**Case studies & Practical exercises on IT Law**

**1.**John from the UK ordered 2 computers for his two children through the website of “Infotech” which displays and advertises computer equipment and software. The latter makes regularly promotional offers as well. Just before placing his order and clicking OK, a message appears on the screen saying “delivery will take place within 8 days from the day following customer’s order submission and the sale is considered concluded once the express confirmation of the receipt of the customer’s order has been communicated by the distributor”. John then validates his order by clicking OK.

On the day after he had placed his order and given that he had not received confirmation of receipt of his order, he visited websites selling computers and finally found on a competitor’s website “Flashdiscount” a very interesting offer- valid only for 48 hours- of computers of identical reference. John wrote an email without undue delay to Infotech in order to cancel his order.

Then he placed another order of 2 computers on the competitor’s website “Flashdiscount”.

However, in the meantime and despite his email cancelling the order he received the computers by Infotech within the time frame of 8 days. To his surprise, the performance of these computers’ processor was much slower than he expected.

Two days after the submission of the second order, he received by Flashdiscount the 2 computers but only one corresponded to his order, as the other one had less available memory than the one advertised on the website.

John is not at all satisfied with the delivered goods. He turns to you for legal advice. Have the contracts been concluded? Do any other legal issues arise?

**Answer**

**Two electronic transactions/contracts of sale: Validity is to be examined.**

In principle, a valid contractis formed where there is an offer, an acceptance, consideration (concept used under UK law corresponding to an exchange of value) and an intention to create legal relations. An offer is distinguished from an "invitation to treat" because the latter lacks that intention to be legally bound. The general principle is that adverts or displays of products do not constitute an offer.  Instead, they are said to be "invitations to treat". An invitation to treat precedes an offer in the contract formation process; it is an invitation to make an offer.  By contrast, an offer is capable of binding the offeree if it is accepted. Generally, websites used to display and market products and services communicate an invitation to treat, not an offer.

**As for the first contract:** The relevant pages of Infotech’s website are probably set up as an invitation to treat. By filling out the order form and giving credit card information, John responded by making an offer to buy the two computers. An offer is a statement of the terms which the client (the offeror) is prepared to be contractually bound. The offer must be complete, specific, and capable of being accepted. It must include the fundamental terms of the agreement with the intention that no further negotiations are to take place. A fully binding contract is only formed if an offer is accepted. Acceptance does not take place until communicated to the client making the offer. Communication of acceptance is the moment when the contract is formed. The Web site also specified clearly when acceptance would occur🡺*if express confirmation of the receipt of the customer’s order is communicated by the distributor.*

John never received such a confirmation and consequently the contract was not formed since the offer was not accepted. Furthermore, he found an interesting offer on another e-shop where he purchased two computers. In the meantime, he wrote an email to Infotech cancelling his order.

Generally, delivery of the items would be considered as an acceptance by the retailer but in our case, it was explicitly mentioned on the website while John was submitting the order that the acceptance would occur *if express confirmation of the receipt of the customer’s order was communicated by the distributor.* Additionally, John had already cancelled the order and within a reasonable time. In fact, he revoked his offer. Thus, he should have refused to receive the items.

If we make a hypothetical scenario that the contract is valid and the items were delivered within the promised time frame, we should then examine the conformity of the goods. Goods are called non-conforming when the delivered goods are not the ones specified in the purchase contract. The expression *“the performance of these computers’ processor was much slower than he expected”* doesn’t make clear whether his expectation was based on the characteristics of the products determined in the contract or it was solely his personal and subjective impression. If it was his personal impression he cannot claim that the products are defective or non-conforming. However, he is always entitled to return them within 14 days upon receipt (cooling off period).

**As for the second contract:** John purchased two computers on the website of “Flashdiscount”. There is no detailed description about the contracting process. We would consider the contract as valid since his order was accepted and the items were delivered on time. However, the memory of one computer was non-conforming to what it was specified in the contract. John has the right to return the item within 30 days and get a full refund under the UK law.

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**2.** On June 10 2016, Mary and Paul residents of the UK purchased through a website which sells electronic and domestic appliances a washing machine for their new home as they had moved recently. Before placing their order, the service provider announced a specified delivery time of 15 working days after the order being placed. It was the faster delivery time comparing to competitors’ websites that convinced them to place the order as they were planning to go on long term holidays abroad on 17th of July. Indeed, they placed the order and they paid for the item.

However, the service provider failed to deliver the washing machine within the specified time frame. Mary and Paul made a complaint to the service provider about the breach of the contract requiring a full refund. The retailer informed them that he had handed over the item for delivery in time to the transport company which he considers responsible for the delay. Additionally, the retailer invoked a legally binding term given after the contract is made stating that the transport company would be liable for any damage and loss of the item or any delivery delay.

Mary and Paul are really annoyed with the retailer’s insolvency and they insist on asking for their money back. Are they entitled to do so? What are the steps to follow? Justify your answer.

**Answer**

-Formation of an online contract of sale with delivery time fixed in the contract 15 working days after the order was placed.

-The item was not delivered within the specified period and the couple invoked breach of the contract requiring a full refund.

-Where delivery within the agreed delivery period is essential and the trader is aware of that but he fails to deliver the goods at the time agreed, the consumer shall be entitled to terminate the contract immediately and get a full refund. The couple have the right to terminate the contract if they have informed the retailer about their leaving on holidays.

-The trader is responsible for the condition or for any delay of the goods from the time of dispatch and until the recipient receives them. The retailer cannot invoke liability of the transport company and certainly he cannot consider as valid and legally binding any term given after the contract was made.

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**3.** Carla bought a hairdryer with a 6-month seller's guarantee. When it broke after 8 months, she took it back to the shop. The shop assistant told her that her guarantee had run out, and that she was not entitled to a refund. What are the legal rights of Carla? Shall she return the item and ask for a refund?

**Answer**

Carla bought a hairdryer which proved to be defective 8 months later. Under EU rules, a consumer has a right to a minimum **2-year legal guarantee** at no cost which starts as soon as he receives his goods. A trader must repair or replace free of charge, reduce the price, or give the consumer a refund if goods they bought turn out to be faulty or do not look or work as advertised. Generally, the consumer will only be able to ask for a partial or full refund when it is not possible to repair or replace the good. Carla has the right to return the faulty item as the six-month guarantee is commercial given by the trader. The commercial guarantee does not replace the two-year legal guarantee. Carla was given a six-month commercial guarantee when she bought the product but she can still use the two-year legal guarantee to claim redress from the trader after more than six months, but still within two years of purchase.

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**4.** George, as he is very busy lately, decided to do his shopping through internet. He visited an EU online shopping site and he purchased a CD, a sandwich maker, a bunch of roses, a digital camera, a plane ticket to Singapore on a specific date, a backpack, a coffee table for his living room and an e-book.

After he has placed the order and within reasonable time the items are delivered to him. Two days after receipt of the items George changes his mind and wants to cancel the sale and return all the items. The retailer refuses to get back the items with the argument that George hasn’t justified sufficiently his decision to cancel the sale. Additionally, the retailer insists on saying that some items due to their nature cannot be returned. Is George entitled to cancel the sale of all items and get a full refund without presenting any reason under EU law?

**Answer**

Under EU law, a “cooling off” period of 14 calendar days is provided during which a consumer can cancel a contract (i.e. a purchase) concluded online, by phone or mail order for any reason and without justification. The right to cancel a purchase of goods starts the moment the consumer places the order and ends 14 days from the day after the consumer has received the goods. However, the 14-day "cooling off" period does not apply to leisure activities to be provided on a specific date such as plane tickets, to perishable items such as flowers or to sealed data carriers such as cds which the consumer has unsealed upon receipt. Consequently, George cannot return the flowers, the plane ticket, and the cd if he has broken its seal. As far as the e-book concerns, it is a digital content product accessed through downloading. Generally, retailers mustn’t supply digital content within the 14-day cancellation period, unless the consumer has given their express consent to this happening. George loses his right to cancel this purchase if he has started downloading.

The trader must inform the consumer that the cooling off period does not apply to the above products.

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**5.** David gets lots of commercial emails every week by “Electron” a business which promotes and sells electronic devices. He is really annoyed as he has his inbox filled with advertisements which do not interest him and without his consent. In fact, David’s email address seems to have been added to the mailing list of this company.

# Electron claims to be legitimate marketer since it includes a disclaimer in the very front of the message, telling the user how to unsubscribe from this mailing list. However, David considers these emails as spams and asks for your legal advice.

# Is it spam if sent in an opt-out manner? Would the reply be different if business-sender and consumer-recipient were based in the US and were subject to the US anti-spam law?

**Answer**

Spam is any email sent for commercial purposes without permission from the receiver. So, direct marketing communications may be sent only to recipients who have given their prior consent, except where there is a clearly defined customer relationship. Marketing text messages can be sent without prior consent by firms who obtained your email address when you bought something from them and are advertising similar products or services. However, these marketing text messages must abide by strict rules regarding their content and provide you with the opportunity to opt out.

An "opt-in" generally refers to a tick box which, if filled in by the user, indicates positively that they would like to be contacted by a particular form of communication. Unless the user ticks the box then the company cannot use their details for the form of marketing list. In our case, David receives unsolicited emails which are spams. There is no evidence in the case study that David had given his details to this firm in the event of a prior business relationship. Under EU law, sending marketing emails in an opt-out manner without the individual has given his prior consent is not permitted.

In the USA, the CAN-SPAM Act allows direct marketing email messages to be sent to anyone, without permission, until the recipient explicitly requests that they cease (opt-out).

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**6.** Robert, resident of the UK, purchased a crepe maker on an e-shop based in France. He received the item a week after placing his order. Though, 25 days later he changed his mind and he attempted to cancel the sale and return the crepe maker unused and in perfect condition asking for full refund. The online trader refused to satisfy his request saying that the cancellation period of 14 days has expired and consequently Robert was no longer entitled to cancel the sale. Robert was not aware of the cooling off period of 14 days and insists on his decision to cancel the sale. What would you advise him?

**Answer**

Under EU rules, a consumer who has purchased an item online, over the phone or by mail gets a minimum 14-day “cooling-off period” to cancel the purchase and get a full refund. Sellers must give the consumers certain information when they buy something without seeing it in person. This includes their business address and phone number, and details of the cancelation right. If the consumer didn’t get this in writing (they’re allowed to send it by email) then the cooling off period is increased even further, to a year and 14 days. If Robert claims that he was not properly informed of his right to cancel by the retailer, he has a period of one year to cancel the transaction.

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**7.** Jeremy has wanted for a long time to purchase a new watch. He finally found one conform to his needs and at a reasonable price on a website. He submitted the order by clicking OK. To his unpleasant surprise, he realized that he had mistakenly added two watches instead of one in his shopping basket when placing his order and his credit card was overcharged with an amount that corresponded to the price of these two identical watches that he didn’t have the means to correct. Furthermore, he was even charged for an extended warranty that it had been added into his basket without his knowledge.

What are the legal issues that arise? What legal advice would you give to Jeremy?

If the dispute arisen between Jeremy and the online retailer is not resolved through extra judicial means and in a friendly manner, which law is applicable and which courts will be competent to hear the legal dispute given that the parties have not determined the applicable law and the competent courts in the contract?

**Answer**

Article 11(2) of the E-commerce Directive stipulates that the service provider should make available to the recipient of the service appropriate, effective, and accessible technical means allowing him to identify and correct input errors, prior to the placing of the order. In practice, the article refers to the double-click requirement which is a second page or confirmation window presenting an overview of what has been ordered, and allowing the identification and correction of input errors before sending the order to the service provider. It requires the customer to confirm that input by clicking once again on “OK” or a similar button.

Jeremy was not given the appropriate technical means by the service provider to correct his input error and thus he has the right to cancel in part or in whole the transaction and get a full or partial refund.

Moreover, additional payments as default option in the form of pre-ticked boxes are no longer permitted. Jeremy was charged for an extended warranty that it had been added into his basket without his knowledge. Traders will need the active consent of the consumer for all payments. Consumers will not be liable for costs which they have not been told, pre-contract, that they must bear. Jeremy has the right to get a refund corresponding to this unwanted charge or even cancel the transaction in whole.

**Regarding the applicable law**: If the trader carries out his activities in the country of the consumer's habitual residence or if he directs such activities to that country or to several countries including that country, **the law applicable to the contract is that of the country in which the consumer is habitually resident.** Consequently, the law which applies and the competent courts are the ones of the country where Jeremy has its residence.