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The Incorporation of Terms into Commercial Contracts: A Reassessment in the Digital Age

Faye Fangfei Wang In modern commercial practice, more flexible means can be used to construct a contract as a result of ever-changing technology. This prompts a reassessment of the legal principles concerning the incorporation of terms and their relation to the legal and technical measures for making terms available before and after the conclusion of the contract. Such a reassessment not only requires the interpretation of the “reasonableness and fairness” test in context but also the examination of the appropriate means to give sufficient notice for the incorporation. This article undertakes primary research, interpreting the requirement of making terms appropriately available “for later reference” and providing insights into the implementation of the realistic assessment of “reasonableness and fairness” for the incorporation of terms in the digital age. In general, this article seeks for solutions to promote harmonisation of the regulatory standard for the availability and incorporation of terms at the international level with reference to the legal theories and practice in the EU, UK, US and China.

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