

Analysis of Contract Problems in Taobao Shopping (Contractual Relationship in Network Transactions and Analysis of Alipay's Legal Status)

-- Based on the Contract Law of the People's Republic of China

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Abstract

Online shopping has become the first choice for many people. Online shopping breaks through the traditional form of entity transaction between the buyer and the seller, and completes the transaction of payment for goods and delivery of the subject matter through the third party. The legal relationship involved is complex. The parties to the transaction should bear different legal obligations and responsibilities according to the actual situation. Taking Taobao shopping as an example, this paper focuses on the analysis of the legal relationship involved in the online shopping process, in order to benefit the trial practice.

Keywords

Online Shopping; Consumer; Operator; Legal Relationship.

1. Analysis of Contract Relationship in Online Shopping

Different from meeting and communicating with buyers and sellers in the original market to decide whether a transaction is completed or not, buyers and sellers of online shopping do not need to meet directly, but conclude a contract through the exchange of electronic data to confirm the rights and obligations of both parties. The main process involved is shown in the figure below (Figure 1).

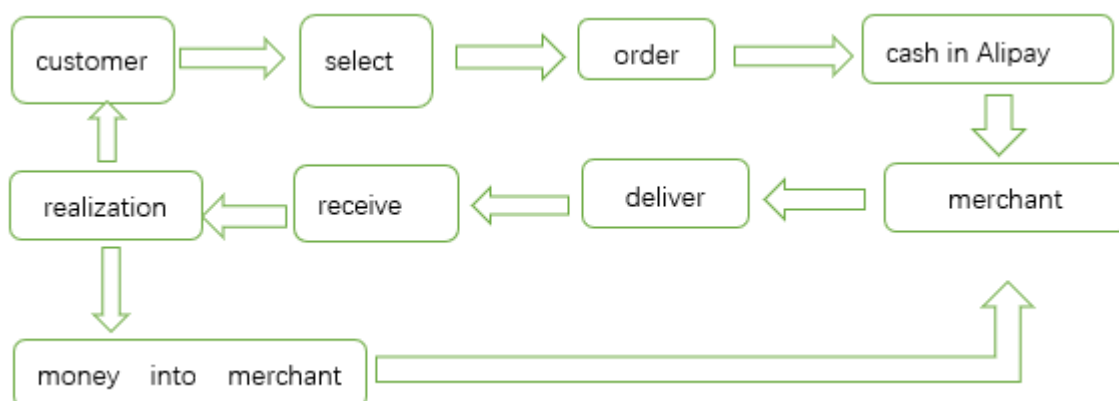


Figure 1. Flow chart of online shopping

As can be seen from the above figure, most of online shopping is carried out in a virtual space, and its transaction process is actually very complex. As the platform of Alipay (and bank certification platform) and express delivery department came into being, besides the obvious sales contracts between buyers and sellers, it also included relationships within the electronic

payment platform, express company, Taobao supervision and certification department and the customer service department. The more participants involved, the more complicated and interwoven legal relationship between them. The obvious contractual relationship exists between buyers and sellers, between buyers, sellers and Alipay platforms, between Alipay platforms and banks, between buyers, sellers and distribution companies, between buyers, sellers and Taobao platforms, etc. (as shown in Figure 2).

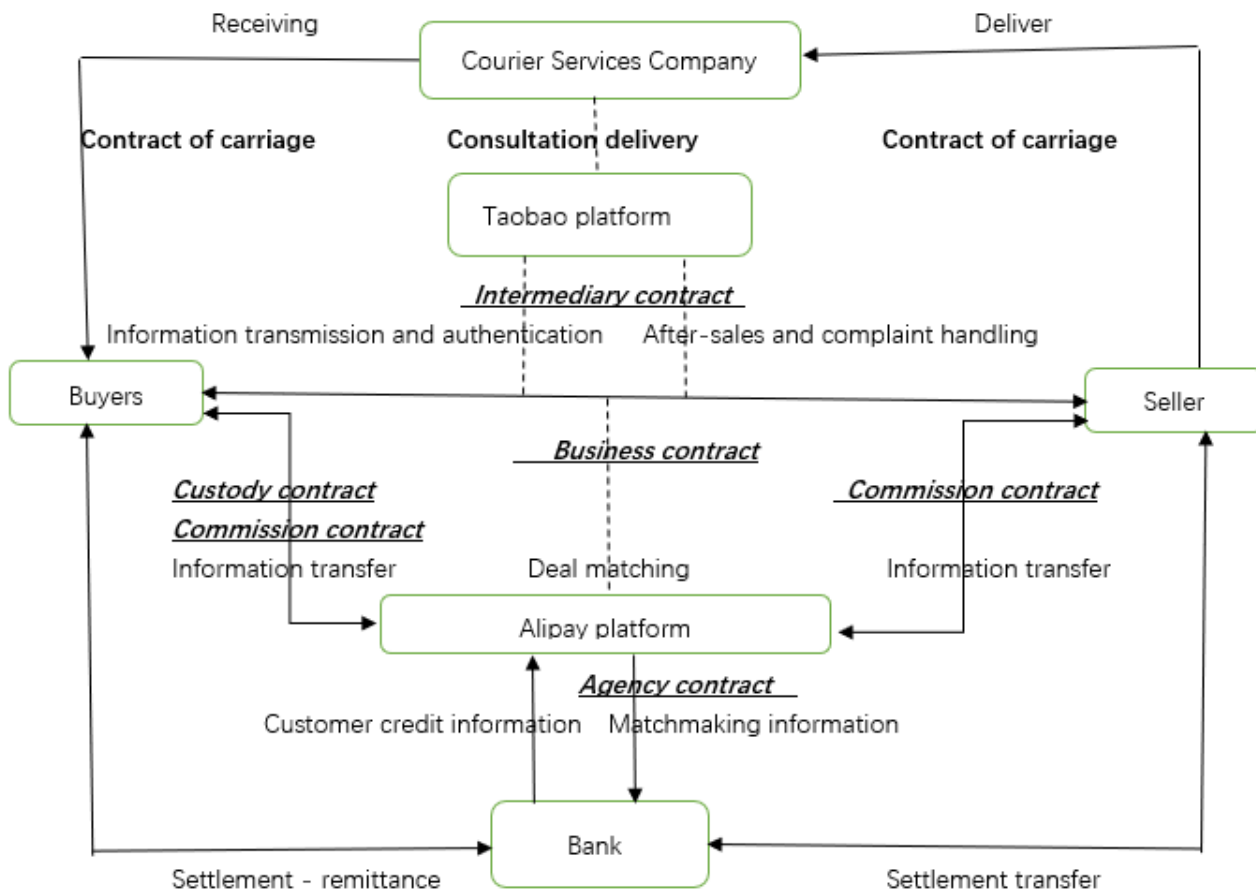


Figure 2. Legal relationship between parties in online shopping

The contractual relationship between the parties in Taobao shopping is shown in the figure above (Figure 2). The following is an analysis of the three main contractual relationships; The contractual relationship between Courier services company and buyers, the contractual relationship between Taobao buyers and Taobao trading platform, and the contractual relationship between Alipay and buyers.

(1) The contract relationship between sellers and buyers

Whether it is the traditional face-to-face transaction mode or Taobao through the exchange of electronic data shopping, the buyer and the seller are actually the typical contract of purchase relationship. Although there are some differences in form, there is no substantial difference in the essence of law. As far as Taobao shopping is concerned, the order confirmation provided by Taobao platform can be regarded as the contract voucher, according to which both parties clarify their mutual rights and obligations. If one party fails to perform the contract obligations, he should bear the responsibility for breach of contract.

(2) The contract relationship between buyers, sellers and Taobao trading platform

Whether it is the supervision and certification service provided by Taobao platform before sale or the complaint handling after sale, it belongs to the relationship between the buyer, the seller

and Taobao trading platform. As for the contractual relationship between them, I think it should belong to the brokerage contractual relationship. Taobao platform provides a platform for operators to sell goods, and then uses its own publicity and influence to attract buyers for facilitating the transaction; Secondly, Taobao platform has also set up an operator access threshold to provide buyers with more intuitive information about the operator's reputation and product quality. This screening process is basically in line with the content of Article 425 of China's "contract law". Therefore, I think Taobao platform is in line with the characteristics of broker, and there is a brokerage contract between the buyer, the seller and Taobao platform.

(3) The contract relationship between buyers, sellers and Alipay platform

The relationship between Alipay platform and buyers constitutes a principal-agent contractual relationship and a custodian contract. After buyers transfer their money to Alipay platform, until the confirmation is received, the relationship between Alipay platform and buyers is the custodian contractual relationship stipulated in the 365th of the contract law of China. When the buyer confirms receipt, the Alipay platform sells the goods to the merchant according to the buyer instructions. In this process, both parties constitute the entrusted contractual relationship stipulated in article 396 of the contract law of China.

2. The Legal Status of Alipay in the Relationship of Sale and Purchase

As the third part online payment organization, Alipay acts as an online payment intermediary in online transactions. When the buyer and seller have concluded the sale and purchase agreement, the buyer will draw the money to his Alipay account through the online bank, and wait until the buyer receives the goods and confirm the receipt. Alipay will pay the buyer's advance payment to the seller's Alipay account. Therefore, in Taobao's purchase and sale contract, Alipay is not the main body of this sales contract. The main contract (sales contract) relationship only exists between the paying party and the receiving party, and has no direct relationship with the third party payment institution. The payment contract of the third party (Alipay platform) is only a contract attached to the sales contract, and its establishment also depends on the establishment of the main contract.

(when Alipay pays as the mode of payment, the payor, the payee and the Alipay platform are established a third party payment contract as the accessory contract). Therefore, when discussing the legal relationship in Alipay platform payment, we can not completely deviate from the relationship within the main contract-- the sales contract.

First of all, according to the content of Alipay's agreement and its operation process, the seller, the buyer and Alipay platform clearly constitute a principal-agent relationship. (Alipay intermediary transaction service means that the two parties use the Alipay software system as the payment method, and the Alipay ends the transaction after the buyer receives the confirmation receipt).

Secondly, according to the relevant provisions of the guarantee contract in the property law of our country, the legal status of Alipay in the sales contract seems similar to the guarantor (similar to the non-strict guarantee), which ensures that the buyer has paid for the goods before the seller delivers the goods and when the buyer confirms the receipt of the goods, the seller receives the payment. The difference is that the buyer is paying the future debt. The seller can not use the right to use the creditor immediately after delivery, and China's property law stipulates that the guarantor has unlimited joint liability for the debtor's outstanding debts with his own property. However, Alipay's payment statement says it will not intervene in the main contract, and provide no guarantee for the validity of the contract. In the sales contract, although Alipay is in the intermediary position and also has the characteristics of the guarantee, but it is different from the guarantor in strict sense. Therefore, it is doubtful whether it will guarantee the legal status of the witness in the main contract.

Finally, according to the relevant provisions of the payment agreement (providing collection services and payment services), it is obvious that Alipay is building a bridge between the buyers and sellers, and keeps the money in the time limit from the beginning of the consumer's order to the completion of the order. Therefore, the buyers, sellers and Alipay constitute a subordinate contract (custody contract) attached to the main contract, then Alipay has the legal status of the custodian. (In the custody contract, ownership is still the original right holder, so the fruits generated during the transaction are still consumers`.)

3. Conclusion

The essence of Taobao shopping is to determine the rights and obligations of both parties through sales contract and entrustment contract, so the principle of autonomy of will in contract law is applicable, that is, as long as both parties have the same intention and do not violate the mandatory provisions of laws and administrative regulations, it should be applied first. If the buyer wants to buy the goods supplied by the seller for living needs, the relevant provisions of the consumer protection law shall apply.

The main difference between Taobao online shopping and ordinary entity business in the application of dispute basis is that the relevant agreements and dispute settlement rules formulated by Taobao have priority. For in the process of registering, Taobao, the buyer and the seller have made an expression of intention which indicating that they are willing to accept the relevant agreement of Taobao. Therefore when dealing with online shopping disputes (Taobao online shopping), the legal basis should be: first, the will of both parties, second, the relevant agreements of Taobao, and finally, the consumer protection law and contract law.

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