

Legal Issues Involved In E-Contracts

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ABSTRACT

Due to global technology growth, there are no longer any communication barriers, and diverse people may communicate information in a matter of seconds. Only the development of e-commerce has made this feasible. In the world of e-commerce, parties exchange goods, services, and information over a digital platform. There is a need for appropriate legislation to control this online business. It is well known that the invention of the computer and the development of the internet are two of the greatest human achievements. These two developments have brought about numerous advancements in the field of information technology. Nearly everywhere, including in electronic commerce, social networking, chat, blogs, dispute resolution, and other activities, people use the internet. Electronic commerce is one of the internet's most important features among other things (Gaur, 2021). Efficiency has significantly risen, paperwork has decreased, waiting times have decreased, and costs have decreased. It is important to note that e-commerce includes e-contracts. So, it is vital to examine e-commerce briefly before talking about e-contracts. E-commerce can be defined as the act of purchasing or selling goods or services online using a digital format or electronic platform (Gaur, 2021). The term "e-commerce" refers to activities that anybody can engage in, including the sale and purchase of goods and services using computers and other forms of technology. Many operations, including automation of electronic payments, supply chain management, shopping, etc., may be included. Due to the development of e-commerce, a vendor can now operate anywhere in the world, and a customer has an unlimited number of vendors to choose from (Gaur, 2021).

Keywords: Electronic commerce, Electronic Contract, Electronic Transaction, Data Protection, Electronic Signature.

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1. BACKGROUND TO THE STUDY

The growth of industrialization, westernization, and development, along with global technological advancements, has caused profound changes in trade and commerce. Today, trade and business are not restricted by territorial boundaries or the requirement of being physically present at the location of a contract. E-commerce refers to this particular set of commercial procedures. E-commerce activities are becoming an essential part of a person's life, much as the internet has done for the past ten years. We are unknowingly a part of this e-commerce system as we purchase everything from vegetables from an online store to airline tickets. Although e-commerce has streamlined and improved our lives, it has also led to a rise in fraud and criminality. We learned about several types of contracts, such as e-contracts, to control these types of agreements and simplify our work (Cooley, 2020).

E-contracts are quite similar to traditional contracts, with the exception that they are completed electronically rather than using paper and a pen. These contract kinds are practical, time-saving, and effective. They operate similarly to other contracts in that vendors show their goods to prospective purchasers with all the terms and conditions, and following consideration of all the terms of the contract and, if necessary, negotiation, the buyer confirms the arrangement and makes payment. By merely adding both parties' digital signatures to an electronic copy of the contract, the transaction can be completed in under a minute. At first, several nations equivocated over whether to accept e-contracts as legitimate; however, by now, the majority of nations have adopted their laws to do so (Gisler & Greunz, 2020)

Valid e-contracts are the cornerstone of electronic commerce; hence enough care must be taken to design one before a transaction is concluded and carried out. The parties' absolute right to independently negotiate for conditions to be maintained. E-contracts provide a wide range of market opportunities up till the legal requirements are satisfied. Entering into numerous e-contracts becomes crucial since commercial businesses utilize the Internet as a tool to disseminate and expand their methods (Cooley, 2020).

2. RELATED LITERATURE

There are now many restrictions in place as a result of the COVID-19 global pandemic, including ones on movement, close contact with people, and social distance, among others.



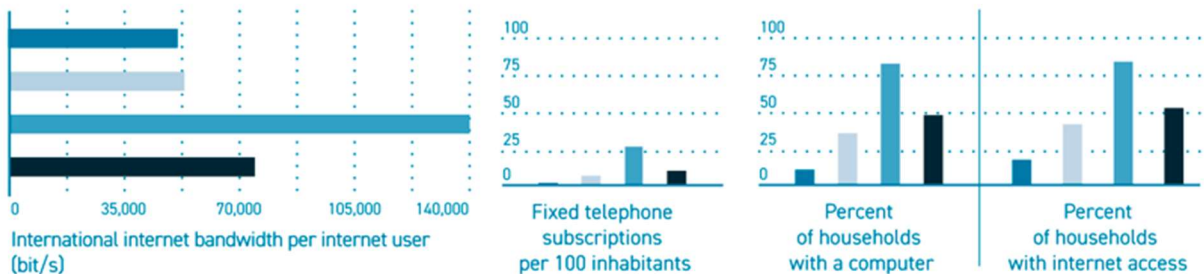
Fig.1: Digital Economy in Indonesia
Source: World Bank, 2022

With this, Ghana's government is also gradually implementing its digital economy program. As a result, more and more governmental institutions are changing the way they conduct business by choosing to file and submit documents electronically, while the majority of businesses have relocated their operations online to cut down on face-to-face interactions and travel (Gisler & Greunz, 2020).

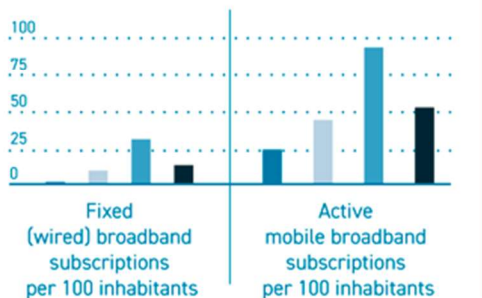
Africa's ICT development indicators

Africa still lags behind both developed and other developing countries in several indicators essential for the Fourth Industrial Revolution, especially in infrastructure, technology access, and education.

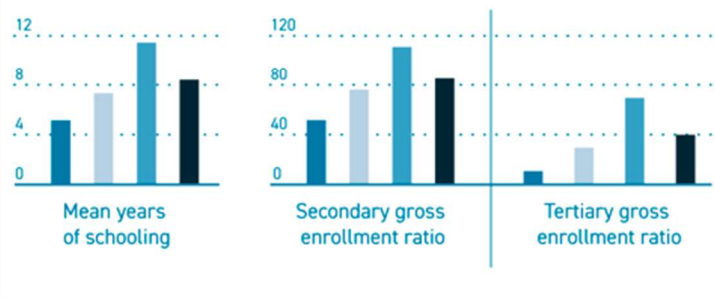
Technology access



Technology use



Technology preparedness



Legend: Africa (dark blue), All developing countries (light blue), Developed countries (medium blue), World (black)

Africa's ICT Development Indicators

Source: Adams, 2019

Also, to adhere to social distancing norms, the majority of businesses are implementing their business continuity plans, which include staff who work remotely. The fact that we now rely largely on technology, particularly digital or electronic platforms, to carry out our daily activities may be the most significant long-term effect or influence of COVID-19 on our lives. Following the COVID-19 rules has made it more challenging to obtain handwritten "wet ink" signatures for business transactions, whether in person or by scanning copies of signed papers. In light of the COVID-19 limits on business transactions in particular, the impossibility of signing major contracts and other documents using a handwritten "wet ink" signature, and the usage of e-signature in contracts generally, this article analyses Ghana's current legal system. It should be highlighted that e-signatures are being used more frequently for different business transactions to make it simple to sign contracts, agreements, and partnerships in both domestic and international activities (Gisler & Greunz, 2020).

Around the world, chairs say their job is fundamentally changing

Five forces expanding the role

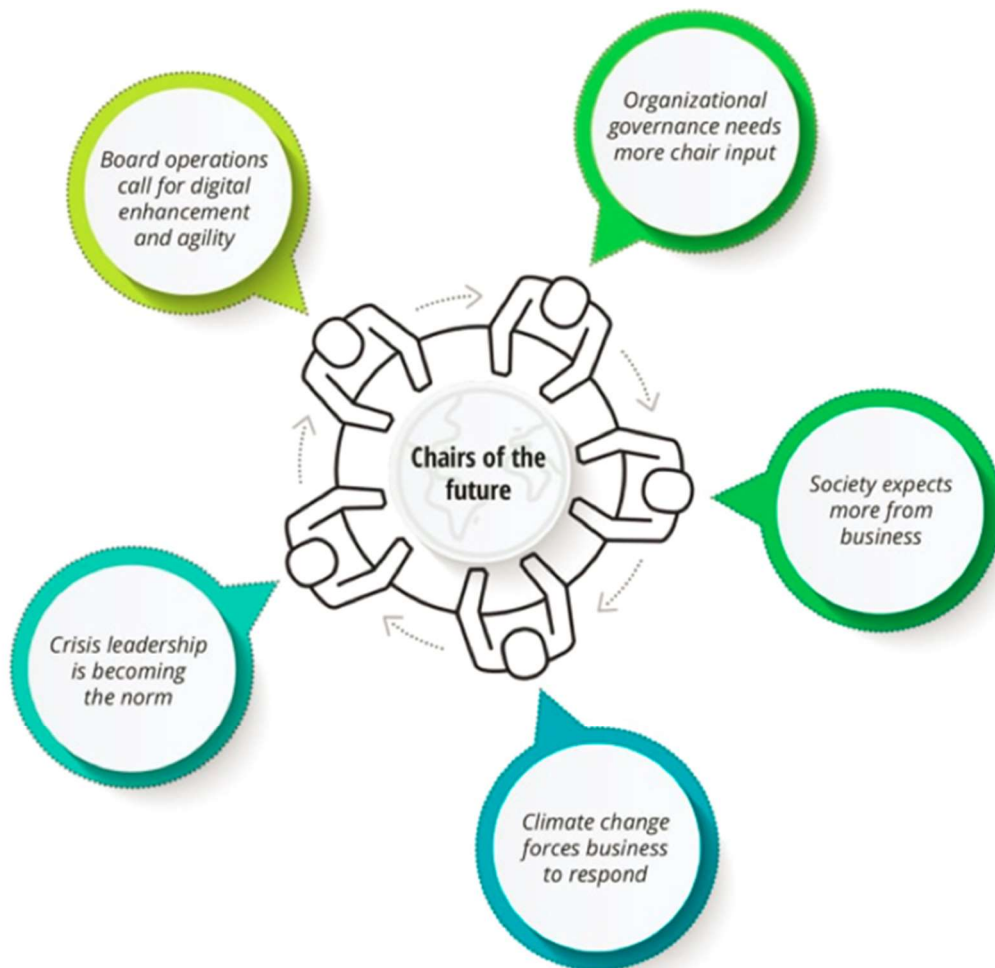


Fig 3: Fundamentally Changing Jobs Around the World

Source: Adams, 2019

2.1 The Electronic Transactions and Electronic signature regime in Ghana

The Electronic Transaction Act of 2008 is the primary piece of legislation in Ghana that regulates electronic transactions between parties (Act 772). According to Section 23 of the Electronic Transactions Act, a contract is enforceable even if it was finalized in whole or in part via an electronic medium. Hence, a contract between parties can be concluded or signed utilizing electronic media by Ghanaian law. The use of e-signatures to execute contracts or other documents is a significant problem in electronic commerce (Moonwalkers, 2018).

Consequently, the Electronic Transactions Act's section 10(1) allows for the use of a digital signature when signing contracts or other legal documents. Section 144 of the Act defines a digital signature as data that is attached to, incorporated into, or conceptually associated with other data and that the user intends to use as a signature (Moonwalkers, 2018). According to Section 12 of the Electronic Transactions Act, "A person may sign an electronic record by attaching a personal digital signature or using any other recognized, secure, and verifiable mode of signing agreed upon by the parties or recognized by the industry as being safe, reliable, and acceptable." (Volkers, 2019)

Therefore, parties to a contract are free to specify that their contracts will be executed through the use of e-signatures. E-signature contracts have the same legal weight as handwritten signature contracts when they are signed (Section 11 of the Electronic Transactions Act). Company owners can thus use e-signatures, which are allowed under the Electronic Transactions Act, to execute contracts with their clients, partners, and workers, among others. The aforementioned Act does not restrict or limit how e-signatures can be used to create and sign documents. As a result, parties to an electronic transaction may choose from a variety of recognized e-signatures, such as typing their name into an email or Word document, posting a digitized image of their handwriting signature, choosing an option in e-signatures software (Adobe Sign & DocuSign), signing a soft copy of a document with a stylus or finger on a touchscreen, or using another type of biometric identification (Moonwalkers, 2018).

2.2 Comparing the Common Law Systems' Electronic Signature Regimes

The Ghanaian courts will rely on international laws and precedents that have persuasive authority to address this subject matter in the absence of specific legislation addressing this field of electronic transactions. It is crucial to take into account the e-signatures-related rules and customs in various common law countries, like South Africa, the UK, Canada, and the US (Crichard, 2000).

The Electronic Communications and Transactions (ECT) Act, 2012 (Act No. 25), which regulates e-signatures in South Africa, defines an e-signature in Chapter 1 as any data that is attached to, incorporated into, or logically associated with other data and is intended by the user to serve as a signature. As long as they meet the requirements of intention and relevance to the document, Section 13 of the ECT Act recognizes a range of digital formats as e-signatures.

The South African Supreme Court of Appeal held that e-signatures were legally binding in the case of *Spring Forest Trading 599 CC v. Wilberry (Pty) Ltd T/A Ecowash & Another 2015 (2) SA 118 (SCA)* and that the parties had validly terminated a contract by email signature by a non-variation clause requiring any changes to the contract to be in writing and signed (Crichard, 2000).

Section 7 of the Electronic Communications Act, of 2000 in the UK covers the topic of e-signature and allows for its usage in document execution. E-signature can be used in the UK to complete online contracts and agreements, and it has the same legal force as a handwritten "wet ink" signature. In a series of cases throughout the years, the English courts have refined the law on this topic. *Bassano v. Toft & Ors* and *Neocleous v. Rees* are two examples of these cases. The High Court of England and Wales confirmed that credit agreements can be properly signed using e-signature in *Bassano v. Toft & Ors* [2014] EWHC 377 (QB) (Moonwalkers, 2018).

Furthermore, the court determined in *Neocleous v. Rees* [2019] EWHC 2462 (Ch) that an automatically generated email footer containing the sender's name and contact information constituted a signature for section 2(3) of the Law of Property (Miscellaneous Provisions) Act, 1989, which mandates a written signature on a document transferring an interest in land. According to the court, what is produced when someone stores their name and contact information in Microsoft Outlook's "signature" feature to have it automatically posted at the bottom of every email qualifies as a "signature" for contractual purposes. So, what matters more today is if adding a "signature" is done so that the content can be authenticated (Nimmer, 2019).

The Personal Information Protection and Electronic Documents Act (PIPEDA) (S.C. 2000, c. 5), a federal law, governs the legal framework for e-signatures in Canada. According to this Act, an electronic signature is just as legitimate as a physical one and is equally accepted in court. The Electronic Information and Documents Act, 2000 (S.S. 2000), a provincial law in Saskatchewan, acknowledges the use of electronic signatures for contract execution.

Consequently, in *Quilichini v. Wilson's Greenhouse*, 2017 SKQB 10, the Court of Queen's Bench of Saskatchewan upheld an electronic waiver as being enforceable (Nimmer, 2019). The Electronic Information and Documents Act's section 18 makes it plain that contracts can be entered into by touching or clicking on an icon or other location that has been specifically defined on a computer screen, according to the court's opinion. After having the chance to view the waiver and release it on the screen, the court concluded that the plaintiff had consented to the provisions in an electronic form (Gaur, 2021).

Two main pieces of legislation make up the US legal framework for e-signatures. The Electronic Signatures in Global and National Commerce Act (ESIGN) was passed by the U.S. government in 2000 to facilitate the use of electronic records and e-signatures in interstate and international trade by ensuring the legitimacy and legal significance of contracts entered electronically. This Act grants an electronic signature in all 50 states where federal law is in effect the same legal standing as a handwritten signature (Sodeman, 2007).

The Uniform Law Commission also created the Uniform Electronic Transactions Act (UETA) in 1999 to establish a legal framework for the use of e-signature technology by the state, in addition to the ESIGN Act. Many cases that were heard by US federal and state courts involved the application of these two laws (Azikiwe, 2021). A properly completed e-signature has the same legal impact as a handwritten signature in nearly all jurisdictions including the great majority of e-signature cases in the US. For instance, the New York Supreme Court determined in *Forcelli v. Gelco Corp.*, N.Y. Slip Op. 05437, 2013 WL 3812103 (N.Y. App. Div. 2d, July 24, 2013) that an email signature in negotiation was legally binding since it demonstrated one of the parties' intentions to proceed with a contract (Crichard, 2000).

"Plaintiff's argument that she should not be bound by the arbitration agreement simply because she did not sign a physical paper contract is as archaic today as the notion that James Joyce is unlawfully obscene," the US District Court for Pennsylvania stated in *Keller v. Pfizer, Inc.*, (2018) WL 5841865 (M.D. Pa. Nov. 8, 2018) (Crichard, 2000). Moreover, the Washington Court of Appeals upheld the plaintiff's summary judgment in *Alliant Credit Union v. Abrego* No. 76669-4-1, (2018) Wash. App. LEXIS 2964 (Ct. App. Dec. 31, 2018), which involved a claim for breach of contract based on the defendant's default on a 2014 auto loan. In a series of claims contesting the existence of a legitimate loan, the defendant claimed, among other things, that the e-signature was somehow falsified (Crichard, 2000).

The court emphasized the thorough authentication procedure used by DocuSign, concluding that there is no legitimate dispute as to the existence of an enforceable contract. In addition, the plaintiff's claim of forgery was rejected in the case of *Obi v. Exeter Health Resources, Inc.* WL2142498 (D.N.H. Ct. 2019), since she had examined and signed the documents from her DocuSign account, resulting in a legally binding and enforceable contract. Last but not least, the Connecticut Trial Court ruled in *Designs for Health, Inc. v. Miller* 187 Conn. App. 1 (2019) that the DocuSigning of a contract by the defendant was sufficient evidence to establish the court's jurisdiction over the defendant (Crichard, 2000). The legitimacy of an e-signature is decided by the courts in a variety of common law jurisdictions based on several variables. Hence, for an e-signature to be enforceable, it must fulfill the following conditions:

Initially, there must be a clear desire to sign; else, an e-signature won't be accepted. The second requirement is express or implied consent to transact business electronically on the part of the relevant parties. The third step is a clear signature attribution; this may be done by looking at the context and circumstances surrounding the document's signing. Fourth, the connection between the signature and the record. E-signatures must be linked to the document being signed. Finally, e-signature records should be kept for as long as necessary to ensure that they accurately reflect the terms of the agreement (Moonwalkers, 2018).

The right of parties to select the kind or type of software they can use for their e-signature is unrestricted by existing Ghanaian law. However, the aforementioned elements must be taken into account when selecting a suitable method or piece of software for e-signing contracts or other documents. The above-mentioned elements must be taken into account by the parties when choosing software for e-signatures (Moonwalkers, 2018).

It's vital to note that contracts signed with electronic signatures can be implemented in counterparts if the agreement allows for it. Another provision of the Electronic Transaction Act states that an electronic record expressing an offer, acceptance, or payment of consideration for the formation of a contract is generally deemed to have been sent or dispatched at the time the record entered the information processing system outside the originator's control (Moonwalkers, 2018).

3. FINDINGS

E-contracts are valid under the Ghana Electronic Transaction Act. E-contracts must be entered into with both parties' free assent and legal consideration, according to a set of rules that govern them. There is a very real risk that children will sign e-contracts as well. Hence, the forms on the websites should state that the person entering into the contract must be older than 18 years to prevent minors from doing so.

Data protection: Everybody is concerned about keeping their online facts safe. Both the Electronic Transaction Act and the Data Protection Act include advice on how to protect data in Ghana. Every Organization should take precautions to secure any type of private information or data from corruption, damage, loss, or destruction, including during the communication of contracts between parties (Keller et al., 2019).

Intellectual property rights: Occasionally, e-commerce websites are run by independent contractors with expertise in the same field. The third party is protecting the information. There is a chance of trademark, copyright, or patent infringement on an online platform if the agreement does not provide IP rights between the parties (Gisler & Greunz, 2020).

Product returns and refunds: The consumer has the option to terminate an e-contract after placing an order for a product. If a consumer isn't happy with the purchase, they can return it to the merchant. We have frequently observed that customers order items that catch their attention on the screen because they seem appealing, but when the items arrive, they are dissatisfied and return the items. Consumers frequently deal with fraud. However, it should be noted that settlements for canceled orders should be given to customers within a few days, yet most of the time, businesses withhold refunds from customers. Hence, the law should specify a reimbursement period in advance that, if exceeded by the trader, will result in a fine (Keller et al., 2019).

Delivery of faulty items: The majority of consumers have experienced problems with electronic contracts when they ordered things but ended up with fake goods. People have frequently witnessed such instances in real life as well as in the press, such as the time someone ordered a laptop but instead received a brick, a vim bar in place of a Samsung Galaxy Core 2, or bits of stone in place of an iPhone 4S. To stop the problems, the law requires the vendor to give injured customers an equal amount of compensation. Nonetheless, there are still some sellers that engage in behavior intended to harry the customer. Strict regulations and laws should be implemented to stop this problem (Sadual, 2021).

4. CONCLUSION

There are no longer any obstacles to communication because of the advancement of technology worldwide, and different people may share knowledge instantly. The only thing that has made this possible is the growth of e-commerce. Parties exchange goods, services, and information using a digital platform in the world of e-commerce. To regulate this online enterprise, the relevant legislation is required.

The foundation of electronic commerce is a valid e-contract; hence it is crucial to create one carefully before finalizing and carrying out a transaction. The sole and exclusive right of the parties to freely negotiate and maintain the terms. As long as the legal criteria are met, e-contracts offer a wide range of business potential. When commercial firms use the Internet as a tool to disseminate and extend their ways, signing multiple e-contracts becomes essential.

The aforementioned research suggests that parties may use e-signatures in Ghana as long as there is no legislation restricting their use when signing contracts or other legal documents. However, the party relying on the e-signature must take steps to make sure it is valid and conforms with all rules and regulations. Despite the Electronic Transactions Act's exclusion of certain transactions under Section 4 of the Act, the courts in Ghana may eventually be more inclined to recognize contracts and documents executed online in some circumstances. This is a result of recent domestic and international changes.

5. RECOMMENDATION

In the context of business transactions involving information technology (IT), a valid and enforceable contract typically includes the following elements:

Offer and Acceptance: One party must make an offer, and the other party must accept that offer. In IT transactions, this may apply to offers to sell software development services or to license software products.

Consideration: Both parties are required to exchange something of value, such as money or services, for the agreement to be valid. In IT transactions, this could involve paying for the products or services obtained or for the use of software licenses.

Terms and Conditions: The terms and conditions of the agreement, including the nature and extent of the work to be performed, dates for delivery, standards of performance, and any other relevant information, shall be outlined in writing in the contract. It should address issues including intellectual property ownership, confidentiality, and warranties.

Capacity: Two individuals who are both of legal age must enter into the arrangement. They must be of legal age, in good mental health, and authorized to represent their respective organizations in the transaction.

Legality: The agreement's objectives must be justifiable. This indicates that the services or items being sold in IT transactions cannot break any laws or regulations. A contract is enforceable even if it was finished in whole or in part via an electronic medium, per Section 23 of the Electronic Transactions Act.

Signatures: The agreement to the terms and conditions of the contract must be signed by both parties. Electronic Transactions Act's section 10(1) allows for the use of a digital signature when signing contracts or other legal documents. Section 144 of the Act defines a digital signature as data that is attached to, incorporated into, or conceptually associated with other data and that the user intends to use as a signature.

According to the Electronic Transaction Act, parties that use e-signature to sign contracts or other documents must take the appropriate precautions to guarantee that the e-signature they acquire is genuine. Thus, section 10(2) of the Act states that a digital signature is considered to be valid if the method used to create it is first linked to the signatory and not to another person in the context in which it is used. Second, the digital signature's creation tool was in the signatory's control not other persons at the time of signing, free from coercion or undue influence.

Thirdly, it is possible to tell whether a digital signature has been changed after it was signed. Anybody who relies on an electronic signature has a responsibility to make sure the signature is real. Hence, parties to an electronic transaction must make sure that these conditions are met while executing their contracts and other documents using e-signature technology.

6. FUTURE WORKS

With technological advancement, parties may contract through an electronic agent using automated transactions. When an electronic agent is used, the contracting party is responsible for making sure that the other contracting party is aware of and can access all of the contract's provisions before signing. This condition may make the aforementioned contract unenforceable if not met.

Under Section 143 of the Electronic Transaction Act, the Ministry of Communication was tasked with establishing regulations that would particularly address the modalities for e-signatures and related issues. The Ministry has yet to release a piece of legislation addressing this issue, despite the Electronic Transactions Act has been in effect for several years. The use of e-signatures in contracts in Ghana is not necessarily invalidated by the absence of the Regulation. In actuality, e-signatures are particularly covered by the Electronic Transactions Act. The lack of regulation merely indicates that there isn't any legislation that specifies the characteristics of e-signatures.

Given the foregoing analysis, it can be inferred that parties may utilize e-signatures in Ghana in the absence of a legislative instrument limiting their usage while executing contracts or other legal documents.

Nonetheless, the person relying on the e-signature must take measures to guarantee that it is genuine and complies with all established standards. The courts in Ghana may gradually be more disposed to recognize contracts and documents signed electronically in certain areas, despite the Electronic Transactions Act's exclusion of particular transactions under Section 4 of the Act. This is because of recent developments both locally and internationally.

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