

# Digital Age Shapes Modern Contract Law

Considering the Legal Significance  
of a “Thumbs-Up” Emoji

BY GEORGE H. SINGER



*This article discusses the role of emojis in business communications and contract formation.*

In embracing the needs of modern commerce and a digital world, the law has developed such that emails, texts, and other electronic communications can create legally binding, contractual relationships. A Canadian appellate court took this concept one step further and recently upheld a lower court's decision that the use of a "thumbs-up" [👍] emoji sent in a text message was a valid form of acceptance of a contract.

A three-judge panel of the Saskatchewan Court of Appeal, in *Achter Land & Cattle Ltd. v. South West Terminal Ltd.*, affirmed the liability of a farmer for non-delivery under a grain purchase contract.<sup>1</sup> The court found that, because the farmer sent the emoji in a text message from his personal cellphone, there was electronic data that he knew would identify him and communicate his assent to the agreement. Looking to past behavior between the parties, the court confirmed that there existed in the circumstances and dealings of the parties a mutual intent to enter a binding contract.

The analysis undertaken by the Canadian court in *Achter Land & Cattle* is instructive to companies in Colorado and elsewhere whose personnel regularly discuss business terms in informal communication methods, such as emails, text messages, WhatsApp, and on other platforms. Legal counsel who advise companies should likewise view the decision as a cautionary tale for their clients and perhaps alter their views of the traditional requirements for contract formation. While the case may be novel, the trial court signaled that it could not "attempt to stem the tide of technology and common usage—this appears to be the new reality . . . and courts will have to be ready to meet the new challenges that may arise from the use of emojis and the like."<sup>2</sup> This article gives an overview of *Achter* and considers the implications of using emojis in business communications.

### Key Points

- Modern law is media neutral. Even a text or basic email message exchange can form the basis of an enforceable contract.
- An emoji's use as a communication tool can have legal significance and should not be perceived as a second-tier form of communication. Emojis need to be interpreted in context, however.
- To avoid ambiguity in the parties' intentions, the use of emojis and other methods of informal communication should not be used when negotiating contractual terms.
- In an ever-growing e-commerce environment, practitioners should be careful to qualify any communications intended as negotiations and memorialize the final deal in a subsequent fully executed, written agreement.

### Background

The parties in *Achter Land & Cattle* had a long-standing business relationship. The farmer frequently sold grain to a cooperative under sale and delivery agreements. During the COVID-19 pandemic, the cooperative changed its practice of sending sales representatives to meet farmers face-to-face and instead handled contracts by phone or email.

The cooperative contended that the parties entered into a deferred delivery agreement for 87 metric tons of flax. An employee of the cooperative prepared a contract that identified the delivery period, signed it, and took a photograph of it using his cell phone. He then texted the photo to the farmer with a message that said: "Please confirm flax contract." The farmer, in response, used his iPhone and texted back a "👍".<sup>3</sup>

By the time the flax was due to be delivered, the flax market had shot up in price. The grain never arrived, and the cooperative later sued the farmer, insisting that the parties reached an agreement. The cooperative pointed to the

text of the emoji as evidence of acceptance and of the agreement.

The farmer countered by asserting that he never meant the simple iPhone emoji to constitute his signature or to form a binding agreement. It was simply an acknowledgment that he received the document. The emoji, he contended, was not affixed to the agreement that was separately forwarded. He added that he expected a full agreement would follow by fax or email for his review and signature.

The lower court ruled in a summary judgment in favor of the cooperative and awarded damages. A three-judge panel of the Saskatchewan Court of Appeal affirmed the ruling, with the majority finding that the thumbs-up emoji created a signed contract. The decision has attracted significant attention due to the court's express acceptance of an emoji as a valid digital signature.

### Course of Dealing

Context matters. The court in *Achter* said that "[t]here is some distance between, on the one hand, saying that a communication—whether it be by word, gesture or symbol—does not bear a universal meaning and, on the other hand, asserting that it is *incapable* of having a particular meaning ascribed to it in a specific circumstance."<sup>4</sup>

A problem with the farmer's defenses was the historical dealings between the parties. The farmer and the cooperative had a history of communicating by text. The cooperative texted photos of the contracts, and the farmer had always accepted those contracts by text message using short, affirmative expressions, such as, "Looks good," "Yup," and "OK," and then delivered grain in accordance with those arrangements.

Courts in Colorado and elsewhere have found an ordinary course of dealing or performance between parties can be a tool for determining the existence of and interpreting a contract in a variety of commercial contexts.<sup>5</sup> The courts employ an objective standard of what the parties said and did to determine mutual assent.<sup>6</sup>

Emojis need to be interpreted in context because they derive meaning from the content

of the communication preceding them, as do all other forms of communication. In at least four other occasions between the parties in *Achter*, after the cooperative had texted a photo of the contract and the farmer had replied by text, the grain was delivered as agreed and payment was made. This course of dealing established the way the parties had conducted business.

### Acceptance

A contract is formed when there is an offer by one party accepted by the other with the intention of creating a legal relationship that is supported by consideration. In contract law, an offer and acceptance are the core elements of a legally binding agreement.<sup>7</sup>

An offer must be a clear proposal evidencing an intention to form a contract that is definite, certain, and not vague. An acceptance requires evidence of an unequivocal agreement to the terms of the offer, absolute and without deviation.<sup>8</sup> These elements can be based upon electronic evidence that can include emails, text messages, social media posts, and other digital records.<sup>9</sup>

As the *Achter* court determined, the fact that emojis are not words shouldn't matter, as an acceptance need not be couched in that manner. In fact, assent can be evidenced in a number of ways, with a nod of a head or the raising of a hand at an auction, for instance.<sup>10</sup> Acceptance can also occur by performance.<sup>11</sup> Caution should therefore be taken in over-assuming emoji exceptionalism in a contract analysis.

The court was careful to acknowledge that text messages will not always constitute acceptance sufficient to form a contract: "The judge would have committed error had he approached his decision by suggesting that a thumbs up emoji invariably means 'I agree' or always bears something akin to that meaning."<sup>12</sup> However, the fact that emojis can have multiple meanings is not unusual. Nor does that point make them fatally defective, as many aspects of human communication develop multiple meanings. The court ruled that a contextual analysis must be undertaken to determine whether an objective, reasonable party would conclude that the parties reached a meeting of the minds.<sup>13</sup>

### Writing and Signature

The farmer also relied on the statutory defense available under Canadian law in the Sale of Goods Act, which renders a contract unenforceable "unless some note or memorandum in writing of the contract is made and signed by the party to be charged," similar to Article 2 of the Uniform Commercial Code adopted in Colorado. The Canadian appellate court framed the issues focused on arguments relating to the requirements of a writing and signature as follows:

[H]uman communication is often subtle. Words, phrases, gestures and symbols may carry more than one meaning. All of this gives rise to the potential for ambiguity and uncertainty and, indeed, litigation. The law has long accommodated for this, and courts are often called upon to determine the legal import of a multitude of communication types between individuals. The fact that, in this case, one part of the communication comprised an emoji simply provides a modern twist to this otherwise rather unremarkable observation.<sup>14</sup>

The majority found that the emoji functioned as a signature and was not required to be affixed to the disputed agreement to satisfy the law's requirements. The panel rejected the farmer's argument that a signature needs to be a newly created artifact affixed to the document (like a wet signature on paper):

I can agree . . . that [the appellant] did not *create* the thumbs up emoji for the purposes of signing contracts. However, the same can be said about the letters that together make up a person's name. In either case, what is controlling is the *use* to which the thumbs up emoji or those letters are put.<sup>15</sup>

The impact of emojis and other digital communications on contract formation often must necessarily be accomplished through the lens of the statute of frauds.<sup>16</sup> The statute of frauds requires certain contracts to be in a *signed* writing to satisfy the statute's requirements and therefore permit their enforcement.<sup>17</sup> "Text messages and emails can potentially satisfy the Statute of Frauds, provided that they, like other writings, contain



the essential terms of the transaction and are signed by the parties to be bound or their authorized agents.”<sup>18</sup> Modern commerce has relaxed the traditional signature requirement so as to include any symbol made or adopted with an intention to authenticate the writing.<sup>19</sup> Signing contracts electronically has also become the new normal in the United States, as it offers business participants a fast and efficient way to close transactions.<sup>20</sup>

The evolving digital landscape will require businesses, consumers, and courts to be vigilant. The recognition of the emoji as a valid acceptance by the court in *Achter* implicates e-commerce transactions and should serve as a cautionary tale for parties and counsel that intent will always trump form.

### Dissent

One of the justices dissented from the decision. While he agreed that the parties had taken the steps necessary under Canadian law to form the basis of a contract, he rejected the notion that a text message containing a thumbs-up emoji could constitute a signature in the traditional sense of the word as required by the applicable law.<sup>21</sup>

### Conclusion

It is important to modern commerce that the law be clear on the force that will be given to various expressions of intent. The use of texts, emojis, and emails for business communications is becoming increasingly common.<sup>22</sup> Businesses and consumers need to be mindful when using emojis and other informal communications, particularly when discussing agreements and relationships.

The legal landscape of the use of emojis in contractual settings contains traps for the unwary. A risk of unintended contracting can arise if an offeror reasonably interprets a response to an offer by an emoji as an acceptance. The *Achter* case is a recent example that courts are increasingly recognizing digital communication as legally significant, and all forms of electronic communication can influence contractual formation and interpretation in ways that may not always align with a party’s intent. <sup>CL</sup>



**George H. Singer** is a partner in the Denver office of Holland & Hart LLP, where he practices in the areas of corporate finance and commercial law. Singer is also a Fellow of the American College of Bankruptcy—ghsinger@hollandhart.com.

**Coordinating Editors:** David P. Steigerwald, dps@sparkswillson.com; Rachel Burkhart, burkhart.rachel@dorsey.com

### NOTES

1. *Achter Land & Cattle Ltd. v. South West Terminal Ltd.*, 2024 SKCA 115 (CanLII Dec. 16, 2024). This case is being discussed here not to instruct on the state of Colorado law but to highlight the importance of clear communication during business transactions and to consider the increasing role that emojis and other informal communications might have in modern legal matters.
2. *South West Terminal Ltd. v. Achter Land*, 2023 SKKB 116, ¶ 40 (CanLII June 8, 2023).
3. *Achter*, 2024 SKCA 115, ¶ 2.
4. *Id.* ¶ 49.
5. See, e.g., *Avedon Eng’g, Inc. v. Seatex*, 112 F.Supp. 2d 1090 (D.Colo. 2000).
6. See, e.g., *Scoular Co. v. Denney*, 151 P.3d 615, 619 (Colo.App. 2006) (indicating that acceptance is determined by words or conduct that, when objectively viewed, embodies an intention to accept an offer).
7. *Marquardt v. Perry*, 200 P.3d 1126, 1129 (Colo.App. 2008).
8. See *Parry v. Walker*, 657 P.2d 1000, 1002 (Colo.App. 1982).
9. See generally *Pacheco v. Pacheco*, No. 23CA1126, 2024 Colo. App. LEXIS 1912 (Aug. 29, 2024); *BGood Ventures LLC v. Hackett*, No. 15CA1212, 2017 Colo. App. LEXIS 2527 (Feb. 2, 2017) (contract formed and memorialized by text message was sufficient to evidence a meeting of the minds and was enforceable).
10. “There are different modes of expressing assent. Expression may be by the tongue, the eye, the hand, or by all of them at once. It may be by language, by words in any language, by words written or spoken. Yet there is also ‘sign language’ which may consist of signs that are mere translations from a language of words, or of signs that convey ideas independently of any word language. A contract made by sign language is an express contract.” Murray, *Corbin on Contracts* § 1.19.
11. *T-Bone Constr. v. Kb Concrete Sys.*, No. 2018 CV 31761, 2020 Colo. Dist. LEXIS 4841 (Adams Cty. Dist.Ct. June 22, 2020).
12. *Achter*, 2024 SKCA 115, ¶ 50.
13. Assent may be implied from the totality of the circumstances, including from a course of dealing as well as an evaluation of the context of an email and other internet communications. See *Macasero v. Ent Credit Union*, 533 P.3d 982 (Colo.App. 2023).
14. *Achter*, 2024 SKCA 115, ¶ 61.
15. *Id.* ¶ 146.
16. See generally *Parker v. Souki*, No. 22-cv-0165, 2025 U.S. Dist. LEXIS 91266, at \*19–20 (D.Colo. May 9, 2025) (finding a “written” agreement in a series of text messages, but nonetheless not sufficient because unsigned and therefore not satisfying law’s signature requirement).
17. See CRS § 4-2-201 (statute of frauds).
18. *Donius v. Milligan*, 24 LCR 440, 442 (Mass. Land Ct. 2015); *Souki*, 2025 U.S. Dist. LEXIS, at \*21.
19. *Brewfab, LLC v. 3 Delta, Inc.*, 2022 U.S. App. LEXIS 28429 (11th Cir. Oct. 13, 2022). See, e.g., UCC §§ 1-201(b)(37) (defining “signed”), 9-102(a)(7) (defining “authenticate”), 9-102(a)(70) (defining “record”).
20. Contracts were traditionally signed in person, with wet ink signatures necessary to satisfy the writing and signature requirements of the law. That has changed for most types of agreements. Indeed, the adoption of the Uniform Electronic Transactions Act, which provides guidance at the state level and gives electronic signatures the same legal effect as handwritten signatures, and the Electronic Signatures in Global and National Commerce Act (ESIGN Act), a federal law that provides that electronic signatures can be used to sign agreements in the same way as a handwritten signature, have sanctioned the validity of electronic records and signatures. See generally CRS § 24-71.3-107(4) (“If a law requires a signature, an electronic signature satisfies the law.”); CRS § 24-71-101(2).
21. *Achter*, 2024 SKCA 115, ¶¶ 156–58.
22. “Emojis are a global phenomenon. Ninety-five percent of the online population sends over ten billion emojis each day.” Garfield Tenzer and Cangro, *An Emoji Legal Dictionary*, 83 U. Pitt. L. Rev. Online 1 (2022).