication, requiring interdisciplinary consideration. This study focused primarily on the legal aspects but acknowledged technological and communicative factors that influence contract formation and enforceability on Instagram, offering a comprehensive view within the doctrinal framework.

Legal interpretation variations, especially in applying contract principles to social media, also posed limitations. To address this, the study focused on foundational contract law principles and used doctrinal analysis to align Instagram transactions with these principles, maintaining consistency with traditional legal interpretation.

Differences in legal frameworks across jurisdictions meant that findings from other regions could not be directly applied to Tanzania. A comparative analysis was conducted to highlight specific limitations within Tanzanian law and explore how foreign frameworks might inspire local improvements, providing contextually relevant insights.

Ethical and privacy concerns restricted access to detailed transactional data on social media. To respect user privacy, this research relied solely on publicly available information and aggregated data sources, upholding ethical standards without compromising user confidentiality. Temporal constraints limited the depth of exploration in certain areas. By prioritizing core research objectives, the study focused on the most relevant and impactful sources, ensuring that the research remained comprehensive while addressing key questions within the available timeframe.

By acknowledging and addressing these limitations, this study aims to offer a thorough understanding of contractual transactions on Instagram within the Tanzanian legal context, contributing to the discourse on adapting local legal frameworks to meet the unique demands of social media transactions.

CHAPTER TWO
CONCEPT OF OFFER AND ACCEPTANCE IN ONLINE
TRANSACTIONS

2.1 Introduction

In the dynamic landscape of online transactions, the traditional principles of offer and acceptance, fundamental to contract formation, undergo a profound transformation. The concept, which historically relied on face-to-face negotiations, is now intricately woven into the fabric of the digital realm. Online transactions, including e-commerce, social media engagements, and digital services, present a unique set of challenges and opportunities that reshape how contractual relationships are initiated and solidified. The details of offer and acceptance in this virtual arena demand a closer examination, considering factors such as instantaneous communication, technological innovations, and the global reach of digital interactions. This research explores into the core of this transformation, dissecting how the principles of offer and acceptance adapt to the digital era, shaping the foundation of legally binding agreements in an environment characterized by rapid technological evolution and cross-border engagements.

This chapter will provide a picture of the characteristics of the online environment, the doctrine of offer and acceptance, the concepts of invitation to treat, offer and acceptance in the formations of contracts generally in online transactions. Through introducing the concepts of offer and acceptance in online transactions, at the end of this chapter there will be a clear distinction between offer and acceptance in online transactions and how these concepts are perceived in traditional contracts.

In the dynamic landscape of contemporary commerce, the traditional foundations of contractual relationships, particularly the concepts of offer and acceptance, have undergone a profound evolution. Historically rooted in face-to-face negotiations, the dynamics of offer and acceptance are now intricately woven into the fabric of the digital realm, reshaping the fundamental paradigms of contract formation. This transformation is particularly evident in the realm of online transactions, encompassing e-commerce platforms, social media engagements, and the provision of digital services. As technology continues to advance and global connectivity becomes increasingly seamless, the details of how contractual relationships are initiated and solidified in this virtual arena demand meticulous examination.

The concept of offer and acceptance, central to contract law, is a cornerstone in understanding how agreements are formed. However, in the context of online transactions, this age-old framework encounters new challenges and opportunities. Instantaneous communication, facilitated by technological innovations, introduces a level of speed and efficiency previously unparalleled in traditional negotiations. Moreover, the global reach of digital interactions transcends geographical boundaries, necessitating a re-evaluation of how jurisdictional considerations impact the formation and enforcement of contracts.¹⁷

This section explores the intricacies of offer and acceptance in the digital age, exploring how these foundational principles adapt and manifest within the context of online transactions. By scrutinizing the dynamics of electronic contract formation, consent validation, and the authentication processes prevalent in the digital realm,

¹⁷ Dr. Manoj Kumar Sadual, *Electronic Contracts: Legal Issues and Challenges*.

this study aims to unravel the complexities inherent in the contemporary intersection of technology and contract law. Through a focused analysis of the Tanzanian legal landscape and a comparative approach to international practices, this exploration seeks to provide detailed insights into the efficiency of existing legal frameworks in regulating and enforcing contracts initiated and concluded on social media platforms and other online channels.

2.2 The Nature of Online Environment

The online environment typically encompasses the digital space where various activities, interactions, and transactions occur over the internet. The online environment is diverse and includes websites, social media platforms, e-commerce platforms, forums, and various digital communication channels. The online environment has evolved over the years to accommodate online trade between sellers and buyers online and has now become an acceptable, popular and convenient way to do business between consumers and businesses worldwide.¹⁸

In the digital era, online transactions have become abundant and have reshaped the landscape of commerce; inevitably, the era has also brought challenges to the traditional notion of offer and acceptance. The online environment is immediate and borderless in nature, and therefore introduces a dynamic dimension to the fundamental principles of contract formation. The same way a buyer and seller interact physically and form a contract likewise the same applies to a buyer and seller online. However, the nature of the online environment is unique in the sense

¹⁸ Ihuoma K. Ilobinso, Formation of Electronic Contracts: Melding the Traditional Contract Law with Contemporary Electronic Commerce, *The Commercial and Industrial Law Review*, Vol 2, 2016, p.50

that the essentials of formation of traditional contracts, particularly the establishment of the essentials of contracts are not easily established in the online contracts due to the complexities of the digital world, including the uncertainty which may surround the ability of parties to form valid and enforceable contracts through this “paperless mode of communication”.¹⁹

In the context of this research, the online environment presents a dynamic landscape that serves as a platform for electronic transactions. The nature of this environment includes rapid technological advancements, evolving user behaviors²⁰, and the instantaneous nature of communication. The uniqueness of the online environment prompts this research to explore the characteristics in the context of this research to gain insights into how the unique features of the online environment in order to determine how they may influence the enforceability of electronic contract terms on social media platforms in Tanzania.

The first unique feature of the online environment is the global reach that it welds. In the modern interconnected era, the e-commerce environment is swiftly changing. Businesses must extend their focus beyond local markets and consider a global perspective. Advancements in technology and internet accessibility mean that consumers worldwide can now explore and access products and services from any location. This transition toward global e-commerce presents businesses with abundant opportunities to broaden their reach and enter new markets.²¹ The online realm spans beyond geographical boundaries, facilitating international interactions

¹⁹ Ibid, p. 51

²⁰ Understanding user behaviors is crucial for analyzing the formation and acceptance of offers, assessing the effectiveness of engagement strategies, and evaluating the overall dynamics of contractual interactions on Instagram.

²¹ <https://www.linkedin.com/pulse/why-global-reach-matters-todays-e-commerce-landscape-tnyff> Why Global Reach Matters In Today's E-Commerce Landscape And How Connetmi Live Market Prepares For The Global Stage

and transactions. The second unique feature of the online environment is the instant communication that it provides to its users. Immediate interactions on social media platforms allow for real-time communication, potentially affecting the expediency of contract formation and execution.

The dynamics of customer-business interaction have been revolutionized by social media, offering a platform for instantaneous and direct communication. This immediate engagement not only cultivates trust but also strengthens brand loyalty and elevates customer service standards. Incorporating social media as a means of direct interaction enables businesses to remain in harmony with the preferences, needs, and feedback of their customers, ultimately fostering a business model centred on customer satisfaction and success. As social media undergoes further evolution, its influence on interactions between customers and businesses is poised to expand, playing a fundamental role in shaping the future landscape of customer experience and relationship management.²²

A third noteworthy characteristic of the online environment is the diversity available in the different social media platforms which offer distinct features and user experiences, influencing the presentation, negotiation, and acceptance of contracts. Fourthly, one must also take note and caution that the casual nature of many online interactions and the prevalence of user-generated and informal content can pose challenges in determining the formality and intent behind electronic contracts²³. The

²² <https://www.linkedin.com/pulse/social-media-enables-direct-immediate-interaction-touhid-doullah>: Social Media Enables Direct and Immediate Interaction with Customers, Touhid Doullah.

²³ Ihuoma K. Ilobinso, Formation of Electronic Contracts: Melding the Traditional Contract Law with Contemporary Electronic Commerce, *The Commercial and Industrial Law Review*, Vol 2, 2016, p.51

fifth characteristic worth observing about the online environment is that the visual and multimedia content provided by users online and particularly on social media influences the way contract terms are displayed and interpreted, sometimes not to the advantage of the buyer. This affects the way contractual terms are perceived and give way for mistake or misrepresentation as errors can occur effortlessly on the internet due to the rapid and automated nature of data input by users. Additionally, misrepresentation is common in online shopping since buyers cannot physically examine, touch, or test the products. When disputes arise, online buyers often face challenges in providing evidence for both mistakes and misrepresentation.²⁴

A sixth notable characteristic of the online environment that is relevant to this research is the presence of electronic signatures online. Electronic signatures including various forms such as clicking “I Accept” where a user is deemed to have accepted the terms and conditions of an online contract all play a significant role in the formation of online contracts.²⁵ This characteristic goes together with the seventh characteristic that emphasizes the importance of digital evidence in that the online environment generates digital records and evidence which may be crucial in establishing the terms of electronic contracts and in resolution of disputes arising therefrom.²⁶ The eighth characteristic has to do with cultural factors; the global nature of the online environment introduces cultural diversity impacting how its users interpret and engage with contract terms. Several studies have suggested a

²⁴ Faya Fangfei Wang, *Law of Electronic Commercial Transactions: Contemporary Issues in the EU, US and China*, p. 55

²⁵ Electronic signatures are typically defined as “an electronic symbol, sound or process that is either attached to or logically associated with a document. . . and executed or adopted by a person with the intent to sign the document.” *Black’s Law Dictionary*, 1415 (Eighth Ed.)

²⁶ *Ibid* p. 49

strong connection between trust and culture; trust being fundamental in the formation and implementation of online contracts.

Studies have emphasized on the impact of culture on the processes of building trust. While Gefen and Heart emphasize the importance of incorporating culture as a crucial factor in analysing trust beliefs in e-commerce (trustworthiness), the analysis primarily focuses on the US and Israel as cultures, resulting in limited diversity in the cultural sets explored in the e-commerce environment.²⁷ Having expounded rather widely on the character of the online environment, I find it prudent to also touch on the international regulatory framework globally and in three of the major economies namely the US, EU and China and also on the Tanzanian existing regulatory framework. Many legal systems have tackled certain aspects of challenges brought about by electronic commerce through recent legislation. Additionally, global entities like the UN and the EU have proposed remedies for some of these issues by outlining model provisions and directives, which countries can adopt when formulating their laws. However, despite these efforts, several concerns persist and may require recourse to traditional contract law principles for resolution.²⁸

The ongoing global discussion on adapting international commercial law to embrace technological innovations in global trade involves active participation from entities such as the UNCITRAL, ICC, and the OECD. Specifically, there is a focus on

²⁷ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8523785/>; How Culture and Trustworthiness Interact in Different E-Commerce Contexts: A Comparative Analysis of Consumers' Intention to Purchase on Platforms of Different Origins

²⁸ Ihuoma K. Ilobinso, Formation of Electronic Contracts: Melding the Traditional Contract Law with Contemporary Electronic Commerce, *The Commercial and Industrial Law Review*, Vol 2, 2016, p.52

shaping a worldwide consensus on electronic contracting, exploring potential modifications to the structure or content of international commercial law to align with advancements in the technology of international commerce.²⁹ The CISG which is an international treaty binding its member states governs the international commercial contracts for the sale of goods and provides a uniform set of rules for the formation and performance of contracts between parties from different countries.

In the United States, the legal framework for electronic contracts is primarily governed by the Electronic Signatures in Global and National Commerce Act (ESIGN) and the Uniform Electronic Transactions Act (UETA).³⁰ These laws provide a foundation for the validity and enforceability of electronic contracts and signatures at the federal and state levels. The European Union has a comprehensive legal framework for electronic contracts, including the eIDAS Regulation (Regulation (EU) No 910/2014) as well as the EC Directive on Electronic Commerce which acknowledges the validity of electronic contracts and electronic signatures, ensuring that they have the same legal effect as traditional paper-based contracts.³¹

eIDAS establishes a common framework for electronic identification, electronic signatures, electronic seals, and electronic time stamps within the EU. It aims to ensure the mutual recognition and cross-border validity of electronic transactions. In China, the legal framework for electronic contracts is primarily governed by the

²⁹ Faya Fangfei Wang, *Law of Electronic Commercial Transactions: Contemporary Issues in the EU, US and China*, p. 7 - 12

³⁰ http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_bills&docid=f:s761enr.txt.pdf; “Electronic Signatures in Global and National Commerce Act”.

³¹ <https://edicomgroup.com/learning-center/eidas-regulation/>; What is the eIDAS Regulation?

Electronic Signature Law and the Contract Law of the People's Republic of China. These laws provide a basis for the legality and enforceability of electronic signatures and contracts. Additionally, the Civil Code of the People's Republic of China, effective from January 1, 2021, includes provisions related to electronic contracts.³² In exploring international frameworks governing electronic contracts, the United States enforces the validity of electronic contracts primarily through the Electronic Signatures in Global and National Commerce Act (ESIGN) and the Uniform Electronic Transactions Act (UETA), both of which ensure electronic signatures are legally binding at federal and state levels. Similarly, the European Union has implemented a robust legal framework through the eIDAS Regulation (Regulation EU No. 910/2014), which provides for the mutual recognition and cross-border validity of electronic signatures, electronic seals, and timestamps across member states. In China, the Electronic Signature Law and the Civil Code set standards for the legality and enforceability of electronic contracts.

However, while international frameworks like eIDAS and ESIGN establish detailed protocols for electronic identification and signature, the Tanzanian Electronic Transactions Act (ETA) [Cap 442, R.E. 2022] also provides foundational provisions for electronic contracts. Section 7 of the ETA recognizes electronic signatures as legally valid, provided they meet reliability standards, aligning Tanzanian law with global principles of electronic contract validity. Nevertheless, the ETA does not include specific guidelines addressing the unique, informal nature of social media transactions. This gap indicates an area where Tanzanian law could evolve to better

³² Faya Fangfei Wang, *Law of Electronic Commercial Transactions: Contemporary Issues in the EU, US and China*, p. 7 - 12

align with the protections offered by international frameworks, particularly for platform-based contracts formed on social media sites like Instagram.

In Tanzania, the online environment is currently regulated by the Electronic Transactions Act, 2022 which provides a legal framework for electronic transactions within the country. The Electronic Transactions Act is designed to facilitate and regulate electronic commerce and transactions by recognizing the legal validity and enforceability of electronic records, signatures, and contracts.³³ While the Electronic Transactions Act (ETA) [Cap 442, R.E. 2022] provides a foundational framework for the recognition and enforceability of electronic transactions and signatures in Tanzania, its provisions primarily address structured, formal transactions common in e-commerce. Notably, Section 7 of the ETA recognizes the legal validity of electronic signatures, establishing them as legally binding equivalents to handwritten signatures, provided they meet the Act's standards for reliability and verification. Similarly, Sections 21 to 26 outline requirements for the formation of electronic contracts, addressing offer, acceptance, and the timing and location of contract formation.³⁴

However, these sections are tailored to formalized online interactions and do not account for the informal, fluid dynamics of social media transactions. For instance, on Instagram, a post showcasing a product may serve as an *invitation to treat* rather than a definitive offer, and potential buyers might express interest across multiple interactions (comments, likes, or direct messages) rather than a clear act of

³³ S 18 Electronic Transactions Act, 2022

³⁴ Ubena John, Implementation of Electronic Signature Law in Tanzania: Success, challenges and prospects, Digital Evidence and Electronic Signature Law Review, 19 (2022) 102

acceptance. This informal, multi-step interaction highlights the limitations of the ETA in governing social media transactions, suggesting a need for supplementary interpretations or regulations to bridge the gap and ensure adequate enforceability of contracts formed on platforms like Instagram within Tanzanian law.

2.3 Doctrine of Offer and Acceptance

The doctrine of offer and acceptance is a principle of contract law and are two of the most fundamental among the established elements which are mandatory in the formation of a legally enforceable contract. These two concepts combined form an agreement between parties to a contract and essentially create the basis for formation of an enforceable contract. The other essential elements are the presence of mutual agreement between parties to a contract, capacity to contract, provision of lawful consideration, legality and proper form. Acceptance by the offeree is the unconditional agreement to be bound by the terms of the offer. An offer must be accepted as is without any modification.³⁵

By adhering to established rules regarding the communication of offer and acceptance, the legal system can interpret and enforce contracts consistently, thus fostering confidence in the legal framework and to promote a stable environment for commercial and personal transactions. In essence, the importance of the concept of offer and acceptance lies in its role as the cornerstone of contract formation, ensuring that agreements are entered into voluntarily, with a shared understanding of terms, and providing a solid foundation for the enforcement of legal rights and obligations.

³⁵ <https://unacademy.com/content/ca-foundation/study-material/business-laws/proper-offer-and-proper-acceptance/>; Proper Offer and Proper Acceptance

Since its formulation in the nineteenth century, the doctrine of offer and acceptance has undergone adaptations to accommodate shifts in contracting practices, such as the emergence of online contracts. The doctrine has also evolved in response to contemporary legal trends, including an increased emphasis on consumer protection, exemplified by consumers gaining the ability to revoke consent.³⁶

However, scholars like Bayern, argued that contracts do not necessarily have to be formed by a clear or recognizable offer and followed by an explicit acceptance but contracts can also be formed through diverse methods tailored to the unique circumstances of the parties involved. He gives examples of such scenarios where parties may simultaneously sign a shared document, engage in a handshake, employ a series of progressively certain verbal cues, or utilize third-party assistant or technology for a firm match³⁷. Bayern argues that the doctrinal concept of “offer and acceptance” in contract formation should be replaced with a more straightforward inquiry: whether one party reasonably believes that a contract exists. He suggests that this alternative approach will simplify the question of contract formation.³⁸

An Australian court went further and found that even the use of emojis online has been deemed to indicate acceptance of an offer and therefore forms a binding contract; the rationale being that the courts need to adjust to the changes brought about by the digital environment.³⁹ Hence the purpose of this research, to analyze critically the enforcement of contractual terms, such as offer and acceptance, in online contracts formed on social media.

³⁶ Ekaterina Pannebakker: Offer and Acceptance and the Dynamics of Negotiations: Arguments for Contract Theory from Negotial Studies

³⁷ Shaw, J. Bayern: Offer and Acceptance in Modern Contract Law; A needless Concept. California Law Review, pg. 68

³⁸ Ibid at pg. 73

³⁹ South West Terminal Ltd. vs Achter Land, [2023] SKKB 116

Because this research is focused on the enforceability of electronic contract terms displayed on social media in Tanzania, the application of the doctrine of offer and acceptance takes centre stage, offering a lens through which to understand the intricacies of online interactions. The dynamics of electronic communication on social media platforms, encompassing posts, messages, and advertisements, warrant scrutiny to discern whether they qualify as offers. The analysis explores into the nature of these digital communications, evaluating their clarity and the extent to which they signify a genuine willingness to engage in a contractual agreement.

Interactive features and clickwrap agreements emerge as fundamental components within the context of offer and acceptance on social media. Platforms often utilize buttons and checkboxes, providing users with means to actively signal their acceptance of contractual terms. This research seeks to unravel the functionality of these interactive elements, particularly in the realm of clickwrap agreements where users explicitly consent to the terms of the contract.⁴⁰

User engagement metrics, including likes, comments, and shares, introduce an intriguing dimension to the determination of offers. This research will examine whether these user actions hold significance in interpreting an acceptance or if they constitute initial steps in negotiation. Real-time interactions on social media platforms, characterized by their immediacy, present a unique set of considerations. The research scrutinizes how the swift nature of responses influences the timing and comprehension of offers and acceptances, probing whether instantaneous interactions translate into legally binding contractual obligations.

⁴⁰ Dr. Manoj Kumar Sadual, *Electronic Contracts: Legal Issues and Challenges*, IJRAR Vol. 8 Issue 3, July-Sept 2021

The dynamic nature of social media content introduces an additional layer of complexity. Updates to content, terms, or offers are subject to evaluation regarding how effectively these changes are communicated to users and whether such updates impact the validity of existing offers or contracts. Automated features, including responses from chatbots⁴¹ and algorithms, are scrutinized to ascertain their role in facilitating or acknowledging offers. The study investigates whether these automated elements inadvertently create contractual obligations and their alignment with the principles of offer and acceptance.

Geographical considerations become paramount as social media transcends borders. With users situated in diverse jurisdictions, the research contemplates how the doctrine of offer and acceptance adapts to the global reach of social media platforms. The display of terms and conditions on these platforms is a critical facet under examination. The study assesses whether users have clear access to contractual terms, emphasizing the need for transparency and fairness in presentation.

Understanding the mechanisms for the revocation of offers on social media is integral to this research. Analysing whether users can effectively withdraw offers before acceptance and the provided mechanisms for revocation sheds light on the fluid nature of contractual negotiations in the digital realm. Finally, the study explores into the alignment of the legal recognition and enforcement of electronic contracts with Tanzanian laws and regulations governing electronic transactions, offering a comprehensive examination of the enforceability landscape in this evolving digital context.

⁴¹ Chatbots are computer programs designed to simulate human conversation, providing automated responses and assistance through text or voice interactions.

2.3.1 Invitation to Treat

In social media contexts, advertisements are generally classified as invitations to treat rather than offers. This distinction is significant because an invitation to treat invites potential buyers to make offers rather than creating an immediately binding agreement upon acceptance by the viewer. Such a classification aligns with traditional contract law principles, where advertisements, whether online or offline, are typically not seen as offers unless explicitly stated otherwise⁴². An invitation to treat is not a formal offer, but is where a party advertises the goods or services and another party shows interest and gives an offer to purchase the goods or services.

An invitation to treat is characterized by a lack of a clear intention to be bound by the terms of the contract and is often illustrated in advertisements, preliminary negotiations or on display of goods. Goods or services displayed online or in a store without having a specific price tag are seen to fall in the category of invitations to treat rather than a solid offer. While the acceptance of an invitation to treat does not automatically create a legally binding contract it does well to set the stage of the negotiation process that permits the parties to give each other offers as well as counteroffers for consideration. An invitation to treat can be communicated through words, actions and also a display of goods without a price. The distinction between invitations to treat and offers is essential for understanding the formation of contracts because it clarifies the point which legal obligations are created in a transaction.⁴³

⁴² Carlill v Carbolic Smoke Ball Co, [1893] 1 QB 256

⁴³ <https://sprintlaw.com.au/articles/invitation-to-treat-vs-offer/>; Sapna Goundan, What is an Invitation to Treat?

In the famous case of *Pharmaceutical Society of Great Britain vs Boots Cash Chemists (Southern) Ltd.* (1953)⁴⁴ the court clarified the distinction between an invitation to treat and an offer. In this case, goods were displayed on the shelves, and customers would take them to the cashier for payment. The court held that the display of goods on the shelves was an invitation to treat rather than an offer. The offer occurred when the customer presented the items at the cashier for payment. This case underscores the idea that an invitation to treat invites negotiations and expressions of interest rather than constituting a firm offer.

In the context of electronic transactions, the case of *Harvey vs Facey* (1893)⁴⁵ is often referenced. While this is not a recent case and it is definitely not directly related to social media, it sheds light on the principle of invitation to treat. In the *Harvey* case, the defendants sent a telegram to the plaintiff inquiring about the lowest price they would accept for their property. The court held that the response indicating the lowest price was not an offer but an expression of the minimum the seller might consider. It highlighted that mere inquiries or statements about price are generally considered invitations to treat.

Applying these principles to the online environment, a hypothetical scenario involving a social media post advertising products without specifying prices could be seen as an invitation to treat. Users expressing interest or making inquiries about the price through comments or direct messages might then be considered as initiating negotiations rather than accepting a pre-existing offer.

⁴⁴ *Pharmaceutical Society of Great Britain v. Boots Cash Chemists (Southern) Ltd.* [1953] 1 QB 401.

⁴⁵ *Harvey vs Facey* [1893] AC 552

While specific case law related to social media platforms and electronic contracts in Tanzania may be limited, these foundational cases help establish the general principles surrounding invitations to treat and offers. The adaptation of these principles to the digital landscape requires careful consideration of the platform's interactive features, user engagement dynamics, and the overall context in which communications occur.

In the realm of researching the enforceability of electronic contract terms on social media in Tanzania, the concept of an "invitation to treat" becomes a fundamental aspect to consider. As explained earlier in this chapter, an invitation to treat refers to a communication or action that invites others to make an offer rather than constituting a definite proposal. Understanding how this principle operates in the digital landscape, particularly on social media platforms, is essential for evaluating the details of contractual interactions.

Social media platforms often serve as dynamic spaces where users engage in various activities, including posting content, sharing information, and expressing preferences through actions like 'liking' or 'commenting.' Within this context, the challenge lies in differentiating between expressions of interest and concrete offers. Content posted on social media, such as product images, promotional messages, or even pricing details, may be seen as invitations to treat rather than firm offers. The dynamic and interactive nature of social media necessitates careful examination of user interactions to ascertain whether they represent genuine offers or preliminary expressions of interest.

Interactive features on social media platforms, such as buttons prompting user engagement or the ability to 'add to cart,' can be perceived as invitations to treat. These features often prompt users to take specific actions that indicate an intention to negotiate or transact but may not constitute a binding offer. Investigating the functionality and user interpretation of these features becomes crucial within the broader exploration of electronic contract terms. As a general rule, advertisements are not offers per se, but scholars have argued that an advertisement may present itself as an offer if it passes the test of being an offer.⁴⁶

Moreover, the evolving nature of content on social media introduces complexities. Updates, changes, or additions to posted content may signify an ongoing invitation to treat rather than a finalized offer. This dynamic characteristic requires a detailed analysis of how users perceive and respond to evolving content, emphasizing the importance of timing and context in determining the existence of an offer. Additionally, the use of chatbots or automated responses on social media platforms introduces considerations related to invitations to treat. Automated responses generated by algorithms⁴⁷ or artificial intelligence may initiate interactions that resemble invitations to treat, prompting users to engage in further negotiation or discussion before a formal offer is made.

In the legal landscape, understanding the concept of invitation to treat aids in navigating the distinction between preliminary interactions and legally binding offers within the dynamic and interactive environment of social media. As the digital

⁴⁶ Jay. M. Feinman, Stephen R. Brill; Is an Advertisement an Offer? Why It Is, and Why It Matters, *Hastings Law Journal*, Vol. 58 Issue 1

⁴⁷ An algorithm refers to a set of computational rules or procedures used to determine which content users see in their feeds.

realm continues to evolve, recognizing and interpreting invitations to treat on these platforms is integral to comprehensively assessing the enforceability of electronic contract terms in Tanzania.

2.3.2 Offer

An offer in the context of this research, is a clear and unequivocal proposal made by one party (the offeror) to another party (the offeree) indicating a willingness to enter into a legally binding agreement under specific terms. An offer is characterized by a genuine intention of the offeror to be bound by the terms of the offer. Such terms contained in the offer must be clear, specific, and capable of being understood by the offeree. The communication must create a meeting of the minds between the offeror and the offeree. In most cases an offer is revocable before acceptance unless it falls within the category of an option contract where the offeror agrees not to revoke for the specified period. Mwandambo, J. A held that unless an offer is revoked before it is accepted by the offeree, a contract comes into existence immediately upon its acceptance.⁴⁸

In the dynamic landscape of electronic transactions, the issue of offers takes centre stage as businesses and users engage in contractual interactions on digital platforms, particularly on social media. Understanding how the concept of an offer translates into the realm of electronic transactions is fundamental to exploring the enforceability of contract terms on platforms like Instagram in Tanzania. Electronic transactions often involve the display of products, services, or promotional content

⁴⁸ Stella Lyimo vs CFAO Motors Tanzania Ltd, (Civil Appeal 378 of 2019) [2022] TZCA 742

on social media, which may be construed as an invitation to treat rather than a definitive offer. The nature of posts, messages, or advertisements on Instagram can be examined to discern whether they represent a preliminary invitation for users to engage in negotiations or whether they unequivocally express an intention to enter into a contract. This distinction is crucial in shaping the legal dynamics of online transactions, as it sets the stage for subsequent user interactions and the formation of electronic contracts.

The concept of clickwrap agreements, prevalent in electronic transactions, further complicates the issue of offers. When users actively click on buttons like "Buy Now" or "Accept Terms," they may be signaling their acceptance of contractual terms. However, the question arises as to whether the initial presentation of products or services constitutes a binding offer or if the subsequent clicks are merely confirmations of user intent. Exploring the functionality of these interactive features on Instagram and how they align with the principles of offer and acceptance becomes fundamental for understanding the legal dynamics of electronic transactions on this platform.

While Tanzanian case law specific to social media interactions and electronic contracts may be limited, foundational contract law principles provide a framework for analysis. For instance, in Tanzania, Law of Contract Act emphasizes the importance of clear communication and mutual assent in contract formation⁴⁹. Applying these principles to the digital context requires a detailed examination of

⁴⁹ Section 2(1) of the Law of Contract Act recognizes that a contract is formed when one party makes a proposal (offer) and the other party signifies their assent to that proposal (acceptance). The Act emphasizes the importance of mutual assent between the parties for the formation of a valid contract.

how electronic offers are presented, interpreted, and accepted in the online environment. Moreover, the global nature of social media platforms introduces considerations of jurisdictional differences. Comparing Tanzanian legal frameworks with international standards, such as the U.S. Uniform Electronic Transactions Act or the EU e-Commerce Directive, can provide insights into best practices and potential areas for harmonization in the regulation of electronic offers.

In conclusion, the issue of offers in electronic transactions on social media, particularly Instagram in Tanzania, involves a multifaceted exploration of how digital content is presented, user interactions are facilitated, and legal frameworks adapt to the details of the online environment. By dissecting these elements, this research aims to contribute to a deeper understanding of the enforceability of electronic contract terms in the evolving landscape of electronic transactions in Tanzania.

2.3.3 Acceptance

Acceptance of an offer in the context of this research is the unequivocal agreement by the offeree to the terms of the offer. For acceptance to be established, it must mirror the terms of the offer, any deviation therefrom may be seen to be a counteroffer. A counteroffer serves the dual purpose of rejecting the original offer to enter into a contract and presenting a new offer with modified terms. By issuing a counteroffer, the original offer is effectively nullified and cannot be accepted anymore. It is important to understand that introducing changes doesn't automatically classify as a counteroffer. Sometimes, these alterations may result in conditional acceptance, subject to the adjusted terms and relevant legal principles.

Alternatively, requests for modifications might not constitute a fresh offer but rather signify ongoing negotiations.⁵⁰

The acceptance must be communicated to the offeror through various methods including through instantaneous communication methods such as phone calls or any other reasonable means (unless specified in the offer) including verbally, in writing or through actions that clearly indicate an agreement to the terms of the offer. If the Online Retailer's website is the invitation to treat, and it is the Customer who makes the offer, the contract is created when the online Retailer accepts the Customer's offer. But how, when and where is the contract accepted? Courts have developed 2 rules for traditional contracts to determine the moment when contract acceptance occurs for contracts that are not made by both parties physically meeting (e.g. in the Shop), but made by Customers sending their offer to the Retailer, as happens in an online purchase.

The rules are the Postal Rule and the Receipt Rule. Under the Postal Rule, the contract is created when the letter accepting the offer is posted by the Customer to the Retailer. The Receipt Rule applies to situations of continuous communications between the parties. Under the Receipt Rule, the contract is only created when acceptance is communicated by the Retailer to the Customer.⁵¹ However, the postal rule is seen to be impractical in this modern age where communication is instantaneous for instance telephone (including mobile phones) faxes and telex, emails and so on and so forth.⁵²

⁵⁰ <https://www.law.cornell.edu/wex/counteroffer>; Counteroffer, Legal Information Institute.

⁵¹ <https://www.batemanbattersby.com.au/e-commerce-online-contracts/>; E-commerce and Online Contracts

⁵² Ihuoma K. Ilobinso, Formation of Electronic Contracts: Melding the Traditional Contract Law with Contemporary Electronic Commerce, *The Commercial and Industrial Law Review*, Vol 2, 2016, p.62

In the case of *Entores Ltd. v Miles Far East Corporation*, Denning L.J stated that “in instantaneous communications, the acceptor will often know that his attempt to communicate was unsuccessful, and is under the duty to ensure that the communication is properly made”.⁵³ In the context of researching the enforceability of electronic contract terms displayed on social media in Tanzania, understanding the details of acceptance is crucial. Acceptance, a key element in contract law, signifies the unequivocal agreement to the terms of an offer. In the digital realm of social media, where interactions are dynamic and instantaneous, the application of acceptance principles warrants careful examination.

Social media platforms often incorporate interactive features that facilitate user engagement and the expression of agreement. For instance, clicking on a "Buy Now" button, responding positively to a post, or actively engaging with content may be interpreted as actions indicative of acceptance. The real-time nature of these interactions introduces complexities, and the challenge lies in distinguishing between expressions of interest, negotiations, and legally binding acceptances. The concept of "clickwrap agreements" is particularly relevant to the acceptance of electronic offers.⁵⁴ When users actively click on an "I agree" button, they are signalling their acceptance of contractual terms. Investigating how these clickwrap mechanisms function within the social media context and whether users fully comprehend the legal implications of their actions is integral to evaluating the enforceability of electronic contracts.⁵⁵

⁵³ Ibid

⁵⁴ The whole concept of “click wrap agreements” will be dealt with in further detail in Chapter 3.

⁵⁵ <https://ironcladapp.com/journal/contract-management/6-components-of-clickwrap-enforceability/>;
6 Components of clickwrap enforceability

Moreover, the principles of acceptance extend to the communication of acceptance. In the digital age, where communication occurs through various channels such as comments, direct messages, or even automated responses, it becomes imperative to assess how these diverse forms of communication manifest acceptance. Consideration should also be given to potential challenges, such as the timing of acceptance and issues related to the reliable recording of digital communications. While Tanzanian case law specific to social media interactions and electronic contracts might be limited, foundational contract law principles remain relevant. The case of *Felthouse v. Bindley* (1862)⁵⁶ serves as a classic example where silence was not considered acceptance. Applying this precedent to the digital landscape, it becomes crucial to discern whether passive actions, such as the mere viewing of a post, can constitute acceptance or if a more affirmative act is required.

In conclusion, exploring the dynamics of acceptance in the realm of social media involves a multifaceted analysis of user interactions, the functionality of platform features, and the legal implications of various forms of communication. As the digital landscape continues to evolve, the adaptation and interpretation of acceptance principles in electronic contracts on social media platforms contribute significantly to the broader understanding of contract law in the digital age.

2.4 Conclusion

In conclusion, this chapter has explored the intricacies surrounding the issue of offers in the context of electronic transactions on social media, with a specific focus on Instagram in Tanzania. The advent of the digital era has brought about a

⁵⁶ *Felthouse v. Bindley* [1862] EWHC CP J35

fundamental change in how transactions commence and contractual agreements are established. The presentation of products, services, and promotional content on Instagram serves as a starting point for user engagements, prompting a detailed examination of whether such displays constitute binding offers or invitations to treat. The exploration of clickwrap agreements has highlighted the interactive features that often accompany electronic transactions. The act of users clicking on buttons to signify acceptance raises pertinent questions about the nature of the initial presentation – whether it serves as a definitive offer or a precursor to the user's expression of intent. Understanding the functionality of these features on Instagram is essential for unravelling the legal complexities inherent in electronic transactions on this popular social media platform.

While Tanzanian case law specific to social media and electronic contracts may be limited, foundational contract law principles from the Tanzanian Contract Act provide a solid framework for analysis. The emphasis on clear communication and mutual assent remains integral to contract formation, guiding the exploration of how electronic offers are manifested, interpreted, and accepted within the digital realm. The global reach of social media platforms necessitates a consideration of jurisdictional differences and international standards. Drawing comparisons with regulations such as the U.S. Uniform Electronic Transactions Act or the EU e-Commerce Directive has broadened our perspective, offering insights into potential best practices and areas for harmonization within the Tanzanian legal landscape.

As we move forward, the subsequent chapters will continue to unveil the complexities surrounding electronic contracts on social media in Tanzania. From the

critical analysis of existing legal frameworks to an exploration of online and offline transactions through Instagram, this research aims to contribute to a comprehensive understanding of the enforceability of electronic contract terms in the ever-evolving digital age. The multifaceted nature of the research will shed light on the challenges, opportunities, and potential areas for improvement in the legal framework governing electronic transactions on social media platforms in Tanzania.

CHAPTER THREE

FORMATION OF ONLINE CONTRACTS

3.1 Introduction

The formation of online contracts represents a fundamental aspect in the dynamic landscape of electronic commerce, reshaping traditional concepts of offer, acceptance, and mutual assent in the digital era. As individuals and businesses increasingly engage in transactions over the internet, the intricacies of contract formation demand a detailed examination, especially within the context of social media platforms like Instagram. This chapter explores into the multifaceted processes and challenges associated with the formation of online contracts, exploring how digital interactions, automated features, and global connectivity intersect to shape the evolution of contractual relationships.

One of the distinctive features of electronic contracts lies in their challenge to the conventional notions of time and place in contract formation. In traditional contracts, where parties typically engage face-to-face and the offer and acceptance occur swiftly, establishing the timing and location of the contract is relatively straightforward. However, complications arise when parties are geographically distant, as seen in e-commerce transactions. In such cases, known as absentee contracts, there exists a temporal gap between the offer and acceptance, posing challenges in pinpointing the precise time and place of contract formation. This issue underscores a key legal concern in electronic transactions, particularly in e-commerce, where clarity regarding the timing and location of contract formation is paramount.⁵⁷

⁵⁷ Ebrahimi, Alireza & Ansarifard, Zahra. (2023). Time and place of forming electronic contracts retrieved from <https://www.researchgate.net/publication/376272349>

The emergence of online platforms as transactional spaces introduces novel elements that challenge established legal doctrines. The unique characteristics of social media platforms, including Instagram's visual-centric nature, interactive features, and real-time engagement, necessitate a re-evaluation of traditional contract formation principles. From the initial presentation of products or services to the finalization of contractual terms through electronic means, each step in the online contract formation process merits careful analysis.

In the interconnected global landscape, jurisdictional considerations and the harmonization of legal frameworks further complicate the formation of online contracts. Understanding how local and international laws converge or diverge in governing electronic transactions is crucial for businesses, users, and legal practitioners alike. This chapter aims to unravel these complexities, providing insights into the challenges and opportunities that arise during the formation of online contracts, with a specific focus on transactions conducted through Instagram in Tanzania.

The exploration begins with an examination of the foundational principles governing contract formation, both within Tanzanian legal frameworks and in comparison, to international standards. Subsequent sections will navigate the unique aspects of online interactions, including the role of automated features, the impact of geographical diversity, and the implications of evolving content on social media platforms. By exploring these aspects, this chapter seeks to contribute to a comprehensive understanding of the formation of online contracts, illuminating the legal landscape and offering valuable insights for practitioners, scholars, and

stakeholders navigating the intricate terrain of electronic commerce.

3.2 Types of Online Contracts

In a nutshell, an online contract is a legally binding agreement between parties which is formed in a digital environment. A wide classification of online contracts includes clicks wrap agreements, shrink-wrap agreements and browse-wrap of web-wrap agreements which we will look at more closely in this section. Other common types of online contracts include terms of service / user agreements, privacy policies, end – user license agreements, online sales contracts, service level agreements, electronic signatures and digital contracts, subscription agreements, partnership agreements and joint ventures, crowdfunding agreements and affiliate agreements. The mentioned online contracts serve to cater for the diverse transactions and interactions occurring digitally through provision of a legal framework for various online activities each contract is uniquely dependent on the type of transaction and the parties involved.⁵⁸ In this study, the online contracts being analysed arise on Instagram as a social media platform.⁵⁹

In the realm of electronic commerce and social media transactions on platforms like Instagram in Tanzania, a diverse array of online contracts emerges, each tailored to accommodate the details of digital interactions. Understanding the types of online contracts is essential for unravelling the complexities associated with contractual relationships forged in the online landscape.

⁵⁸ <https://legalstudymaterial.com/e-contracts/>; E-contracts; Types of E-contracts.

⁵⁹ Sang Bernard Kibet; Online Contracts in Kenya: Challenges the Interent Poses as to Fomation and Formalities of Contracts, 2014, University of Nairobi

One prevalent type of online contract is the clickwrap agreement. This form of contract is characterized by users actively clicking on a button or checkbox to indicate their acceptance of contractual terms.⁶⁰ Frequently employed during online purchases, clickwrap agreements play a significant role in shaping the landscape of electronic transactions on platforms like Instagram. Analysing the nature of clickwrap agreements is crucial for comprehending how users manifest their consent to contractual terms through explicit actions.

Browse wrap agreements, on the other hand, operate more passively. These contracts present terms and conditions to users, typically through hyperlinks or footnotes, without requiring explicit actions like clicking. The enforceability of browse wrap agreements hinges on whether users have reasonable notice of the terms and whether their continued use of the platform implies acceptance. Investigating the prevalence and legal implications of browse wrap agreements within the context of Instagram transactions provides valuable insights into the dynamics of online contracts.⁶¹

Shrink-wrap agreements are common in the context of software or digital goods purchases. Users express their acceptance of terms by breaking the seal or opening the shrink-wrap packaging of a product. In the digital sphere, this concept extends to the use of digital keys or activation processes. Understanding how shrink-wrap agreements operate within the realm of digital transactions is integral to comprehending the diverse methods through which users affirm their consent.

⁶⁰ <https://ironcladapp.com/journal/contract-management/6-components-of-clickwrap-enforceability/>;
6 Components of Clickwrap Enforceability

⁶¹ <https://legalstudymaterial.com/e-contracts/>; E-contracts, Types of E-contracts

Social media platforms like Instagram rely heavily on user-generated content. The use of hashtags, sharing features, and content creation tools may imply a user's agreement to specific terms related to the use and sharing of their content. Investigating the nature and enforceability of user-generated content agreements sheds light on the unique contractual relationships that arise within the social media landscape. For services offered on a subscription basis, subscription agreements govern the ongoing relationship between users and service providers. Whether it's a subscription to premium content, exclusive features, or enhanced services on Instagram, understanding the terms and conditions associated with subscription agreements is crucial for users engaging in recurrent transactions.

The legal validity of e-contracts in Tanzania is derived from Section 5 of the Electronic Transactions Act, which stipulates that those contracts formed electronically, (including their offer and acceptance), shall not be invalidated solely because they were created in electronic form. This provision ensures that e-contracts adhering to the basic requirements of a valid contract and formed electronically are legally enforceable. Additionally, in the case of T. G. World International Ltd., the court held that electronic evidence from WhatsApp messages was admissible in court proceedings as per Section 18 of the Electronic Transactions Act.

As this research unfolds, a comprehensive exploration of these types of online contracts within the specific context of Instagram in Tanzania will provide valuable insights into the legal dynamics and challenges associated with electronic transactions on social media platforms. The evolution of these contract types in response to the dynamics of the digital age contributes to the broader understanding

of the formation and enforcement of online contracts.

3.3 Communication of Offer and Acceptance

On social media platforms such as Instagram the process of offer and acceptance takes a dynamic and visually engaging form. Businesses and individuals utilize Instagram to present products, services. Or opportunities that constitute as offers to the audience. The interactive nature of the platform allows users to express their acceptance of these offers through actions such as liking, commenting or sharing. The challenge lies in navigating the informal nature of social media while ensuring the clarity and specificity of terms, aligning with traditional contract law principles.⁶²

In the digital landscape, the traditional principles of offer and acceptance, fundamental to contract law, undergo a transformative shift, especially in the realm of online transactions. The communication of offer and acceptance on platforms like Instagram involves a dynamic interplay of visual, interactive, and real-time elements.

The digital environment offers a diverse array of methods for businesses to communicate offers to potential consumers. Visual presentations, promotional posts, and interactive features on social media platforms like Instagram serve as virtual shop fronts, constituting an open invitation for users to engage in transactions. The challenge lies in discerning the threshold between preliminary expressions of interest and formal offers in a visually driven and dynamic online marketplace. User engagement on social media platforms is characterized by clicks, comments, and other interactive features. Acceptance of an offer may manifest through actions such

⁶² Faye Fangfei Wang (2008) E-confidence: Offer and acceptance in online contracting, *International Review of Law, Computers & Technology*, 22:3, 271-278, DOI: [10.1080/13600860802496483](https://doi.org/10.1080/13600860802496483)

as clicking "Buy Now," adding items to a cart, or engaging with content through comments and shares. The digital realm's real-time nature and immediacy of interactions add layers of complexity to the communication of acceptance, requiring a detailed understanding of user behavior and intent.

As technology advances, automated features and chatbots play an increasingly prominent role in facilitating communication. Businesses employ automated responses to acknowledge inquiries, confirm orders, and provide information. These automated interactions become integral to the communication of acceptance, prompting examination of their legal implications and alignment with traditional contract law principles. The global nature of online platforms introduces considerations of jurisdictional diversity. Users engaging in online transactions may be dispersed globally, raising questions about the legal recognition and enforcement of contracts across borders. Harmonizing legal frameworks and navigating the challenges posed by international transactions become critical aspects of understanding the communication of offer and acceptance in the online sphere.

Online content, especially on dynamic platforms like Instagram, is subject to frequent updates and changes. Understanding how changes in content, terms, or offers are communicated to users is essential. The fluidity of digital content introduces considerations about the timing and clarity of communications in the context of evolving offers.

In summary, the communication of offer and acceptance in online contracts reflects the dynamic and interactive nature of digital transactions. As users and businesses

navigate the complexities of the online marketplace, comprehending how traditional contract law principles adapt to the digital environment becomes crucial for establishing the enforceability of electronic contract terms.

3.3.1 Communication of Offer

On Instagram, an offer is typically made by the user or business account that presents products, services or terms for transaction. An offer is communicated online through website displays, product listings or through interactive forms. Through website display, an offer can be displayed on a website, specifying the terms and conditions of a transaction, product, or service. Through product listings on e-commerce platforms serve as offers, providing details like price, quantity and specifications and interactive forms on websites can present offers, such as subscription forms or order forms where users provide necessary information to complete a transaction.

In the dynamic sphere of social media, particularly Instagram, the communication of offers undergoes a distinctive transformation. Traditional storefronts are replaced by visually compelling posts, stories, and advertisements that serve as digital showcases for products and services.⁶³ These visual elements, often accompanied by persuasive captions, embody the modern equivalent of an offer—an invitation for users to explore, engage, and potentially enter into contractual agreements. On Instagram, businesses leverage the power of visuals to communicate offers effectively. Each carefully crafted post or story can be viewed as a visual representation of an offer,

⁶³ Nasibu Mramba, Joel Rumanyika, Instagram as a New Marketing Platform for the Informal Traders in Tanzania, IST Africa Conference, 2020

showcasing products or services in an enticing manner. Users scrolling through their feeds encounter these digital displays, initiating a process where the visual content serves as the initial communication of a potential contractual proposition.

The communication of offers is not confined to static visuals; it extends to the platform's interactive features. Users may encounter calls to action, such as "Shop Now" or "Learn More," embedded in posts. Clicking on these features serves as an interactive response that further communicates user interest and, in some instances, may be construed as a preliminary acceptance of an offer. The interactive nature of these features transforms the passive act of viewing into an active engagement with contractual implications. Social media platforms, including Instagram, are often used for time-sensitive promotional campaigns and limited-time offers. The communication of such offers is characterized by a sense of urgency, encouraging users to act swiftly. Understanding how these time-bound offers are presented and communicated is crucial for assessing the enforceability of contracts initiated through these promotional strategies.

Considering the global reach of social media, businesses may tailor their offers based on geographical considerations. Targeted advertising allows for the customization of offers to specific regions or demographics. Analyzing how businesses communicate location-specific offers and the implications for users in different jurisdictions contributes to the understanding of the global dynamics at play. Within the Tanzanian legal framework, transparent and clear communication of offers is paramount for enforceability. The Tanzanian Contract Act emphasizes the importance of clear and unequivocal expressions of intent. Assessing how businesses

on Instagram adhere to these legal principles in the communication of offers is central to evaluating the enforceability of resulting contracts.

In summary, the communication of offers on Instagram within the Tanzanian context involves a sophisticated interplay of visuals, interactive features, and legal considerations. Examining how businesses leverage these elements to convey offers and how users engage with them contributes to a detailed understanding of electronic contract formation in the dynamic landscape of social media.

3.3.2 Communication of Acceptance

Communication of acceptance to the terms of an offer on online contracts is determined according to the unique nature and context of each transaction. Webpage users may be required to show their acceptance through clicking on buttons to either “I accept”, “I agree” or “buy now” and may also indicate their acceptance through the use of electronic signatures, emails to confirm acceptance of terms, creating a user account on a website of platform can also signify acceptance of the website of platform’s terms of service. In the case of browse-wrap agreements, acceptance may be signified through the continuous use of the platform for ongoing services.

In the dynamic and interactive landscape of social media transactions, the communication of acceptance plays a fundamental role, shaping the formation of online contracts. Understanding how users express their acceptance of offers on platforms like Instagram involves exploring various digital interactions, responses, and engagements that signal their commitment to entering into contractual relationships.

On Instagram, user interactions go beyond passive viewing—they involve active engagements with content. Clicking on features such as "Buy Now," adding items to a virtual cart, or engaging with interactive elements within posts can be indicative of user acceptance. These actions serve as digital affirmations of intent, signalling users' willingness to proceed with the terms associated with the presented offers. The communication of acceptance is not always explicit; it can manifest through users' comments, inquiries, or other forms of engagement with posts. Expressions of interest, questions about product details or requests for further information may all contribute to the overall dialogue of acceptance. Analysing the details of indirect forms of acceptance is essential for understanding the diverse ways in which users on Instagram signal their commitment.

Social media platforms operate in real-time, with immediate responses shaping the trajectory of interactions. The timing of user responses is integral to the communication of acceptance, influencing the perceived immediacy and commitment to contractual agreements. Examining how the real-time nature of responses impacts the enforceability of contracts provides valuable insights into the evolving dynamics of online transactions.

The integration of automated features, such as chatbots or automated responses, introduces a layer of complexity to the communication of acceptance. Businesses often employ automated acknowledgments to confirm orders or provide information. Understanding how these automated features align with legal principles and whether they inadvertently contribute to the acceptance of offers is essential for a comprehensive analysis.

Geographical considerations may influence the methods through which users communicate their acceptance. Additionally, user engagement metrics, such as likes, shares, or comments, contribute to the overall understanding of acceptance within the global context of social media. Assessing how geographical diversity and user engagement metrics intersect with the communication of acceptance enriches the analysis of online contract formation.

Within the Tanzanian legal framework, recognizing the legal implications of user actions as expressions of acceptance is crucial. The Tanzanian Contract Act emphasizes the importance of mutual assent. Evaluating the alignment of user interactions with legal principles ensures that the communication of acceptance adheres to established norms, contributing to the enforceability of resulting contracts.

In summary, the communication of acceptance on Instagram involves a dynamic interplay of user actions, responses, and engagements within the Tanzanian legal context. Examining the diverse ways in which users express their commitment provides a detailed understanding of how online contracts are formed and enforced in the dynamic landscape of social media transactions.

3.4 Authentication of Online Contracts

How are online contracts authenticated? Authentication simply means verification or confirmation of accuracy and the identity of the parties to the contract and also ensuring the integrity of the electronic communication; the aim of authentication is to improve the security and dependability of online transactions. There are several

ways by which online contracts may be authenticated; it may be done through use of electronic signatures, digital signatures, use of audit trails, legal frameworks and regulations and biometric authentication to name a few. This section will delve deeper into understanding this further.

In the realm of social media transactions, ensuring the authentication of online contracts is crucial for establishing the validity and enforceability of contractual relationships. Examining how users and businesses authenticate their intent to enter into contracts on platforms like Instagram involves delving into the methods, mechanisms, and legal considerations that underpin the authentication process. Authentication often begins with the establishment of user accounts on social media platforms. Users typically create accounts and profiles, which serve as digital identities. Analyzing how social media platforms authenticate users' identities and the security measures in place is fundamental for understanding the initial steps in the formation of online contracts.

Interactive features, such as the clicking of buttons or checkboxes, play a role in user authentication. Users often signal their acceptance of terms or intent to enter into contracts through these interactive actions. Exploring the legal status of these digital interactions as a form of digital signature is essential for assessing their authenticity and the weight they carry in contract formation. Security measures, including two-factor authentication, contribute to the authentication process. Understanding how platforms implement and enforce these security features adds a layer of assurance to the authentication of user interactions. Assessing the robustness of these measures ensures a secure environment for the formation of online contracts.

In the case of businesses, social media platforms often offer verification processes to authenticate the identity of the entity. A verified badge, for example, signals to users that they are interacting with a legitimate and authenticated business account. Examining how businesses undergo and maintain the verification process contributes to the overall authentication of online contracts. The authentication of online contracts is intertwined with the transparent communication of terms. Businesses are tasked with clearly presenting contractual terms to users. Analyzing how terms are communicated, whether through detailed captions, dedicated pages, or linked documents, ensures that users are well-informed and that their engagements are grounded in transparent and authenticated understanding.

Within the Tanzanian legal framework, recognizing the legal status of digital signatures is paramount. Exploring how Tanzanian law accommodates and acknowledges digital signatures as authentic representations of user intent contributes to understanding the legal standing of authenticated online contracts. Considering the global nature of social media, assessing international standards for authentication and digital signatures contributes to the harmonization of practices. Comparing these standards with Tanzanian legal requirements sheds light on potential areas for alignment and international cooperation in the authentication of online contracts.

In summary, the authentication of online contracts on Instagram within the Tanzanian context involves a multifaceted analysis of user authentication, digital signatures, security measures, and legal recognition. Examining these elements provides insights into the secure and authentic formation of online contracts in the

evolving landscape of social media transactions.

3.5 Conclusion

In conclusion, the third chapter sheds light on the detailed processes involved in the formation of online contracts on Instagram within Tanzania. From the diverse types of contracts to the dynamic communication of offers and acceptances, and the critical role of authentication, the chapter contributes to a comprehensive understanding of electronic commerce in the evolving digital landscape. The insights gained will serve as a foundation for the subsequent chapters, focusing on the enforceability of electronic contract terms.

CHAPTER FOUR

CONTRACTUAL TRANSACTIONS ON INSTAGRAM IN TANZANIA

4.1 Introduction

As the dissertation explores deeper into the intricacies of electronic commerce in the Tanzanian context, Chapter Four sheds light on the specific landscape of contractual transactions conducted on Instagram. This chapter focuses on the application and realization of electronic contract terms within the unique digital environment of Instagram, a prominent social media platform. In the Tanzanian context, where legal frameworks intersect with the global dynamics of social media, understanding the details of contractual transactions on Instagram becomes imperative. The chapter will explore how users and businesses navigate the complexities of contractual engagements, emphasizing the enforcement of electronic contract terms within the bounds of Tanzanian legal structures. By scrutinizing the practicalities and challenges of contractual transactions on this visual-centric platform, the research aims to contribute valuable insights into the evolving landscape of electronic commerce in Tanzania.

4.2 Who Makes an Offer on Instagram?

Instagram is a social networking application designed for users to share and view photographs, particularly those related to photography. Leveraging Instagram for marketing purposes is highly effective due to its visual nature, as images can convey messages more effectively than text alone, as the adage suggests, "a picture is worth a thousand words."⁶⁴ Brands recognize the potential of Instagram marketing due to

⁶⁴ Li, Yiyi & Xie, Ying. (2019). Is a Picture Worth a Thousand Words? An Empirical Study of Image Content

its affordability, widespread accessibility, global audience reach, and the availability of data and analytics for campaign evaluation. With over two billion monthly active users, Instagram boasts significant engagement, with 500 million users interacting with business profiles daily.⁶⁵ Among social media platforms, Instagram stands out for its user-friendly interface and high interactivity, making it an attractive choice for businesses seeking to connect with their target audience.⁶⁶

Within the vibrant digital realm of Instagram, offers manifest through a dynamic process that significantly deviates from traditional storefront presentations. The responsibility of making an offer predominantly falls upon businesses and users who leverage the platform for commercial interactions. Businesses employ Instagram as a virtual showcase, utilizing visually appealing posts, stories, and advertisements to present their products or services. Each carefully crafted visual element serves as a digital representation of an offer, inviting users to explore and engage in potential transactions.

Individual users, often recognized as influencers, entrepreneurs, or freelancers, actively contribute to the diverse landscape of offers on Instagram. By showcasing their skills, services, or collaborations, these users extend invitations for potential contractual agreements. The interactive nature of Instagram allows not only businesses but also individual users to be active participants in the making of offers, fostering a dynamic marketplace where various entities play fundamental roles in shaping the contractual landscape.

and Social Media Engagement. *Journal of Marketing Research*.

⁶⁵ <https://www.statista.com/topics/1882/instagram/#topicOverview> Instagram Statistics and Facts

⁶⁶ Impact of Social Media Marketing on Small Businesses' Sales Performance: A Case of Women Clothing Stores in Nyamagana District, Tanzania Glory Silvano, Dr Crispin Mbogo, *International Journal of Engineering, Business and Management (IJEEM)*, Vol-6, Issue-2, March - April 2022, Pages 70-82

In this visually immersive platform, the initiation of contractual engagements begins with the making of offers. The traditional boundaries between sellers and buyers blur on Instagram, creating a fluid space where both businesses and individual users contribute to the intricate tapestry of offers. Understanding the dynamics of offer-making on this social media platform is crucial for evaluating how contractual transactions unfold, providing valuable insights into the evolving nature of electronic commerce within the Tanzanian context. It's noteworthy that while Instagram serves as a platform for making offers, the actual transaction often takes place offline, directing users to external websites, e-commerce platforms, or specific locations for completing the transaction.

The common scenarios for offer-making encompass e-commerce businesses showcasing products, individual sellers offering various items or services, brands and advertisers promoting products or services with offers, event organizers detailing participation costs and registration, and content creators, artists, and service providers utilizing Instagram to extend their offers. This diversity showcases the platform's role as a dynamic marketplace, where both businesses and individual users actively contribute to the formation of online contracts.

4.3 Who Makes Acceptance on Instagram?

On Instagram, the acceptance of an offer is typically made by the user (offeree) who engages with the content posted by another user of business (offeror). The process is informal and may vary depending on the nature of the interaction. There are some common ways in which acceptance can occur on Instagram such as through likes and comments by users where they express acceptance or approval by liking posts of

leaving comments. While this may not constitute a formal contract acceptance, it signals positive engagement. Another common way acceptance can occur on Instagram is through Direct Messaging (DMs) between the offeror and the offeree especially if the context of business transactions or collaborations initiated on the platform. Sometimes acceptance is communicated through clicking on links if an offer includes a link leading to a website for further engagement or transactions, clicking on that link can signify acceptance of the offer or at least a genuine interest to accept.⁶⁷

On Instagram, the act of acceptance within the context of contractual transactions is equally dynamic and involves various participants in the digital realm. The process of acceptance unfolds as users, both individual and business entities, engage with the offers presented on the platform. Unlike traditional contract formations, where acceptance is often conveyed through explicit actions like signing a document, the digital landscape of Instagram introduces interactive and detailed ways of signaling agreement.

Acceptance on Instagram can be initiated by users who actively engage with the presented offers. This engagement can take various forms, such as clicking on buttons like "Buy Now," adding items to a virtual shopping cart, or participating in interactive features within posts. The real-time nature of the platform enables users to express their acceptance swiftly, contributing to the immediacy and dynamism of online transactions. Moreover, users often communicate acceptance through comments, inquiries, or other forms of engagement with the posts. Expressions of

⁶⁷ Dreyer, A. (2021, August 4). Sign at the DM: The enforceability of text message agreements.

interest, questions about product details, or requests for further information all contribute to the overall dialogue of acceptance. The interactive nature of these engagements allows users to participate actively in the negotiation and acceptance of contractual terms.

Automated features and chatbots, prevalent on Instagram, can also play a role in facilitating the communication of acceptance. Businesses use automated responses to acknowledge inquiries, confirm orders, or provide information. Understanding how these automated features align with legal principles and contribute to the acceptance of offers is essential for a comprehensive analysis within the digital context. Geographical considerations and user engagement metrics further enrich the understanding of acceptance on Instagram. Users engaging in online transactions may be dispersed globally, and businesses may tailor their offers based on geographical considerations. Additionally, user engagement metrics, such as likes, shares, or comments, contribute to the overall assessment of acceptance within the global context of social media.

Within the Tanzanian legal framework, the communication of acceptance on Instagram must align with established legal principles. As stated in previous chapters, the Law of Contract Act emphasizes the importance of mutual assent and clear expressions of intent for a valid contract. Evaluating the alignment of user interactions with legal principles ensures that the communication of acceptance adheres to established norms, contributing to the enforceability of resulting contracts.

In summary, the acceptance of offers on Instagram involves a dynamic interplay of user actions, responses, and engagements within the Tanzanian legal context. Examining the diverse ways in which users express their commitment provides a detailed understanding of how online contracts are formed and enforced in the dynamic landscape of social media transactions.

The offline aspect in the context of Instagram transactions refers to the crucial phase of the contractual process that occurs outside the digital realm of the Instagram platform. While Instagram serves as a dynamic space for making offers, expressing acceptance, and fostering user engagements, the actual completion and execution of the transaction often take place offline. After a user expresses their commitment or acceptance of an offer on Instagram, the subsequent steps to finalize the transaction frequently involve transitioning to other channels or platforms. The offline aspect encompasses activities such as visiting external websites, accessing e-commerce platforms, or engaging in direct communication with the offering party outside the Instagram environment. For instance, when an e-commerce business makes an offer on Instagram showcasing products, users interested in making a purchase are typically redirected to the business's official website or an associated e-commerce platform. The completion of the transaction, including providing payment details, shipping information, and finalizing the purchase, occurs on these external platforms.

Individual sellers, influencers, or service providers who make offers on Instagram may guide users to contact them through direct messages, emails, or external websites for further details and to finalize the terms of the agreement. The

negotiation, customization, and execution of the contract may involve direct communication outside the Instagram platform. In essence, the offline aspect ensures that the legal and practical finalization of the contract adheres to conventional and established methods. It allows for the inclusion of detailed terms and conditions, secure payment gateways, and other formalities that may be better handled on dedicated websites or platforms designed for secure and comprehensive transaction processing.

While Instagram serves as the initial stage for user engagement and commitment expression, the offline component acknowledges the limitations of the platform in facilitating the entire contractual process. Recognizing this offline phase is crucial for a comprehensive understanding of how Instagram transactions seamlessly integrate with established legal and commercial practices beyond the digital confines of the social media platform.

4.4 Emerging Legal Issues

4.4.1 Online Contract Formation and Traditional Legal Principles

In Tanzania, the Electronic Transactions Act provides the legal basis for recognizing electronic transactions and upholding the validity of contracts formed through digital means⁶⁸. This legislative framework aligns with traditional contract law principles, ensuring that online transactions, including those on Instagram, adhere to established legal standards.

⁶⁸ Section 5 and 18 of the Electronic Transactions Act, 2015.

4.4.2 Capacity to Contract and Minor's Rights

In Tanzanian law, the capacity of minors to contract is governed by established legal principles aimed at safeguarding their interests and protecting them from entering into agreements that they may not fully comprehend or be able to fulfill. Firstly, it's essential to define who constitutes a minor and at what age they attain the status of majority. In Tanzania, a minor is generally recognized as an individual under the age of 18 years old. Upon reaching the age of 18, they are deemed to have attained majority and are considered legally competent to enter into contracts.⁶⁹

The overarching principle regarding minors' capacity to contract is that they lack the legal capacity to enter into binding agreements. This general rule is grounded in the recognition that minors may not possess the maturity, understanding, or financial independence necessary to make informed contractual decisions.⁷⁰ However, there are exceptions to this rule, particularly concerning contracts for necessities. Contracts for necessities are those deemed essential for the minor's well-being or suitable to their condition in life, such as food, clothing, shelter, and education. In such cases, minors may enter into contracts, and these contracts are generally binding on them.

Despite the general incapacity of minors to contract, any agreements they do enter into are not automatically void but are instead considered voidable. This means that while the contract is initially binding, the minor has the option to affirm or disaffirm

⁶⁹ The age of majority for Tanzania is 18 years of age. Refer Section 11 and 12 (1) – (3) of the Law of Contract Act. Drunken persons, persons of unsound mind, and minors as a general rule cannot enter into a contract except for necessities.

⁷⁰ <https://mkundilegalservice.blogspot.com/2019/02/law-of-contract-notes-in-tanzania.html>; Law of Contract Notes In Tanzania

the contract upon reaching the age of majority or within a reasonable time thereafter. Parental consent plays a significant role in certain contractual situations involving minors. In cases where parental consent is obtained or where parents act as guardians or trustees for minors, the enforceability and validity of the contract may be influenced by the presence or absence of such consent. Moreover, Tanzanian law provides specific legal protections for minors in contractual matters to ensure their rights are upheld and that they are not taken advantage of in agreements. These protections may include requirements for enhanced disclosure, stricter scrutiny of contractual terms, and avenues for seeking redress in the event of exploitation or unfair treatment.

Overall, understanding the legal framework surrounding minors' capacity to contract is crucial in evaluating the validity and enforceability of contracts involving minors, particularly in the context of online transactions on social media platforms like Instagram. It underscores the need for heightened diligence and adherence to legal requirements to ensure that minors are adequately protected in contractual engagements.

4.4.3 Enforceability of Online Contracts

Ensuring the enforceability of online contracts on Instagram within the Tanzanian legal framework necessitates clear and transparent communication of terms. The challenge lies in presenting comprehensive information in a visually engaging manner, where users have reasonable notice of contractual terms, aligning with traditional principles.

4.4.4 Authentication of Online Contracts

The authentication of online contracts emerges as a crucial issue, involving the establishment and verification of user identities on platforms like Instagram. This includes aspects such as user accounts, interactive features, and security measures. Legal recognition of digital signatures and adherence to authentication standards become fundamental for the validity of contracts.

4.4.5 Global Dynamics and Jurisdictional Challenges

Given the global nature of social media, challenges related to jurisdictional diversity in online contracts must be addressed. Businesses engaging in cross-border transactions on Instagram need to tailor offers and contracts based on geographical considerations. Harmonizing legal frameworks and addressing jurisdictional challenges are essential for a seamless online contractual landscape.

4.4.6 Fluidity of User Roles in Offer and Acceptance

The chapter highlights the evolving roles of businesses and individual users in making offers and expressing acceptance on Instagram. This fluidity challenges traditional distinctions between sellers and buyers, requiring a detailed understanding of how contractual engagements unfold in this dynamic space.

4.4.7 Integration of Automated Features

The use of automated features, such as chatbots and automated responses, introduces legal considerations in the communication of acceptance. Businesses must ensure that automated interactions align with traditional contract law principles and do not inadvertently create contractual obligations.

4.4.8 User-Generated Content and Agreements

The legal implications of user-generated content, including hashtags, sharing features, and content creation tools, add complexity to the online contract landscape. Understanding the nature and enforceability of agreements related to user-generated content on Instagram becomes crucial.

4.4.9 Time-Sensitive Offers and Promotions

Addressing the legal dimensions of time-sensitive offers and promotions on Instagram is paramount. Businesses must carefully structure and communicate limited-time offers, considering the urgency they create, and ensuring that users have a clear understanding of the associated terms and conditions. These emerging legal issues underscore the need for a detailed legal framework that aligns with the evolving dynamics of online transactions on social media platforms, specifically Instagram, within the Tanzanian context. As the digital landscape continues to evolve, addressing these issues becomes paramount for ensuring the efficiency and fairness of contractual engagements in the online sphere.

4.5 Conclusion

Chapter Four explores into the intricate landscape of contractual transactions on Instagram within the Tanzanian context, shedding light on the evolving dynamics of electronic commerce. As the digital realm intersects with legal frameworks, this chapter explores the application and realization of electronic contract terms, emphasizing the unique challenges and opportunities presented by Instagram. The process of making offers on Instagram is dynamic, with businesses and individual users actively participating in shaping the visual-centric marketplace. This platform

serves as a virtual showcase, where visually appealing posts, stories, and advertisements become digital representations of offers, inviting users to engage in potential transactions. The fluidity between sellers and buyers challenges traditional distinctions, underscoring the platform's role as a dynamic marketplace.

Acceptance on Instagram involves a diverse range of user actions, responses, and engagements. Users express their commitment through likes, comments, and interactions with the presented offers. The digital landscape introduces interactive and detailed ways of signaling agreement, encompassing both formal and informal expressions of acceptance. Crucially, the offline aspect of Instagram transactions recognizes the platform's initial role in user engagement and commitment expression. While Instagram facilitates the offer-making and acceptance processes, the actual finalization of transactions often occurs offline. Users are directed to external websites, e-commerce platforms, or specific communication channels for the completion and execution of the contract, aligning with established legal and commercial practices.

The chapter concludes by highlighting emerging legal issues inherent in contractual transactions on Instagram in Tanzania. From reconciling traditional contract law principles to addressing global dynamics, jurisdictional challenges, and the integration of automated features, a detailed legal framework is essential. These issues underscore the need for legal norms that adapt to the evolving dynamics of online transactions, ensuring fairness and efficiency within the Tanzanian context. In summary, Chapter Four contributes valuable insights into the complexities of contractual engagements on Instagram, offering a detailed understanding of the

evolving nature of electronic commerce in Tanzania. As the digital landscape continues to evolve, the analysis of these issues provides a foundation for shaping a legal framework that aligns with the dynamic dynamics of social media transactions.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

This dissertation embarked on a comprehensive exploration of contractual transactions on Instagram within the Tanzanian context, unravelling the intricacies of electronic commerce in the digital age. The evolution of social media platforms, particularly Instagram, has created a dynamic landscape where businesses and individual users actively participate in the formation and execution of online contracts. As this study expounds, the intersection of digital interactions and traditional legal frameworks presents both challenges and opportunities for the Tanzanian legal landscape.

The journey through the chapters has been a journey of discovery, navigating the multifaceted aspects of offer-making, acceptance, and the offline dimension of contractual transactions on Instagram. From the visually immersive process of making offers to the diverse ways in which users' express acceptance, the dissertation has provided a detailed understanding of how contractual engagements unfold in this dynamic space. The interplay between the digital and offline aspects of transactions has been a focal point, emphasizing the need for a holistic comprehension of the contractual process.

The analysis of data within Chapter Four brought to light several emerging legal issues that demand attention in the realm of contractual transactions on Instagram in Tanzania. From reconciling traditional legal principles with the dynamic nature of Instagram transactions to addressing jurisdictional challenges and the integration of

automated features, these issues underscore the evolving landscape of online commerce. The need for a detailed legal framework that adapts to the unique characteristics of Instagram transactions is paramount.

In conclusion, this dissertation has provided a holistic examination of contractual transactions on Instagram in Tanzania. The synthesis of theoretical frameworks, analysis, and legal considerations has illuminated the complexities of this evolving landscape. As businesses and users continue to forge connections in the digital sphere, the legal framework must evolve to safeguard rights, ensure fairness, and foster trust in online transactions. The digital era demands a flexible and adaptive legal infrastructure that harmonizes traditional principles with the dynamic nature of platforms like Instagram. This study contributes to the ongoing discourse on electronic commerce in Tanzania, offering insights that can inform legislative reforms, user practices, and the overall trajectory of online transactions.

As we bid farewell to the pages of this dissertation, the exploration of contractual transactions on Instagram invites further inquiry and continuous dialogue. The digital landscape is ever-changing, and the legal framework must evolve in tandem to create a conducive environment for electronic commerce. In the spirit of progress and adaptability, this dissertation lays the groundwork for future research, policymaking, and the dynamic evolution of contractual engagements on Instagram in Tanzania.

5.2 Recommendations

Based on the analysis and findings presented in the dissertation, here are some recommendations:

5.2.1 Legislative Adaptation

Consider amending existing legislation or introducing new laws to explicitly address the challenges and opportunities presented by social media platforms like Instagram. This includes specific provisions for online contract formation, user rights, and the recognition of digital signatures within the context of social media platforms like Instagram.

5.2.2 User Education

Develop initiatives to educate Instagram users, both businesses and individuals, about the legal implications of their actions on the platform. This includes understanding the enforceability of online contracts, the significance of clear communication, and the importance of consent in data processing.

5.2.3 Platform Guidelines

Collaborate with social media platforms, including Instagram, to establish clear guidelines and policies regarding contractual transactions. This can include standardized terms for user-generated content, disclosure requirements for influencers, and mechanisms for dispute resolution.

5.2.4 Dispute Resolution Mechanisms

Implement effective mechanisms for resolving disputes arising from contractual transactions on Instagram. This may involve creating specialized online dispute resolution platforms or integrating existing alternative dispute resolution methods with the digital landscape.

5.2.5 International Collaboration

Given the global nature of social media, collaborate with international stakeholders to harmonize legal frameworks related to online transactions. Establishing cross-border standards can facilitate smoother transactions and enhance the legal certainty of contractual engagements.

5.2.6 Continuous Monitoring

Regularly review and adapt legal frameworks to keep pace with the evolving nature of digital transactions. This includes monitoring technological advancements, user behaviours, and emerging legal challenges to ensure that regulations remain relevant and effective. In light of the findings and emerging legal issues, several recommendations can guide the development of a robust legal framework for contractual transactions on Instagram in Tanzania.

These recommendations aim to address the identified legal issues and contribute to the development of a robust legal framework for contractual transactions on Instagram in Tanzania. They encompass legal, educational, and collaborative approaches to create an environment that fosters fair, transparent, and secure online transactions.

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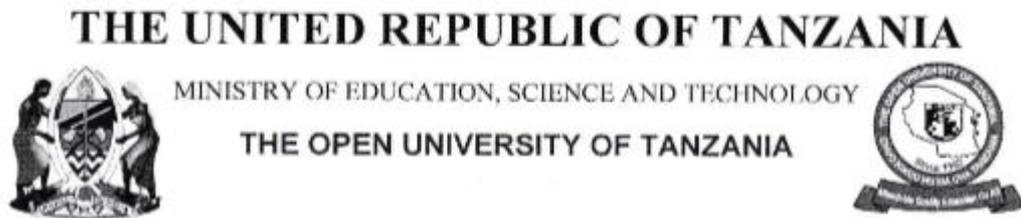
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APPENDICES

Appendix 1: Clearance Letter



Ref. No OUT/PG201800896

16th November, 2023

To Whom It May Concern,

RE: RESEARCH CLEARANCE FOR MS. ENGERASIA ALBERT MONGI, REG NO: PG201800896

2. The Open University of Tanzania was established by an Act of Parliament No. 17 of 1992, which became operational on the 1st March 1993 by public notice No.55 in the official Gazette. The Act was however replaced by the Open University of Tanzania Charter of 2005, which became operational on 1st January 2007. In line with the Charter, the Open University of Tanzania mission is to generate and apply knowledge through research.

3. To facilitate and to simplify research process therefore, the act empowers the Vice Chancellor of the Open University of Tanzania to issue research clearance, on behalf of the Government of Tanzania and Tanzania Commission for Science and Technology, to both its staff and students who are doing research in Tanzania. With this brief background, the purpose of this letter is to introduce to you **Ms. Engarasia Albert Mongi Reg. No (PG201800896)**, pursuing **Master of Law in Information and Communication Technology (LLMICTL)**. We here by grant this clearance to conduct a research titled **"Enforceability of Electronic Contract Terms Displayed on Social Media in Tanzania: A Critical Analysis of the existing Tanzanian Legal Framework for Online and Offline Transactions Performance through Instagram"**. She will collect the documentary review from 17th November 2023 to 15th January 2024.

4. In case you need any further information, kindly do not hesitate to contact the Deputy Vice Chancellor (Academic) of the Open University of Tanzania, P.O.Box 23409, Dar es Salaam. Tel: 022-2-2668820. We lastly thank you in advance for your assumed cooperation and facilitation of this research academic activity.

Yours sincerely,

THE OPEN UNIVERSITY OF TANZANIA



Gwahula Raphael Kimamala

For: **VICE CHANCELLOR**

Appendix II: Manuscript



THE AFRICAN REVIEW
**A JOURNAL OF AFRICAN POLITICS, DEVELOPMENT
 AND INTERNATIONAL AFFAIRS**



EDITORIAL DESK

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 Website: brill.com/tare

TARE-13460

Dear,

Engerasia Albert Mongi,
 The Open University of Tanzania

**Ref: Enforceability of Electronic Contract Terms Displayed on Social Media in Tanzania:
 A Critical Analysis of the Existing Legal Framework**

I am pleased to inform you that your article entitled "*Enforceability of Electronic Contract Terms Displayed on Social Media in Tanzania: A Critical Analysis of the Existing Legal Framework*", which was submitted a while ago, has now been accepted for publication in The African Review. Your manuscript will soon be transferred to the publisher for further processing. Should the production editor have any questions, you will, of course, be contacted. Otherwise, you should receive proof of your article in due course.

Thank you for choosing "The African Review" to publish your research.

With kind regards,

Prof. Dr. Alexander Makulilo
 Editor-in-Chief
 The African Review