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The Effectiveness of Alternative Dispute Resolution Mechanisms in Electronic Commerce Disputes.

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Abstract: The heavy reliance of electronic communication tools to conduct businesses across the world has facilitated business transactions and other related aspects of business. An evaluation on the effectiveness of resolving e-commerce disputes by alternative dispute resolution methods (ADR) is dwelled upon in this article. There are many problems associated by relying on the traditional adjudication processes in courts to resolve e-commerce transaction disputes amongst which are; high cost, waste of time, corruption and jurisdictional problems. Disputes arising from e-commerce transaction are most often complicated to be resolved by courts based on this. This article raises questions on the effectiveness of using ADR mechanisms to resolve such disputes and shows its advantages. It also raises questions on the effectiveness of using the normal courts processes. The article is timely because of the heavy reliance nowadays on e-commerce and the frequency of disputes arising from such. The methodology used is qualitative with the use of the doctrinal research methods. The findings of this research is beneficial to the business world, business persons, those charged with conducting ADR and students of business and commercial law. Its findings reveal that processes like arbitration, mediation and online dispute resolution are more effective and accepted by contending parties in resolving their disputes as opposed to litigation. It is therefore recommended that e-disputants should use the opportunities and tools provided under ADR and Online dispute resolution (ODR) to resolve their disputes. That the ODR framework and guidelines should be properly established as a dispute resolution mechanism with worldwide recognition. It is also recommended that reciprocity amongst states should be encouraged in solving e-commerce transactions disputes. ADR methods being more effective in resolving e-commerce disputes, the education community is encouraged to incorporate e-commerce dispute settlement courses in their syllabuses with continuous training on the topic. That countries should encourage reciprocity to easily recognize and enforce ADR and ODR decisions.

Keywords: Effectiveness, Dispute Resolution, e- commerce, Transactions

I. **Introduction**

Electronic commerce (e-commerce) consists of buying and selling goods and services through electronic systems such as the internet and other computer networks.[1] The magnitude of trade conducted electronically nowadays has exponentially grown due to widespread internet usage in the domains of electronic funds transfer, supply chain management, internet marketing and online shopping. Companies like Amazon, eBay, Alibaba and Temu are the world's leading companies on e-commerce transactions.[2] E-commerce transactions have dominated sales and purchases since 1990 after Tim Berners-Lee invented the world wide web (www) browser. He transformed an academic telecommunication network into a worldwide communication system that is today called the internet. But immediately after his invention, commercial transactions on the internet were strictly prohibited until 1991.[3] By the end of 2000, many European and American business companies started offering their services through the world wide web and people began to associate the word "e-commerce" with the ability to purchase various goods through the Internet using secured protocols and electronic payment services.[4] E-commerce transactions like other conventional commercial transactions also suffer from unforeseen circumstances that may lead to disagreements and conflicts. Most of these conflicts arise between parties who reside in different areas of the world and may be governed by different types of laws.[5] It is for this reason that the world is moving towards international co-operation to resolve international commercial disputes. This has been achieved by enacting legislation that can be useful in resolving potential disputes that may arise under e-commerce transactions.[6] Early examples of legislation in this field are; the Bern convention,[7] the Paris Convention that led to national statutes for most industrial property rights by trying to create a basic level of uniformity, the Organization for the Harmonization of Business law in Africa (OHADA) established in 1993 at Port Louis in Mauritius.[8] Under the Berne Convention for instance, nation states enact

[1] See The European Union Electronic Commerce Directives of 2000/2001.

[2] Originally, electronic commerce was identified as the facilitation of commercial transactions electronically, using technology such as Electronic Data Interchange (EDI) and Electronic Funds Transfer (EFT). These were both introduced in the late 1970s, allowing businesses to send commercial documents like purchase orders or invoices electronically. The growth and acceptance of credit cards, automated teller machines (ATM) and telephone banking in the 1980s were also forms of electronic commerce.

[3] Kelly K., ''We Are the Web Wired magazine'' Number 13 (2005).

[4] Although the Internet became popular worldwide around 1994 when the first internet online shopping started, it took about five years to introduce

[5] The main purpose of e-commerce is to connect people and businesses across the world to reduce cost and for people to carryout their businesses within a short time frame irrespective of the distances.

[6] E- commerce transactions are unique and most of the litigation procedures sort to be used by these conventions may not work considering the swift nature of e-commerce transactions.

[7] The Bern convention of 1886 for copy right was formalised in the Paris Convention of 1983 (for industrial property rights)

[8] The OHADA treaty provides ways to resolve commercial disputes though litigation and ADRs but is generally silent on e-commerce transactions.

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copyright statutes and courts enforce legal rights of authors and publishers who are nationals of signatory countries. Also, the World Intellectual Property Organization treaty (WIPO)[9] works to promote and harmonize intellectual property (IP) law. The European Union and North American Free Trade Area (NAFTA) aided the harmonization of inter-country laws to promote effective competition.

These trade areas can ultimately apply trade sanctions and fines on offending national governments when they do not observe the law. Other examples are the Trade-related Intellectual Properties (TRIPS), the General Agreement on Tariffs and Trade (GATT) which started in 1986 and qualified electronic data as intangible goods[10] and services alongside primary and manufactured goods. It can be observed that most of these agreements especially those dwelling on copyrights and other IP laws have become part of international trade and are regulated by the World Trade Organization (WTO) that has considerable world-wide trade sanctions.

The legal frameworks as seen above suggests that they came into existence because of the plurality of national legal systems with different laws that may be applied to citizens of different countries within the framework of similar transactions. The trans-border nature of data distribution over the internet and the huge content of telematics that go across international boundaries with different legal systems makes it difficult to rely only on adjudication to resolve e-commerce transaction disputes. This is because countries prefer to secure and protect the interest of their citizens in international commercial transactions.[11] This is further exacerbated by different levels of development. The Legislatures of different countries may also fail to reciprocate their laws in order to effectively resolve e-commerce related disputes on the basis of equality.[12] As such, Lawrence Lessig clearly puts it that, ''…the invisible hand of cyberspace is building an architecture that is quite the opposite of what was at cyberspace's birth. The invisible hand, through commerce is constructing an architecture that perfects control, an architecture that makes possible highly efficient regulation. In real space we recognize how laws regulate through constitution, statutes and other legal codes. In cyberspace we must understand how codes regulate, how the software and hardware that make cyberspace regulate cyberspace as it is.[13] He further emphasized that code is law. This code presents the greatest threat to liberal ideals as well as its greatest promise. We can build, or architect, or code cyberspace to protect values that we believe are fundamental, or we can build, or architect, or code cyberspace to allow those values to disappear.''[14] This implies that the dynamism of information technology makes it difficult to rely on the code i.e., statutes to resolve conflicts in cyberspace that mostly involves e-commerce. This is arguably so too because such will only lead to a conflict of the choice of law due to the plurality of legal regimes and vast territorial geographical distances that e-commerce transactions cover. This invariably means that, remedies may be easily available under extraterritorial forms of alternative dispute resolution (ADR) methods.

Statement of the problem.

Assuming that the main reason why many people opt for e-commerce in conducting business is because of the speed in communication and rapid turnover, so too, the risk of encountering legal problems may occur. Resolving ensuing disputes by going through the normal lengthy court processes will overwhelm this assumption and will not be profitable to business counterparts, entities and customers. A problem that may arise is for instance the situation where a dispute may contain foreign elements. The procedure is to first go through the normal court procedures to determine the competent jurisdiction under the rules of private international law. Also, the recognition and enforcement of court decisions may have their limitations in their applicability in different parts of the world. Another setback in using the normal courts will be different conducts of proceedings around the world that may not be welcomed by all.[15] Litigation can further lead to some major problems which include the inadequacy of current private international law when applied to a non-territorial internet, courts may have a problem to reconcile cyberspace's nature with the traditional competent jurisdiction and choice of law concept of territoriality. The second problem is the incapability and unwillingness of courts to spend time to keep updates on the changes in different technologies and processes.[16] The third and fourth problems relate to cost and time. E-commerce disputants experiences are that court litigation costs are very high with unreasonable delays. In other words, the way national courts work sometimes lack the flexibility, rapidity and the specialization demanded in dealing with cyberspace related cases.[17] But although alternative dispute resolution methods may be good in resolving e-commerce transaction disputes, it may also be problematic to recognize and enforce decisions taken under the different alternative dispute resolution (ADR) mechanisms.

Research Questions:

Based on the above problems identified, the following questions are raised;

[9] The World Intellectual Property Organisation (WIPO) was created as a UN world-wide policy forum works to promote harmonization of all IP law

[10] Electronic data is now considered tangible

[11] This leads to a dichotomy in the application of legal rules in cyberspace.

[12] There is also a constrain as regards the trans-border nature of data circulation and the main problem here is that criminal law provision on computer crime is not sufficient. The content of telematics is so large to an extent that it cannot be monitored by governments and hence will lead to piracy crimes. The Computer Crime Act has come in place to offer solutions but still yet it still has its shortcomings. The OECD treaty too is worth mentioning here. Decisions made in this regard are not binding on the judiciary hence making the judicial systems to reach differentiated decisions on cases that might have similar facts.

[13] This aspect aligns with the positivist school of thought.

[14] Lawrence Lessig, *Code and other laws in Cyberspace*, Basic Books, 1999 p.6.

[15] Justice may not be done at all instances. Not all the parties may be satisfied with the applicable laws of that jurisdiction but at the same time expected to abide by the decision of such courts. This may further lead to lengthy appeal procedures.

[16] This represents the biggest obstacle to the development appropriate (specialized) skills for the settlement of e-commerce disputes

[17] This provokes resistance and the risk of court litigation.

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Can disputes arising from e-commerce transactions be effectively resolved by using the normal court processes?

To what extent are alternative dispute resolution methods effective in resolving e-commerce transaction disputes?

Does using alternative dispute resolution methods lead to a reduction of cost in resolving e-commerce disputes?

Can decisions taken under alternative dispute resolution methods be effectively enforced?

What are the recommendations that can be made to effectively resolve e-commerce disputes?

Objectives

The objectives of this article are;

To investigate the effectiveness of ARDs in resolving e-commerce transaction disputes as opposed to the traditional adjudication court processes.

To evaluate the cost and benefits of using alternative dispute resolution methods in resolving e-commerce disputes.

To examine whether decisions taken under alternative dispute resolution methods can be effectively enforced.

To make recommendations that can be used to effectively resolve e-commerce disputes.

II. Methodology

The research methodology adopted is qualitative. In this light, it involves analysing related content and using same to evaluate the resolution of e-commerce transaction disputes. It uses primary and secondary data in the relevant domain and adopts the doctrinal method. Primary sources include textbooks while secondary sources are journal articles, legislation and reports.

Justification

An article on resolving disputes in e-commerce transactions by using alternative dispute resolution (ADRs) methods is timely because of the rate at which businesses nowadays tend to rely on information communication technologies (ICTs) to carry out their business. There is no gainsaying that the complex nature of these businesses concluded online, may lead to a lot of frustration when disputes arise. There are numerous cases nowadays concerning e-commerce. Therefore, it is imperative to embark on the best ways to resolve ensuing disputes in the subject matter. This research is carried out at a time when there is a high level of internet proliferation with a large portion of commercial transactions relied upon and carried out via the internet under e-commerce. The differences and plurality of legislations in different countries may under e-commerce transactions lead to discrepancies and delays in resolving e-commerce disputes thereby challenging the intentions of parties to opt for e-commerce transactions. The findings of this research is needed at this time because of the current trends in globalizations and e-commerce disputants may not rely only on the traditional court litigation processes to resolve ensuing disputes since such disputes may have foreign elements that raise issues of jurisdiction.

Significance

This article draws attention to the importance of using ADRs to resolve e-commerce transaction disputes which may be otherwise difficult to resolve through litigation in normal court processes. Its significance also lies in the fact that it highlights the weaknesses of going through the normal courts and the advantages of using ADRs. Its findings benefits the global business community by showing the extent that e-commerce transaction disputes can be resolved with the use of Alternative dispute resolution methods. It adds to literature in the relevant domain and makes recommendations that can lead to further research in the area. Scholars, commercial law students, business institutions, lawyers and the judiciary will have a better understanding on how to resolve e-commerce disputes through ADR methods as opposed to court litigation.

Theoretical and conceptual framework

This article is underpinned by some theories.

The Theory of Justice as Fairness

Some contemporary philosophers under this theory contributed in the elaboration of ways to do justice when conflicts arise. John Rawls[18] from an egalitarian point of view expounded on this perspective and captioned it as a theory of justice as fairness. He considered justice as requiring fairness in determining the results of a case after hearing, while noting that an equitable result can only be achieved if everyone is heard under a due process. Rawls believed in making the society fair for everyone and insisted that this can only be accomplished if every party has a fair and equal opportunity to be heard in any cause.[19] He argued that the term "justice as fairness" does not imply that justice and fairness are identical, but that the principles of justice are agreed under fair conditions by individuals who are in a situation of equality. According to Rawls, justice as fairness also implied that the

[18] In 1958.
[19] Rawls, *A Theory of Justice*, Cambridge, Belknap, Harvard University Press 1971 at p.9.

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principles of justice should be applied equally to all individuals. This relates to this article because e-commerce brings together people of different backgrounds from different places in business transactions.

The Natural Law Theory

Natural law can be defined as the inherent right of a person to a fair and just treatment. One of the oldest recorded definitions of natural law comes from the Roman orator, Cicero. As early as the 7th century, The Roman orator and statesman Marcus Tullius Cicero laid the foundation to the concept of natural law. Cicero described it as the highest reason implanted in nature which commands what ought to be done and forbids the opposite.[20] He noted that rights are not based upon men's opinions, but upon nature and that natural law is the right reason to agree with nature, with universal application that is unchanging and everlasting.[21] Most of what is known today about natural law was codified in the 13th century by St. Thomas Aquinas. He reasoned out that there is an eternal law which is God's device to fairly govern the entire community of the universe towards a common good. He further articulated the fact that divine law has been represented for example in the Ten Commandments. This implies that the principles of natural law has to be highly considered in resolving e- commerce transactions. Justice therefore needs to be done at all places irrespective of the cause of action and the nationality of the parties involved.

Transaction Cost theory

The transaction cost theory was propounded by John R. Commons in 1931.[22] Williamson defines transaction costs as a cost innate in running an economic system or companies, comprising the total costs of making a transaction, including the cost of planning, deciding, changing plans, resolving disputes, and after-sales. According to Williamson, the determinants of transaction costs are frequency, specificity, uncertainty, limited rationality, and opportunistic behaviour.[23] Transaction cost theory (TCT) considers a transaction as the most basic unit of measure and focuses on how much effort, resources, or cost is necessary for two parties to complete a transaction. Transaction costs are is also defined as the costs beyond the cost of the product or service that are required to exchange a product or service between two entities. By determining that the purpose of e-commerce is to significantly reduce cost, the same applies to resolving e-commerce disputes with the use of ADRs as opposed to costly litigation processes. This theory has a bearing in this article in this perspective.

The contract theory

The contract theory explores the way that parties create legally binding agreements for the exchange of goods and services. It incorporates elements of law and economics. Ronald H.[24] propounded the contract theory in 1937 where he noted that the longer the duration of a contract regarding the supply of goods or services due to the difficulty of forecasting, then the less likely and less appropriate it is for the buyer to specify what the other party should do. A contract in a legally binding agreement between two or more parties. In relation to using ADR to resolve e-commerce disputes, arbitration may be agreed upon by parties to a contract where they can use the arbitral clauses to resolve their dispute. Arbitral clauses are contractual in nature. So too, parties may agree to submit their dispute to a mediator out of their free will. The contract theory represents the behaviour of a decision maker under certaincircumstances. The choice to use ADR in resolving e-commerce disputes is based on a separate contract or agreements incorporated in the original contract. Therefore based on this theory parties are bound to follow the terms of their agreements in case disputes arise. Failure to do so will lead to a breach of contract with its attendant consequences.

The Concept of Realistic Legitimate Expectation

This is a basic conceptual parameter that encapsulates this research. The concept is used particularly to mean to act fairly upon a promise. It applies to contractual agreements and in e-commerce because business transactions are contractual in nature. A person under this concept has an expectation under a promise to be treated in a fair manner. This article is also underpinned by this concept because people expect that every legal proceeding has to be fair. In ADRs parties agree to submit their dispute to a third party or body while expecting a fair outcome. The agreement itself to submit their dispute to a third party is usually part of the business agreement and reflected especially in arbitration clauses or under mediation clause. An e-commerce disputant ought to under this theory expect a fair decision due to his legitimate expectation of being heard. One of the clearest mention of this concept comes from the dicta of Laws LJ in the case of *R (Nadarajah) v. Secretary of State for the Home Department*[25] in which he stated that; "the principle of good administration requires that public authorities should be held to their promises. This can be undermined if the law does not insist that any failure or refusal to comply is effectively justified as a proportionate measure in the circumstances with proportionality depending on the interests being balanced in each case." In *O'Reilly v. Mackma*,[26] reference to legitimate expectation was made by Lord Frasier who briefly summed up the court's decision in regards to legitimate expectation as involving legitimate or reasonable expectation from an express promise given on behalf of a public authority or the existence of a regular practice which the claimant can reasonably expect to continue hence leading to procedural certainty in the

[20] Cited in Morris *v. United States*, 12 F.2d 727 (9th Cir. 1926) by the Court of Appeals for the Eighth Circuit in May 8, *1959.*

[21] Cicero said; There will not be a different law at Rome and at Athens, and different law now and in the future, but one eternal and unchangeable law for all nations and for all times. (1928, 3.33)

[22] John R. Commons, ''Institutional Economics,'' *American Economic Review*, Vol.21, pp.648-657, 1931

[23] www.investopedia.com.(accessed on the 05/05/2025).

[24] Coase, R. H., "The Nature of the Firm". *Economica*. (1938) 386–405.

[25] EWCA Civ 1363 Case No: C4/2002/2697 & C4/2003/2729 (2005).

[26] [1983]2 AC 237.

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determination of cases. Therefore if e-commerce disputants agree to submit their dispute to a public authority who may be and arbitrator then the arbitrator is bound by this concept to resolve the dispute fairly.

The disadvantages of court adjudication processes in resolving e-commerce disputes.

Court processes through litigation is the most popular way to resolve conflicts and has been used for many centuries to settle disputes. A court gains its authority from a state as one of the arms of government while carrying with it the authority to take decisions backed by law.[27] One of the major setbacks of litigation which does not make it suitable for e-commerce disputes is the unnecessary delays involved in court processes. Most e-commerce cases may not be determined within a reasonable time frame in the context of opting for e-commerce transaction disputes. Reasonable time is the time frame during which a trial ought to be carried out and the case determined. Reasonable time may vary from case to case depending on the peculiar nature and facts of every case and the organisation of courts in different legal systems. One of the main purposes of e-commerce is to carry out transactions within a short period of time and delays in its dispute resolution mechanisms can challenge this purpose. Elements to be considered as to what amounts to reasonable time are; the national legislation, the cause of action, the nature of the cause of action, the complexity of the case, the conduct of the accused or the parties to the dispute and the conduct of the judicial authorities.[28] Paradoxically, reasonable time does not mean that hearing should be rushed even in electronic commercial cases.

Due to the cross-border nature of e-commerce transactions, the likelihood that language may be a hindrance during litigation that will require the services of an interpreter which may further lead to delays. This delay may be further exacerbated because the right to interpretation is not limited to oral interpretation but is also extend to the interpretation of documents.[29] In the Cameroonian case of *The People and Another v. Tita Njina Kevin Ndango,*[30] a document written in German which was used as exhibit in the case had to be translated in order to conform to the language requirement of the court which led to a further delay. Many procedural issues handled before litigation can be resolved through ADR where the whole process is summarized. This is the reason why it is preferable to resolve e-commerce disputes through ADR processes.

Delays may also occur in litigations processes because some pre-litigation formalities like summonses must be issued. This leads to loss of precious time that is not favorable for those who have opted to carry out their transaction by an electronic means. This is why it is believed that the conduct of civil litigation in England has become more abrasive and aggressive.[31] The conduct of proceedings in litigation may also be tainted with undue influence like partiality and lack of judicial independence.

E-commerce transaction disputes may not require the same traditional and general litigation rules that characterize conventional commercial transactions. This is because of the co-existence of plurality of legal norms across different countries. This coexistence of many laws in e-commerce transactions creates difficulties on the laws to apply between parties from different countries. Chaos can exist due to the fact that e-commerce disputes can take place within different regimes of law. Different territorial legal systems have different laws and considering the trans-boarder nature of e-commerce in cyberspace, it is becoming complicated to handle such disputes through the courts.

There are also difficulties by governments to monitor data shared through telematics due to their very large nature and their ability to cross national boarders. If such monitoring is done under all e-commerce transactions, it may lead to the violation of privacy rights. The issue of bribery and corrupt practices by some courts also go a long way to discourage e-disputants to rely on courts to resolve differences.

The Suitability of resolving e-commerce disputes under different types of alternative dispute resolution mechanisms.

ADR is successful in reducing legal costs and time consumption for business disputants. Computer technology spreads massive free information and further lowers barriers to manage cases of foreign nature. ADR is more flexible, specialized, and expeditious. ADR processes allow parties to adopt positional bargaining and problem-solving modes to solve e-commerce disputes. ADR offers more appropriate procedures for e-commerce because different circumstances and interests require different procedures. ADR can be successfully used to evade conflict of laws and solves problems of jurisdiction. Certainty and predictability is achieved as parties know where, who and how their dispute will be settled. It is for this reason that settling disputes through ADR mechanisms is advantageous in achieving speed, less cost and fairness.[32] This is also why most labour matters which are commercial in nature, begins with conciliation in many countries. This is known as pre-litigation dispute methods that may resolve a m case in an expedited manner.

Arbitration

Arbitration may be used as one of the ADR methods to resolve ensuing e-commerce disputes especially considering the binding nature of arbitral awards. It has a long history and has been widely used after the second world war to resolve disputes between

[27] These decisions must be abide to even if the parties feel unsatisfied.

[28] Some trials lasting as long as 10 years have been deemed reasonable, while others lasting less than one year have been found to be unreasonably delayed.

[29] For example, the Inter-American Commission considers the right to translation of documents as fundamental to due process (Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin, OEA Ser.L/V/11.62, doc.10, rev. 3, 1983.

[30] (2010) 1 CCLR 1-126.

[31] Brown Henry J., & Arthur L. Marriott Qc., ADR principles and Practice, London: Sweet & Maxwell 2002, P25.

[32] *Ibid* p27.

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states and private individuals.[33] Arbitration is a private mechanism for the resolution of disputes which takes place in private pursuant to an agreement between two or more parties, under which the parties agree to be bound by the decision of the arbitrator. [34] In relation to e- commerce, arbitration provides businesses with a method or mechanism for the resolution of business disputes on the basis of the ideas of justice, and not necessarily compromise the settlement process. This is because of the binding nature of its decisions that assigning rights and duties and distributes the benefits and burdens. Once rendered, such decisions or determinations must be respected. A problem that may arise in arbitral awards is in the recognition and enforcement of its decisions by national courts. A distinctive trait of arbitral justice, when compared with state justice, is that the parties in the latter give their concern to abide to whatever decision is arrived. The decision of an arbitrator thus is binding on the parties.

Mediation

This is a facilitative process in which disputing parties engage the assistance of an impartial third party known as a mediator who helps them to arrive at an agreed resolution of their dispute.[35] The main difference between Mediation and arbitration is that, unlike in mediation, the decision of an arbitrator is binding on both parties but in mediation, the mediator has no authority to make decisions that are binding on the parties. As regards electronic commerce disputes, mediation could be a better option, considering the problems of jurisdiction and the interaction of different laws in cyberspace. This is so because of the nature of electronic data that could be disseminated without any encumbrances across territorial boundaries.

The Advantages of using ADR methods to resolve e -commerce transaction disputes.

Many conflicts that arise under e-commerce create difficulties to get satisfactory results from the normal courts. This suggests that different methods of dispute resolution may be considered. The benefits of using ADR methods in comparison to the normal courts and their procedures to resolve e-commerce related disputes have enormous advantages. This is because of the frequency and satisfaction derived in e-commerce transactions. The probability of encountering problems in e-commerce transactions is high. For example, a British on-line retailer may electronically enter into a contract with a Chinese person to market his products. If any party breaches his contractual obligations, it will be cumbersome and time consuming to determine the applicable law to settle the dispute. That is why although most disputes in e-commerce transactions may not be difficult to resolve, but rather, a difficulty may arise due to disagreements on the choice of law to apply.

The management of conflicts and their resolution methods differ significantly in different countries because of different legal frameworks. Therefore the resolution of e-commerce disputes need the participation of specialized and extra judicial settlement bodies to conciliate the traditional rules within the intrinsic nature of the internet. The main reason for this is because e-commerce disputes have particular characteristics since the parties involved hardly meet in person to conclude their deal. Meanwhile in real space, parties are able to personally negotiate contracts face to face.

ADR has become increasingly popular as an alternative to the traditional court proceedings which are perceived to be slow and expensive. ADR overcomes the geographical issues that can make court proceedings unsuitable for certain cross-border disputes. It can be observed that consumers and businesses are increasingly reluctant to engage in business transactions online because of the difficulties involved in legally resolving problems that may arise. Because of this, the Colin Rule emphasizes that any party to a dispute can contact an online expert to explain his position in confidence and state its preference among the choices of mediation, arbitration, evaluation or negotiation. Online disputes resolution (ODR) method is becoming popular because of its speed and other advantages.

ODR is an online service that works by receiving demands from a petitioner. It then contacts the adverse party to see if he is willing to use the site's services and if he shares the first party's preferred means of resolution. Upon the payment of a fee, the online resolution mechanism will then work with both parties with the aim of resolving the dispute. If an agreement is reached, the details are set out in a document which the parties can then choose to make it legally binding. The principal aim of solving commercial conflicts is justice. The intention to do justice and the satisfaction of the parties involved in a dispute is the prime objective in both real world and cyberspace. Colin contends that the traditional state system based in public courts is not always suitable to manage disputes which originate in cyberspace. ADR and ODR are better ways for the resolution of e-commerce disputes. These mechanisms can be effectively utilized to deal with the problems that emerge from relying on the judicial processes in courts to resolve e-commerce disputes. It may be observed that ODR employs ADR procedures conducted with the assistance of computer technology. For instance, ODR has adapted a range of ADR processes for online use which include arbitration and mediation which can be via e-mail or through a secure website.

It is reasonable to assumed that disputes arising between small, medium and large size companies can be resolved through one of the ODR modalities. This is because the characteristics that have encouraged increased computer use among contracting parties are the same justifying the adoption of ODR systems. Internet is a resource that extends what we can do, and where and when we can do it. ODR uses computer technology to support the storage and dissemination of information. Simultaneous translation software can facilitate participation of multicultural companies in a real-time videoconference process. While language barriers

[33] See the New York Convention of 1958.
[34] Brown Henry J., & Arthur L. Marriott Qc., ADR principles and Practice, London: Sweet & Maxwell 2002, P49.
[35] *Ibid* p.127.

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have often blocked the engagement on both ADR and traditional adjudication procedures, ODR has the potential to ensure efficient procedures for the parties in dispute. In this context, ODR is meant to have an immense impact on the facilitation and organization of dispute resolution in e-commerce. Therefore, it is possible in ODR to employ videoconferencing so that the mediator and the parties can see each other. A setback in the ODR procedure unlike offline ADR procedures is that confidentiality cannot be guaranteed at all times. In offline ADR procedures confidentiality is not really a problem, but in ODR communications take place through cyberspace by constant copying both intentionally and unintentionally. This constant copying may lead to leaks that may affect the impartiality of the process.

III. Conclusion.

E- commerce disputes have their origins in e-commerce transactions and should follow due process. A due process is hearing which is efficiently and effectively administered in determining cases according to the principles of justice which guarantee fundamental rights and fairness. This article has attempted to examine the nature of e-commerce transaction disputes in relation to its nature and the options on how to resolve such disputes whenever they arise. The state may intervene in resolving disputes of such nature by using coercion. This coercion does not work properly in e-commerce disputes. The problem of jurisdiction and the distances capable of being covered by electronic data interchange are some of the factors that have contributed to the difficulties encountered by courts in resolving e-commerce transaction disputes. This article has exposed most of these weaknesses and has suggested the use of the various ADR methods to resolve and achieve faster long lasting solutions within a short space of time. ADR as could be seen have no territorial limits, so too is electronic data interchanged in cyberspace. ADR mechanisms apart from being expeditious and reliable, disputing parties generally tend to abide to the outcome of the proceedings. This is because they generally have the discretion to choose between the various options in ADR. In arbitration for instance, disputing parties accept arbitral clauses which makes the decision of the arbitrator binding on both of them. In mediation and conciliation, although the decision of the mediator may not be binding, parties usually agree to such decisions because of the concern given by them to use the method to resolve their dispute. It cannot be gainsaid that ADRs will constitute a better option in resolving E- commerce transactions disputes over the traditional court processes with its attendant consequences that are not suitable for e-commerce.

It is therefore recommended that the ODR framework and guidelines should be properly established as a dispute resolution mechanism with worldwide recognition. This can be done such that a set of rules and guidelines are formulated under national legislations that with recognize ODR under their legal and institutional frameworks in dispute resolution in e-commerce. It is also recommended that reciprocity amongst states should be encouraged in solving e-commerce transactions disputes because of their trans-boarder nature. From the findings in this article that ADR methods are more effective in resolving e-commerce disputes, the education community is encouraged to incorporate e-commerce dispute settlement as a course in their syllabuses. That the judicial personnel should be continuously trained to understand how ADR can be used in e-commerce disputes. It is finally recommended that national courts should minimize the bureaucracy involved in the recognition and enforcement of foreign decisions and awards in e-commerce related disputes.

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