



COURSES

Forms and Trust. Authenticity and Integrity. Contract as record or form

[Click here to start](#)

Table of Contents

[Doing business electronically: Electronic Commerce and Recordkeeping](#)

[Documentary form in Diplomatics](#)

[Contract as record or form](#)

[Legal Authenticity of Records in E-commerce](#)

[Electronic Transactions Bill](#)

[Contract and E-commerce](#)

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COURSES

Doing business electronically: Electronic Commerce and Recordkeeping

**Forms and Trust. Authenticity
and integrity; contract as record
or form**

Livia Iacovino, Monash University
Forms and Trust

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Slide 1 of 10



Documentary form in Diplomatics

- **The rules of representation according to which the content of a record, its administrative and documentary context, and its authority are communicated.**
- **Documentary form possesses both extrinsic and intrinsic elements.**



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Slide 2 of 10



Contract as record or form

- **documents as legal instruments: probative**
- **transaction: changing the legal relationship of parties concerned. ‘Legal documents are those that state or change the legal relationship between people, or between the state and people’, *Expert Group Report from NAC, Canada, June 1999, p. 3.***



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Slide 3 of 10



Legal Authenticity of Records in E-commerce

- **security of contract formation**
- **the need for legislative certainty**



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Slide 4 of 10



Electronic Transactions Bill

- **functional equivalence**
- **technology neutrality**



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Slide 5 of 10

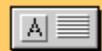
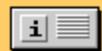


Electronic Transactions Bill

- specific provisions which state that a requirement or permission under a law of the Commonwealth for a person
 - to provide information in writing
 - to sign a document
 - to produce a document
 - or to retain information or a document
- can be satisfied by an electronic communication, subject to certain minimum criteria being satisfied.
 - in the absence of any contrary agreement, to determine the *time and place of dispatch and receipt* of electronic communications and the attribution of electronic communications.

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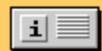


Electronic Transactions Bill

- **“Electronic communication” is defined as a communication of information by means of guided and/or unguided electromagnetic energy. The term “communication” should also be interpreted broadly. Information that is recorded, stored or retained in an electronic form but is not transmitted immediately after being created is intended to fall within the scope of an “electronic communication”.**

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Electronic Transactions Bill

- **“Transaction” is defined to include transactions of a non-commercial nature. (The term “transaction” is defined in clause 5.) This term is intended to be read in its broadest sense of doing something, whether it be conducting or negotiating a business deal or simply providing information or a statement. It should not be read narrowly to confine it to contractual or commercial relationships. Nor is it limited to the actual transmission of the information.’**

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Electronic Transactions Bill

- **Clause 9 Writing**
- **Clause 10 Signature**
- **Clause 11 Production of document**
- **Clause 12 Retention**
- **Clause 14 Time and place of dispatch and receipt of electronic communications**
- **Clause 15 Attribution of electronic communications**



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Slide 9 of 10



Contract and E-commerce

- **Terms of contract**
- **Valid contract**
- **Nonrepudiation**
- **Proof of offer and acceptance**
- **Place of contract**



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Slide 10 of 10