

**EMERGING ISSUES IN ELECTRONIC CONTRACTING IN THE LAWS OF SOUTH AFRICA AND NAMIBIA
WHERE ONE PARTY IS A “ROBOT”.**

**By Aimite Jorge
University of Namibia**

ABSTRACT

Although a contract is traditionally known to arise on the meeting of the minds of the contracting parties, often-times parties to a contract do not always clearly address all of the contract terms. Sometimes some terms may be missing or they may be unclear, or the parties may have exchanged conflicting documents. The determination of the contractual terms in these circumstances sometimes is uncertain. But normally, the general rules of contract follow a hierarchy of evidence when determining the terms of a vague or incomplete contract. Such hierarchy is usually as follows: (a) the terms stated in the discussions and writings exchanged by the parties that are not in conflict; (b) terms implied by the current and past conduct of the parties; (c) terms implied by the industry custom and practice; and (d) terms implied by law. If a planner and supplier exchange promises by e-mail the law will interpret this agreement the same way it would interpret a more traditional contract written on paper. Thus parties to an electronic contract should be just as careful in articulating the terms as they would be in traditional contracts. However, in modern and more recent contracting, the exchange of the parties may not necessarily involve humans from both sides. In such case, several questions arise as to the determination of the terms of the contract if ambiguity arises. This paper discusses the approach that may be followed based on the South African and Namibian Contract interpretation rules.

Keywords: Interpretation of e-contracts; e-contracts; robot contracts.