

Digital Technology transforming the nature of commercial contracts: An exploration of English law and the South African law

* Dr Thelela Ngcetane-Vika is an Academic, Legal Researcher, Governance Expert and Leadership Frameworks Scholar

Abstract

Digital transformation has become an interesting area of research to legal scholars who seek to study how it has impacted regulatory frameworks and in this case, laws that govern commercial contracts. Undoubtedly, digitalisation has drastically changed how business is done and by extension commercial contracts. Digital transformation has far reaching implications on commercial contracts. Thus, Legislative frameworks are needed to regulate online business which culminates into standardisation of commercial contracts, on areas like Block Chain and Artificial intelligence.

The aim of this paper, therefore, is to assess how the English law and South African laws are responding, in relation to digital transformation and commercial contracts. Digital transformation (DT) can be traced back to the year 2000 when its use became prevalent as the rapid increase of the use of digital technologies has become important in societies, governments and businesses. Undoubtedly, DT has revolutionised how business and societies function.

This particular investigation hinged upon qualitative research tradition, whereby a non-intrusive case study approach was followed. Pursuantly, the empirical basis for this essay included mostly primary and secondary sources such as literature review on articles, books, case laws and relevant Statutes. This paper is structured to include an analysis of key concepts as part of the theoretical framework, especially commercial contracts and digital technology. Furthermore, to assess how the South African laws are responding to digital transformation in relation commercial contracts. At the end, to conduct a comparative analysis of English law versus South African law in relation to digital transformation and commercial contracts. The paper hopes to contribute to the body of knowledge on digitalisation and commercial law.

Key words: Digital transformation, Legislative Framework, Commercial Contracts, English law, South African law

TABLE OF CONTENTS

1. Introduction	3
2. Background	4
2.1 Preamble	4
2.2 The need for legislative framework.....	4
2.3 Application of legislative Framework	5
2.3.2 South African context	7
2.3.3 Digital Signatures	9
3 Research Statement	9
4. Research Objectives	9
5. Methodology.....	10
5.1 Introduction	10
5.2 Conceptual Analysis and Description of Variables.....	10
5.3 Commercial contracts.....	10
5.4 Digital Technology.....	11
6. Discussion.....	11
6.1 Introduction: Three Areas where digital transformation occurs	11
6.2 Cryptocurrency	12
6.3 Legal proceedings and Technology	Error! Bookmark not defined.
6.4 Data and Protection of Consumers in digital marketplace.....	12
7. Conclusion	14
Bibliography	15
References.....	16

1. Introduction

In the recent years, the relationship between commercial contracts and digitalisation has been at the fore of digital transformation.¹ Therefore, this has become an interesting area of research to legal scholars who seek to study how digital transformation has impacted regulatory frameworks and laws that govern commercial contracts, among others. Undoubtedly, digitalisation has drastically changed how business is done, hence the rise of e-commerce in recent years.² Thus, many companies have since opted to conduct business online. Digital transformation has been intrinsically linked to the 'Fourth Industrial Revolution',³ popularly known as 4IR. The last ten years have seen a massive digital transformation as people transacted mainly online. Recently, there have been more significant calls for amendments of legislative frameworks in commercial contracts, as legislations have to catch up⁴ with the dynamism of digital transformation.

Digital transformation involves technology and its continuous advancement. Furthermore, because of the rapid growth of the development of the digital world, it is inevitable for the law to catch up by continuously reviewing and amending laws. This also proves that digitalisation is altering the world order and invariably, legislations.⁵ These developments have seen serious uptake of e-commerce and business use of digital technologies, for example, cloud computing and big data analytics.⁶ The COVID-19 pandemic, with its unprecedented nature, has dramatically influenced digital transformation. Scholars call this development the great digital transformation of the decade. It is safe to argue that while digital transformation brings innovative changes, it can also be disruptive with far-reaching implications on commercial contracts.

Intellectual Property (IP) has also been an area of research interest during digital transformation. Similarly, e-commerce, as an area of digital transformation, has also seen rapid growth. Electronic contracts and their newfound regulations are not formally recognised,

¹ OECD, KEY ISSUES FOR DIGITAL TRANSFORMATION IN THE G20, Report prepared for a joint G20 German Presidency/ OECD conference BERLIN, GERMANY 12 JANUARY 2017, <https://www.oecd.org/g20/key-issues-for-digital-transformation-in-the-g20.pdf>>accessed 22 August 2023.

² Ibid.

³ Schwab, K. (2016), "1.14 The fourth industrial revolution: What it means and how to respond", *World Economic Forum*,

⁴ Komarčević, M., Dimić, M., & Čelik, P. (2017). Challenges and impacts of the digital transformation of society in the social sphere. *SEER: Journal for Labour and Social Affairs in Eastern Europe*, 20(1), 31–48. <http://www.jstor.org/stable/26379907>>accessed 4 August 2023.

⁵ Schwab (n 1).

⁶ Schwab (n 2).

but the rise in digitalisation has necessitated it. Thus, many jurisdictions like South Africa had to relook at current regulatory frameworks to meet this demand.

2. Background

2.1 Preamble

I conducted literature review to gain better insights on what is currently happening in the space of digital transformation and commercial contracts. In order to achieve that, it became important to understand the evolution of digitalisation which brought to the fore the phenomena of digital transformation. For this study, a number of articles on the subject of digital transformation and commercial contracts were searched through Google Scholar, Web of Science, Open Science Framework (OSF) and Crossreff to understand the background of the phenomena under investigation.

Digital transformation (DT) can be traced back to the year 2000 when its use became prevalent⁷ as the rapid increase of the use of digital technologies has become important in societies, governments and businesses. Undoubtedly, DT has revolutionised how business and societies function. Although its definitions vary but it has been widely accepted that DT is “a process that aims to improve an entity by triggering significant changes to its properties through combinations of information, computing, communication, and connectivity technologies.”⁸ These changes permeate all sectors and aspects of people’s lives, including health, education, academia, religion, law, among others. These digitalisation happen in large scales, thus the rise of digital transformation. Digital transformation has since become an integral part of business and thus, “...84% of global companies regarding DT as critical to their survival in the next 5 years.”⁹

2.2 The need for legislative framework

Digital transformation has far reaching implications on commercial contracts. Thus, Legislative frameworks are needed to regulate online business which culminates into standardisation of commercial contracts, on areas like block chain and Artificial intelligence.¹⁰ The fact that

⁷ Patel, K., & McCarthy, M. P. (2000). *Digital transformation: The essentials of E-business leadership*. McGraw-Hill Professional.

⁸ Vial, G. (2019). Understanding digital transformation: A review and a research agenda. *Journal of Strategic Information Systems*, 28(2), 1–27 > <https://doi.org/10.1016/j.jsis.2019.01.003>.

⁹ SAP Insight. (2017). *4 Ways Leaders Set Themselves Apart*. Retrieved from: <https://insights.sap.com/sap-digital-transformation-executive-study-4-ways-leaders-set-themselves-apart/>. accessed 4 August 2023.

¹⁰ Gozman, D., Liebenau, J., & Aste, T. (2020). A case study of using Blockchain technology in regulatory technology. *MIS Quarterly Executive*, 19(1), 19– 37.

commercial contracts often contain ambiguities, as a result this becomes more complex with digitalisation of businesses as legal enforceability is a challenge. Given the fluidity of online transactions, clarity on regulations will bring legal certainty of what constitutes a contract. There is a general consensus among scholars that commercial contracts are affected the most by digital transformation as regulatory consistency across jurisdictions can play an important role. Having said that, the traditional elements of a commercial contract coupled with good values like honesty, integrity of both parties remain critical even during digital transformation. These are very important in an event a dispute arises and litigations are brought to courts and courts have a duty to adjudicate.

Thus, there seems to be a disparity between digital transformation and legislative frameworks. While commercial laws exist in English law and South African laws, there is however a need to legislate tightly the digital space which grows rapidly and laws may be behind to meet this rapidness. For example, digital transformation allows for consumers to do transactions anywhere they are in the world. Similarly, business can do online transactions seamlessly online and this brings to the fore the importance of commercial contracts. The protection of data in digital transformation is vital. What is the scope and limits of commercial contracts in a digitalised world is an interesting question to pose. The legal effect of commercial contracts can be really tested by DT as “commercial contracts are normally complex and have a large number of oral and written statements and understandings made during preliminary negotiations, erroneous judicial enforcement of some of these statements and understandings is likely”.¹¹ Sophisticated digital technologies may further complicate the understanding of the contract signed or entered into. Contract interpretation remains an important part of commercial contracts and digital transformation compounds it. Thus, the need for clear legislative frameworks that are not outdated.

2.3 Application of legislative Framework

The regulatory framework for effective application of commercial contracts related to digital transactions for both business-to-business (B2B) and business-to-consumer (B2C) differs from the normative application that does not use web-based applications. In this study, critical pieces of legislation in the UK and South African are hereby presented as theoretical framework.

¹¹ Michael B. Metzger, *The Parol Evidence Rule: Promissory Estoppel's Next Conquest?* 36 VAND. L. REV. 1383, 1387–88 (1983) (“Jurors also may lack the sophistication needed to deal effectively with complex commercial transactions involving numerous alleged oral and written contract terms.”); Posner, *The Parol Evidence Rule*, supra note 77, at 556

2.3.1 English Law (UK)

The historical foundations of the English legal system are deeply rooted in Common law and in subsequent years, the enactment of Statutory Law, both referred to as the primary sources of English law. Thus, for the most part, the English legal system was defined not by Statutes but by case laws (judicial precedents). English law (Anglo-Welsh) has three practice areas, namely, contract, tort, and restitution. English law has different legislative regimes for certain kinds of contractual relationships.

The paper, therefore, has examined significant statutes that have a bearing on commercial contracts. Those include Consumer Rights Act 2015,¹² the Sale of Goods Act 1979¹³ as both are important in transaction in businesses and consumers. CRA provides “a simple, coherent framework of consumer legislation by consolidating and simplifying existing law”.¹⁴ Thus, “Part 1 of the CRA sets the standard that goods must meet and consolidates the remedies according to contract types, such as sale, work and materials, conditional sale or hire purchase. It gives a 30 day period to reject substandard goods for a full refund and limits the number of replacements before a refund. The Act also introduces digital content, quality standard and remedies to the consumer. It introduces a new statutory right of information in relation to a service and remedies and clarifies that a consumer can always request these rights and remedies when a trader supplies a service to them”.¹⁵

Further, the Unfair Terms in Consumer Contracts Regulations,¹⁶ and the Supply of Goods and Services¹⁷ are also examined in relation to commercial contracts and digital transformation. The supply of goods¹⁸ which is well expounded in the landmark case of *Donoghue v Stevenson*¹⁹ is also an interesting area of this research as digital transformation has drastically affected the nature of supply of goods.

¹² Consumer Rights Act 2015.

¹³ Sale of Goods Act 1979.

¹⁴ Law Commission and Scottish Law Commission, ‘*Unfair Terms in Contracts*’ (Law Com No 292 / Scot Law Com No 199, 2005)

¹⁶ Unfair Terms in Consumer Contracts Regulations.

¹⁷ Supply of Goods and Services Act.

¹⁸ Cartlidge, H. and Davies, L., ‘UK Consumer Rights Act 2015: reforms to the private enforcement of competition law’ (2015) *Compliance and Risk*, 4(6).

¹⁹ *Donoghue v Stevenson* [1932] AC 562.

2.3.2 South African context

South Africa, like many countries, had seen an uptake of digitalisation and thus, put a demand on its regulatory framework. The essay has examined how South African laws have evolved to adapt to the rapid digital transformation. It is also interesting to see how this transformation fits in the deep inequalities in South Africa. Does it close those gaps or widen them further? Our literature review answered in the affirmative.

In South Africa, regulatory frameworks include the Electronic Communications and Transactions Act 2002 (ECTA)²⁰ which governs electronic contracts. Thus, online contracts can be enforceable under the provisions of ECTA. Further, the Consumer Protection Act 2008 (CPA), read with the Consumer Protection Act Regulations 2011²¹ are important regulations governing the supply and sale of goods within South Africa. Another important piece of legislation is the Protection of Personal Information Act 2013 (POPIA)²² which came into effect on the 1st July 2021 and has been a contentious piece of legislation, is also examined in this essay. The latter legislation has a serious bearing on personal data and disclosures of personal information.²³ The essay has also examined the Regulation of Interception and Monitoring of Communications and Provision of Communication-Related Information Act 2002 (RICA)²⁴ whose constitutionality has been tested in courts in South Africa as seen in the case of *AmaBhungane Centre for Investigative Journalism NPC v Minister of Justice and Correctional Services*²⁵ where it was held that some provisions of the RICA were found to be inconsistent with the South African constitution.²⁶ Lastly, the paper has also explained the Companies Act 2008 (Companies Act)²⁷ which governs the incorporation of companies in South Africa and borrows heavily from the UK Companies Act of 2006.

Electronic Communications and Transactions Act 2002 (ECTA)

Online and electronic contracts in South Africa are governed by this law, which imposes a number of requirements on the operators of websites that sell, hire, or trade products or services to real persons, such as providing end users with particular information about

²⁰ Electronic Communications and Transactions Act 2002 (ECTA).

²¹ Consumer Protection Act 2008 (CPA), read with the Consumer Protection Act Regulations 2011.

²² Protection of Personal Information Act 2013 (POPIA).

²³ Ibid.

²⁴ Regulation of Interception and Monitoring of Communications and Provision of Communication-Related Information Act 2002 (RICA).

²⁵ *AmaBhungane Centre for Investigative Journalism NPC v Minister of Justice and Correctional Services*.

²⁶ Ibid.

²⁷ Companies Act 2008 (Companies Act).

operators (or suppliers). To ensure that service providers' liability is minimized, the ECTA sets standards for electronic signatures and cryptographic products and services.

Regulation of Interception and Monitoring of Communications and Provision of Communication-Related Information Act 2002 (RICA)

This Act prohibits the interception of any direct or indirect communication in South Africa using an electronic communications system (that is, traffic on network infrastructure). Interception of communications is generally forbidden (including by the government), unless a designated judge issues an interception direction in accordance with RICA's protocols. However, in September 2019, the South African High Court deemed some elements of RICA to be incompatible with the Constitution and hence illegal.

Consumer Protection Act 2008 (CPA), read with the Consumer Protection Act Regulations 2011

This Act governs all transactions involving the provision of goods and services within South Africa, with a few exceptions. It also has an impact on how goods and services are promoted, as well as how suppliers of goods and services are managed in South Africa. It also specifies legal approaches for goods or services supplied or performed in a transaction covered by the CPA (and goods supplied under an exempt transaction (such as those concluded with a legal entity with an asset value or annual turnover of more than ZAR2 million and goods or services supplied to the state), for which the CPA's product recall and product liability provisions will still apply).

Protection of Personal Information Act 2013 (POPIA)

Privacy and Individual Rights in Information Act (POPIA) is a law enacted by the Parliament in order to implement the common law and constitutional right to privacy and regulate the manner in which the personal data of individuals (data subjects), including website users, can be "processed" ("responsible party" in POPIA). It is the responsibility of the data controller to determine how and why such information is handled under the POPIA law.

Any type of electronic communication can be used for direct marketing (both solicited and unsolicited) under POPIA. Processing of personal information recorded by or for a responsible party domiciled in South Africa, or not domiciled in South Africa, but utilizing automated or non-automated means in South Africa to process personal information is covered by POPIA.

2.3.3 Digital Signatures

ECTA's provisions play a role in determining whether an electronic signature or an enhanced electronic signature is required in a given document. Section 13(3) of ECTA distinguishes between situations where parties to a transaction impose the obligation for a signature on themselves without specifying the type of signature (in this case, a method is used to identify and indicate the parties' approval), and situations where the law requires the use of an advanced electronic signature without specifying the type of signature to be used, in which case an advanced electronic signature is required.

The advanced electronic signature of the person authorized to conduct those acts is the sole way to comply with a legal requirement that a signature, statement, or document be notarized, acknowledged, validated, or made under oath. It is also possible for an electronic signature to be used in conjunction with an advanced electronic signature if a specific law allows it, but only in specific conditions. Electronic signatures can only be used if a person's signature is required by law and the type of signature is not specified (an ordinary electronic signature will not suffice). Specific legislation may stipulate that only advanced electronic signatures can be utilized.

Many times, even if you use a sophisticated electronic signature, you cannot utilize an electronic signature in specific situations.

3 Research Statement

This paper attempts to address this research statement:

Digital technology is transforming the nature of commercial contracts and the legal relationships created by such contracts. Identify three areas where this transformation occurs and assess how the English law and the South African law are responding.

4. Research Objectives

- To identify three areas within commercial contracts where this digital transformation occurs.
- To assess how the English law is responding, in relation to digital transformation and commercial contracts.
- To assess how the South African laws are responding to digital transformation in relation commercial contracts.

- To conduct a comparative analysis of English law versus South African law in relation to digital transformation and commercial contracts.

5. Methodology

5.1 Introduction

Research methodology focuses on procedures, activities and steps undertaken within a scientific context in order to answer the main research question. This particular investigation will be hinged upon qualitative research tradition, whereby a non-intrusive case study approach will be followed. Pursuantly, the empirical basis for this essay will include mostly primary and secondary sources such as literature review on articles, books, case laws and relevant Statutes. This paper is structured to include an analysis of key concepts, especially commercial contracts and digital technology. Furthermore, literature and case laws will be conducted to help us construct a reasoned argument to identify three areas where this transformation occurs, as well as assess how the English law and the law of my jurisdiction, South Africa, respond.

A survey of scholarly sources was extensively conducted. After that, the researcher summarized and synthesized the main points. Furthermore, the researcher identified themes, debates and gaps that help to make the argument and determination.

5.2 Conceptual Analysis and Description of Variables

Conceptual analysis involves the definition of concepts or terms central to this paper. The definitions help bring clarity and better understanding of these terms in the context of the essay. In this essay, I define commercial contracts and digital transformation as both are critical concepts in the research question. The relationship between these variables is important for this study as it set out to examine impact of digital transformation on commercial contracts.

5.3 Commercial contracts

In order to better understand commercial contracts, it is essential to start by locating them in the branch of commercial law. Commercial laws are defined as “Areas of law having particular relevance to commerce and commercial transactions”.²⁸ Further, commercial law involves “the special rules which apply to contracts for the sale of goods and to such contracts as are

²⁸ Butterworths Business and Law Dictionary (1997, Butterworths, Sydney).

ancillary to that, namely contracts for the carriage and insurance of goods and contracts the main purpose which is to finance the carrying out of the contracts of sale'.²⁹ Commercial contracts then form an integral part of commercial law. They are defined as commercial or business agreements between parties that contain agreement,³⁰ consideration,³¹ and intention³² as the three important elements. Another important factor of commercial contracts are expressed terms in the agreement wherein all 3 of the above elements are clear. Further, implied terms are also considered valid as they often arise through statutes or case laws.

5.4 Digital Technology

Digital transformation is defined as 'a change in how a firm employs digital technologies, to develop a new digital business model that helps to create and appropriate more value for the firm.'³³ This transformation is changing the way businesses and societies do business. Thus, Digital transformation can be described as "the result of digitisation and digitalisation of economies and societies (OECD, 2019a)".³⁴ Further, Digital transformation is a process involving several digital technologies, from 5G to artificial intelligence, big data and Block chain.³⁵

6. Discussion

6.1 Introduction: Areas where digital transformation occurs

Digital transformation is a complex phenomenon that has been a highly contested space in law. The question of what constitutes a legal contract in the era of digitalisation has been central to these debates. Further, questions of jurisdictions and governing laws have also been topical in international law. Professor Goode's words seem to expound this discourse well when he states:

"Whether one is dealing with electronic funds transfer, the dematerialization or immobilisation of securities or the use of electronic bills of lading, it is necessary to ask why, if the message is broadly the same, its legal significance should be affected by the medium through which it is sent. ... Why should electronic transmissions necessitate different rules of law?"³⁶

²⁹ HC Gutteridge, *Contracts and Commercial Law* (1935) 51 LQR 117.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ G.C. Kane, D. Palmer, A.N. Philips, D. Kiron, N. Buckley Strategy, not technology, drives digital transformation. *MIT Sloan Management Review and Deloitte University Press*, 14 (2015), pp. 1-25.

³⁴ OECD (2019a), *Going Digital: Shaping Policies, Improving Lives*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264312012-en>.>accessed 4 August 2023.

³⁵ OECD (n 1).

³⁶ R. Goode, *Commercial Law in the Next Millenium* (1998, Sweet & Maxwell, London) at 96-97.

In this section, the writer identifies few areas where the digital transformation occurs. Furthermore, discuss how the English law and South Africa are responding to this transformation. The identified areas are as follows:

6.2 Cryptocurrency

Cryptocurrency is defined as digital money and a popular example of this is Bitcoin. Cryptocurrency is not regulated in South Africa and therefore, not recognized as a formal medium of exchange. The South African Reserve Bank is the central Bank of South Africa and has the power to recognize new currency, however, they have not done so but have recognized its place in the market by not making it illegal to hold or trade cryptocurrency. Similarly, in terms of UK LAW, financial Conduct Authority has not placed regulation on cryptocurrencies and therefore not a recognized mode of currency. Cryptocurrency is currently seen to be a form of high-risk investment as there is not a lot of laws regulating the industry. This is one of the areas digital transformation has occurred and taken the world by storm.

6.3 Data and Protection of consumers during

Digital transformation has also brought to the fore the whole question of data privacy. How do we handle data in a more digitalised world? Thus, some have called data the fuel of digital transformation, highlighting the importance thereof. Thus, digitalisation of information and research processes will be investigated to establish whether there is an impact or not.

The protection of consumers in the digital marketplace has been a topical issue. Existing legal frameworks are proven to be challenged as consumer protection has evolved during digital transformation.

Digital transformation has also brought to the fore the whole question of data privacy. Thus, some have called data the fuel of digital transformation, highlighting the importance thereof. Consumer privacy is also an important aspect during digital transformation. Consumer private information details still need protection.

The protection of consumers in the digital marketplace has been a topical issue. Existing legal frameworks are proven challenging as consumer protection has evolved during digital transformation as existing legal frameworks fall short in addressing issues emanating from digital transformation. There are common concerns such as jurisdiction (what law applies),

choice of law and dispute resolution. Suggestions like modernising consumer protection, legislations and standard terms for digital contracts have been made.

In South Africa, the Consumer Protection Act 2008 (CPA), read with the Consumer Protection Act Regulations 2011 protect consumers even in digital marketplace. This Act governs all transactions involving the provision of goods and services within South Africa, with a few exceptions. It also has an impact on how goods and services are promoted, as well as how suppliers of goods and services are managed. It also specifies legal approaches for goods or services supplied or performed in a transaction covered by the CPA (and goods supplied under an exempt transaction (such as those concluded with a legal entity with an asset value or annual turnover of more than ZAR2 million and goods or services supplied to the state), for which the CPA's product recall and product liability provisions will still apply).

In the English law, consumers are protected in the digital marketplace under the provisions of the CRA. Thus, "Part 1 of the CRA sets the standard that goods must meet and consolidates the remedies according to contract types, such as sale, work and materials, conditional sale or hire purchase. It gives a 30-day period to reject substandard goods for a full refund and limits the number of replacements before a refund. The Act also introduces digital content, quality standard and remedies to the consumer. It introduces a new statutory right of information in relation to a service and remedies and clarifies that a consumer can always request these rights and remedies when a trader supplies a service to them".

6.5 Law and Rise of Online Dispute Resolution(ODR)

Law itself had to adapt to the changes and conduct its judicial processing on online basis and adapt more digital resources to keep up and continue with the administration of justice. Some court sessions have been held via the Zoom platform here in South Africa. One area that has seen an impact of digital transformation is Online dispute resolution. Online dispute resolution (ODR) is a branch of dispute resolution, which uses technology in order to facilitate dispute resolution between parties. Thus, some scholars define it as alternative dispute resolution mechanisms. ODR is seen as the best fit to resolve disputes arising from online transactions. In South Africa, it is not widely used. English law does make use of ODR that parties do not have to appear physically but virtually using technology. ODR is beneficial in commercial contracts, as Commercial disputes tend not to benefit either party. ODR can provide a less awkward and less emotional way of dealing with the dispute, doing so in a quick and affordable

way. This area of digital transformation can prove to be beneficial to access to justice, as ODR can happen through smartphones.

Courts need to invest resources in order to maximize both administration and access to justice. However, many people who use courts may not necessarily have access to computers or internet, which on its own may pose unfairness.

7. Conclusion

From the foregoing discussion, the relationship between digital transformation and legal frameworks, especially commercial contracts, has proven challenging but very important to ensure fairness in (and safety of) transactions conducted digitally. Given the dynamism of digital transformation, regulations will have to adapt, especially on digital impact on commercial contracts. The paper has identified three areas digital transformation has occurred. It is evident from the literature review that regulations have to keep up with the rapidly dynamic digitalisation.

Bibliography

Case laws

AmaBhungane Centre for Investigative Journalism NPC v Minister of Justice and Correctional Services

Donoghue v Stevenson [1932] AC 562

UK Statutes

Consumer Rights Act 2015

Contracts Review Act 1980

Sale of Goods Act 1979

Supply of Goods and Services Act

Trade Practices Act 1974 (Cth)

Unfair Terms in Consumer Contracts Regulations

European Statutes/Codes

OECD KEY ISSUES FOR DIGITAL TRANSFORMATION IN THE G20 REPORT ON 12 JANUARY 2017> <https://www.oecd.org/g20/key-issues-for-digital-transformation-in-the-g20.pdf>>accessed> 22 August 2023

South African Statutes

Companies Act 2008 (Companies Act)

Consumer Protection Act 2008 (CPA), read with the Consumer Protection Act Regulations 2011

Electronic Communications and Transactions Act 2002 (ECTA)

Protection of Personal Information Act 2013 (POPIA)

Regulation of Interception and Monitoring of Communications and Provision of Communication-Related Information Act 2002 (RICA)

References

Agarwal, R. G.G. Gao, C. DesRoches, A.K. Jha. The digital transformation of healthcare: Current status and the road ahead. *Information Systems Research*, 21 (4) (2010), pp. 796-809.

Andal-Ancion, A. P.A. Cartwright, G.S. Yip. The digital transformation of traditional businesses. *MIT Sloan Management Review*, 44 (4) (2003), pp. 34-41

Butterworths Business and Law Dictionary (1997, Butterworths, Sydney).

Gutteridge, HC. *Contracts and Commercial Law* (1935) 51 LQR 117.

Goode, R. *Commercial Law in the Next Millenium* (1998, Sweet & Maxwell, London) at 96-97.

Kane, GC. D. Palmer, A.N. Philips, D. Kiron, N. Buckley. Strategy, not technology, drives digital transformation. *MIT Sloan Management Review and Deloitte University Press*, 14 (2015), pp. 1-25.

Komarčević, M., Dimić, M., & Čelik, P. (2017). Challenges and impacts of the digital transformation of society in the social sphere. *SEER: Journal for Labour and Social Affairs in Eastern Europe*, 20(1), 31–48. <http://www.jstor.org/stable/26379907>

Schwab, K. (2016), "1.14 The fourth industrial revolution: What it means and how to respond", *World Economic Forum*,