



DIGITAL ACCEPTANCE IN CONTRACT LAW: CAN SOCIAL MEDIA INTERACTIONS CONSTITUTE A LEGALLY BINDING AGREEMENT?

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ABSTRACT

Social media has transformed communication and commerce, enabling contractual agreements to be formed through digital interactions. While e-contracts offer convenience, they present legal complexities, particularly regarding offer, acceptance, and intent. Unlike traditional contracts, social media interactions often lack formal structure, raising concerns about whether casual responses, including emojis, can constitute valid acceptance. Courts have increasingly recognised digital symbols as expressions of consent, blurring the line between informal communication and enforceable agreements. Challenges such as identity fraud, unintentional contracting, jurisdictional ambiguities, and data security risks further complicate enforcement. The absence of uniform regulations leaves parties vulnerable to disputes over contract validity and interpretation. Given these uncertainties, individuals and businesses must adopt clear contractual language, specify governing laws, and safeguard digital records. As technology continues to shape contract formation, legal frameworks must evolve to address the complexities of social media-based agreements, ensuring clarity and enforceability in the digital age.

Keywords: E-Contracts, Social Media, Emojis, Social Media Contracts, Digital Acceptance, Unintended Contracting.

INTRODUCTION

In a recent judgment, the Delhi High Court, while referring to the scope of Section 7(4)(b) of the Arbitration and Conciliation Act, 1996¹, observed that WhatsApp and e-mail exchanges may constitute a valid arbitration agreement if the required statutory conditions are met,

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¹ Arbitration and Conciliation Act 1996, s 7(4)(b)

laying down a vital precedent concerning arbitration agreements formed via social media platforms. The Court noted that for an arbitration agreement to be valid, it must form a part of a communication exchange between parties, and the existence of a contract is not a necessity.² However, this prompts the question of whether contracts created through interactions on social media can also be considered legally binding. In the modern digital landscape, contract formation has evolved beyond traditional written and oral agreements to include electronic interactions. The increasing reliance on digital communication has led to a shift in legal discourse regarding the validity and enforceability of contracts formed through electronic means. While the Indian Contract Act 1872³ (hereinafter referred to as ‘the Act’) continues to provide the foundational principles of contract law, emerging technological advancements, such as e-contracts and social media agreements, have necessitated a reinterpretation of these traditional principles. Courts in India and globally have adapted existing legal doctrines to address the unique challenges posed by digital contract formation. One of the fundamental aspects of contract formation is acceptance, which signifies the final and unqualified expression of assent to an offer. Traditionally, acceptance was required to be communicated explicitly to the proposer, either in written or oral form. However, with the rise of electronic communications and evolving business practices, acceptance can now be conveyed through conduct, digital signatures or even implied actions, such as by clicking an “I Agree” button on a website. Social media interactions further complicate this landscape, as courts have begun considering whether informal exchanges on platforms like WhatsApp and using emojis can amount to a legally binding agreement. This paper explores the traditional rules of acceptance as established under Indian contract law. It examines their application in the digital era, particularly in the context of social media and e-contracts. It analyses judicial precedents that have shaped the understanding of digital contract formation and the challenges posed by informal online interactions. By assessing both Indian and international case law, this study aims to highlight the legal principles governing electronic contracts and how social media interactions can create enforceable agreements.

² Total Application Software Co (P) Ltd v Ashoka Distillers & Chemicals (P) Ltd, 2025 SCC OnLine Del 4562

³ Indian Contract Act 1872 (1872 Act)

WHAT ARE E-CONTRACTS?

Section 2(h) of the Act⁴ defines a contract as: “an agreement enforceable by law”. Agreement is defined under section 2(e)⁵ as: “Every promise and every set of promises, *forming the consideration for each other, is an agreement.*” On a joint reading of sections 2(a)⁶, (b)⁷ and (c)⁸ of the Act, it is understood that a contract requires at least two parties: the one proposing, known as the “promisor”, and the one to whom the proposal is made, known as the “promisee.” With the advent of digital communication, contracts are no longer confined to paper-based agreements. This shift has led to the emergence of electronic contracts (e-contracts), which function within the same legal framework as traditional contracts. An electronic contract is a legally binding agreement created and executed electronically, offering the same enforceability as traditional paper contracts. It utilises electronic communication methods, such as Email, online forms and digital signatures, for negotiation, signature and enforcement.⁹

E-contracts are widely used for their speed and convenience, allowing parties to form agreements remotely, regardless of geographical distance. In today’s digital era, they provide a seamless and efficient alternative to traditional contract formation.¹⁰ Section 10A of the Information Technology Act, 2000¹¹ (hereinafter referred to as ‘the IT Act’) gives legislative authority to e-contracts. It states that “Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or using an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.” Despite the differences in execution, e-contracts must still satisfy the fundamental principles of contract law, as enshrined in section 10 of the Act¹² and summarised in *N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.* Section 10 states, “All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly

⁴ 1872 Act, s 2(h)

⁵ 1872 Act, s 2(e)

⁶ 1872 Act, s 2(a)

⁷ 1872 Act, s 2(b)

⁸ 1872 Act, s 2(c)

⁹ Kathryn Stockton, ‘Understanding Electronic Contracts (E-Contracts)’ (*Pocket Law*, 24 June 2024)

<<https://pocketlaw.com/content-hub/electronic-contracts>> accessed 20 March 2025

¹⁰ Nikhil Nair, ‘E-Contracts’ (*Indian National Bar Association*) <<https://www.indianbarassociation.org/e-contracts/>> accessed 22 March 2025

¹¹ Information Technology Act 2000, s 10A (2000 Act)

¹² Indian Contract Act 1872, s 10

declared to be void.” Thus, for an e-contract to be valid, it must fulfil the same legal requisites as any traditional contract.

These key elements, as defined in the Contract Act, include:¹³

- An **offer and acceptance** have to be made (defined under section 2(a)¹⁴ and (b)¹⁵ of the Act).
- There should be a **lawful consideration** (defined under section 2(d) and elaborated under section 23 of the Act).
- There should be a **free consent** between the parties to a contract (defined under sections 13¹⁶ and 14¹⁷).
- The **object** of the agreement should be **lawful**.
- Parties must be **competent** enough to contract (as per the stipulations in section 11¹⁸ of the Act).
- The contract must be **enforceable by law**.

TYPES OF E-CONTRACTS

E-contracts can be broadly classified into the following categories:¹⁹

Clickwrap Agreements: Clickwrap agreements are most prominently used in online transactions, requiring users to click a button or checkbox to indicate acceptance of the presented terms and conditions. By clicking the checkbox or selecting “I agree” or a similar prompt, users expressly consent to be bound by the contract’s terms. These agreements are prevalent in e-commerce platforms, software installations and online services.

Browsewrap Agreements: Browsewrap agreements are website or platform terms and conditions made accessible via a hyperlink. Unlike clickwrap agreements, they do not require

¹³ Nair (n 10)

¹⁴ 1872 Act, s 2(a)

¹⁵ 1872 Act, s 2(b)

¹⁶ 1872 Act, s 13

¹⁷ 1872 Act, s 14

¹⁸ 1972 Act, s 11

¹⁹ Rashmi Sharma, ‘Electronic Contracts: Legal Validity and Enforcement in the Digital Age’ (2024) 1(45) Scientific Journal Impact Factor 326, 327

users to actively acknowledge acceptance. Instead, they rely on implied consent. Users are deemed to have accepted the terms when they access or use the website or platform. These agreements are commonly used for website terms of service and privacy policies.

Shrinkwrap Agreements: Shrinkwrap agreements are commonly associated with software products, where the terms and conditions are enclosed within the product packaging. By opening the shrinkwrap or breaking the seal, users are said to have accepted the contract terms printed inside. These agreements typically include software license agreements and end-user license agreements (EULAs) and govern product use.

E-Mail Contracts: E-mail contracts are agreements formed through electronic communication between parties via Email. While the formalities may vary, a valid contract will still require the essential elements of offer, acceptance and consideration. These contracts are widely used in business transactions, negotiations and informal agreements, providing a convenient and legally recognised means of contract formation.

FORMATION OF E-CONTRACTS

In the digital age, the formation of electronic contracts (e-contracts) involves unique considerations and mechanisms. Key aspects of e-contract formation include electronic signatures, automated systems and the use of standard terms and conditions. Electronic signatures play a pivotal role in the formation of e-contracts, serving as a digital equivalent to handwritten signatures. They allow parties to indicate their consent to the contract terms without requiring their physical presence or any documentation. Various forms of electronic signatures exist, ranging from simple scanned signatures to advanced cryptographic techniques. Many countries have enacted legislation or adopted international conventions to provide legal recognition and validity to electronic signatures. For example, in the United States, the Electronic Signatures in Global and National Commerce Act (ESIGN)²⁰ and the Uniform Electronic Transactions Act (UETA)²¹ establish the legal equivalence of electronic and handwritten signatures in most transactions.²²

Contracts may sometimes be formed through automated systems or processes without direct human involvement. Mechanisms such as online platforms, chatbots and smart contracts

²⁰ Electronic Signatures in Global and National Commerce Act 2000

²¹ Uniform Electronic Transactions Act 1999

²² Sharma (n 19)

enable parties to negotiate, agree to and execute contracts efficiently.²³ Many e-contracts incorporate standard terms and conditions that govern the rights and obligations of the parties. These pre-drafted provisions, often included by one party and presented on a take-it-or-leave-it basis, cover various contractual aspects such as payment terms, delivery arrangements, dispute resolution mechanisms and liability limitations.²⁴

LEGAL REGULATION OF E-CONTRACTS

E-contracts in India are governed by a combination of statutes, including the Indian Contract Act, 1872,²⁵ the Information Technology Act, 2000²⁶ and the Bharatiya Sakshya Adhiniyam, 2023²⁷. The Contract Act is the primary legislation governing contracts in India, including e-contracts. While it predates the digital era, its provisions are still applicable, subject to certain adaptations and interpretations in light of technological advancements. The significant provisions of the Contract Act affecting e-contracts have already been discussed above. The IT Act is the principal legislation regulating electronic transactions and e-commerce in India. It provides legal recognition and validity to e-contracts and electronic signatures and establishes mechanisms for their enforcement. As stated before, section 10A of the IT Act²⁸ grants legal recognition to e-contracts. Section 2(1)(ta)²⁹ and 3³⁰ provide for the legal recognition and validity of electronic signatures, including digital signatures. Under section 2(1) (t)³¹, e-contracts are deemed to be electronic records. This provision ensures electronic records have the same legal status as paper-based records in legal proceedings. Section 79³² provides a safe harbour for intermediaries, such as internet service providers and e-commerce platforms, from liability for the content or actions of users. The provisions of the Bharatiya Sakshya Adhiniyam govern the admissibility and proof of electronic records and electronic contracts in legal proceedings. Section 63³³ specifies the conditions for the admissibility of electronic records as evidence in court. It requires electronic records to be accompanied by a certificate issued by a person in charge of the electronic record, confirming its authenticity

²³ *ibid*

²⁴ *ibid*

²⁵ Indian Contract Act 1872

²⁶ 2000 Act

²⁷ Bharatiya Sakshya Adhinyam 2023 (2023 Act)

²⁸ 2000 Act, s 10A

²⁹ 2000 Act, s 2(1)(ta)

³⁰ 2000 Act, s 3

³¹ 2000 Act, s 2(1)(t)

³² 2000 Act, s 79

³³ 2023 Act, s 63

and integrity. Section 85³⁴ creates a presumption that electronic signatures appearing on electronic records are genuine and have been affixed by the person by whom they purport to have been affixed.

SOCIAL MEDIA INTERACTIONS AND CONTRACT FORMATION

In today's digital age, social media platforms have become integral to daily life, extending beyond social interactions to business transactions and marketing. From personal connections to professional networking, social media has revolutionised communication. With regard to the rapid digitalisation that the world is now experiencing, it is the next obvious step where these platforms would also begin to serve as mediums for contract formation, provided that the essential elements of a contract, including offer, acceptance and consideration, are established through digital interactions. As technology continues to shape the way we engage and transact, individuals and businesses must exercise caution and diligence when forming contractual agreements via social media. The instantaneous nature of social media communication raises questions about how contract law principles apply in this context. Traditional contract law has long distinguished between different forms of communication in determining when acceptance is deemed effective. In the case of *Entores Ltd. v. Miles Far East Corporation*³⁵, Denning LJ distinguished contracts made by telephone and telex from contracts made by post because the former were 'virtually instantaneous and stand on a different footing'.

As a result, the general rule for instantaneous communications is that a contract is only complete "when the acceptance is received by the offeror." This principle is particularly relevant to social media interactions, where messages, comments and direct responses can be exchanged in real time. Similarly, in *Brinkibon v. Stahag Stahl mbH*³⁶, Lord Brandon said that the postal rule (which makes acceptance effective once a properly addressed and stamped letter is posted) applied in cases where there was 'bound to be a substantial interval between the time when the acceptance is sent and the time when it is received', but not where the means of communication was instantaneous. This distinction becomes crucial when considering whether agreements formed over social media are legally binding. Unlike traditional postal communications, where delays are expected, social media messages reach

³⁴ 2023 Act, s 85

³⁵ *Entores Ltd v Miles Far East Corporation*, (1955) 2 QB 327 (CA)

³⁶ *Brinkibon v Stahag Stahl mbH*, (1983) 2 AC 34 (HL)

recipients instantly. However, practical concerns, such as delayed notifications or unread messages, can still create ambiguities in determining the precise moment a contract is formed.

Contract Formation Via E-Mail: Although e-mail is not technically considered a social media platform, it is essential to understand contract formation via e-mail to understand the relationship between social media and contracts. Following the post, the e-mail has become the next most popular form of communicating contracts, offers and acceptances to the parties concerned. In *Trimex International FZE v. Vedanta Aluminium Limited, India*,³⁷ the Supreme Court held that an agreement reached via e-mail exchanges constitutes a valid contract under the Contract Act, provided it fulfils all the essential elements of a contract, including offer, acceptance and consideration. In English law, acceptance via post is as per the postal rule: acceptance becomes valid on posting. There is a debate over whether e-mail is considered an instantaneous or non-instantaneous form of communication. Since, superficially, there are similarities between electronic mail and postal mail as well as the fact that an e-mail passes through various servers before reaching its recipient, it has been argued that the postal rule should be extended to e-mail, with the result that an e-mail contract's acceptance would be effective when sent and the contract would be formed then and there. However, ever since the postal rule was introduced in the 19th century, it has been extended to only one other form of communication: the telegraph. Far from expanding the rule, courts tend to limit its scope, both by developing exceptions to the operation of the rule in the postal context and by refusing to apply it to faster modes of communication, such as telex.³⁸ However, several commentators argue that e-mail is also 'virtually instantaneous' and any delay in the electronic relaying of an e-mail message is now infinitesimal, and the general rule requiring communication of the acceptance should apply. These latter considerations are the ones which have been reinforced by the subsequent classification of fax transmissions as an instantaneous form of communication not subject to the postal rule, as was observed in *JSC Zestafoni v. Ronly Holdings Ltd.*³⁹ Moreover, the sender of an e-mail knows if his message has been sent or not, unlike the sender of a post, who will have no information even if his letter has gone astray. Considering all the positions, e-mails are more likely to fall into the category to which the postal rule does not apply rather than falling into the category to which

³⁷ *Trimex International FZE v Vedanta Aluminium Limited India*, (2010) 3 SCC 1

³⁸ Donal Nolan, 'Offer and Acceptance in the Electronic Age' *Contract Formation and Parties* [2010] OUP, 61

³⁹ *JSC Zestafoni v Ronly Holdings Ltd*, [2004] EWHC 245 (Comm)

it does.⁴⁰ Given these considerations, it is crucial to examine how Indian law treats electronic communication in the context of contract formation. As per section 4 of the Act⁴¹, communication of an acceptance is complete, concerning the proposer, when it is put in a course of transmission to him, to be out of the power of the acceptor and concerning the acceptor, when it comes to the knowledge of the proposer. This principle is reinforced by judicial precedent, particularly in cases where courts have analysed the nature of acceptance in electronic communication. In *Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas & Co.*⁴², the Supreme Court of India reaffirmed that in cases of instantaneous communication, the contract is concluded where acceptance is received. On these grounds, it can be concluded that under Indian law, an e-mail contract is complete, against the promise, once he accepts it, and, against the promisor, when he sees the acceptance mail. The venue of the conclusion of the contract would be where the promisor received and saw the acceptance.

Contract Formation via Social Media Platforms: In the digital age, social media platforms have evolved beyond mere communication tools and now serve as hubs for business transactions and contractual dealings. Platforms like WhatsApp, Instagram, Facebook, X (earlier Twitter) and LinkedIn are frequently used to negotiate agreements, offer goods and services and even finalise agreements. Whether through direct messages, comment exchanges or digital confirmations, parties can enter into legally binding contracts, provided the essential elements of a contract are met.⁴³ Although this area of the law is still developing, some courts have found agreements entered through these mediums to be enforceable, extending reasoning from cases involving e-mails. This trend is likely to gain traction as these informal means of communication become more commonplace in business transactions.

⁴⁴ As online interactions have increasingly begun to shape commercial engagements, courts worldwide are beginning to recognise contracts formed via social media. In an Australian case, *ATL (Australia) Pty Ltd v. Cui*⁴⁵, the court found that text messages sent via a social media platform could constitute a binding agreement if the parties agreed on key terms of the

⁴⁰ *ibid*

⁴¹ 1872 Act, s 4

⁴² *Bhagwandas Goverdhandas Kedia v Girdharilal Parshottamdas & Co*, AIR 1966 SC 543

⁴³ Colin Biggers and Paisley Lawyers, 'Content Creator or Contract Creator - Can social media posts constitute legally binding offers?' (*Lexology*, 11 March 2024)

<<https://www.lexology.com/library/detail.aspx?g=f4433bbb-d5ba-4730-8b93-c061d8083462>> accessed on 25 March 2025

⁴⁴ Anthony Dreyer, 'Sign at the DM: the enforceability of text message agreements' (*Reuters*, 4 August 2021) <<https://www.reuters.com/legal/legalindustry/sign-dm-enforceability-text-message-agreements-2021-08-04/#:~:text=Noting%20that%20it%20was%20a,a%20valid%20and%20enforceable%20agreement.&text=Agree%20ments%20formed%20via%20instant%20messaging,viewed%20similarly%20to%20text%20messages.>>> accessed 27 March 2025

⁴⁵ *ATL (Australia) Pty Ltd v Cui*, [2022] NSWSC 1302

contract and intended to be bound by the agreement. Similarly, in the recent US case of *McBride v. McBride*⁴⁶, the court accepted that a video posted on social media could constitute a valid contract.

Text Messages as Legally Binding Contracts: In multiple cases, courts have increasingly held that text messages, which fulfil contractual requirements, qualify as legally binding contracts. In *St. John's Holdings, LLC v. Two Electronics, LLC*⁴⁷, the Massachusetts Land Court ruled that text messages between two real estate brokers regarding the purchase and sale of a commercial building could constitute a 'writing' sufficient to satisfy the Massachusetts Statute of Frauds.

The court held that a text message, either alone or in conjunction with other writings, may form a valid contract if it identifies the subject matter, evidences mutual agreement, states the essential terms with reasonable certainty and bears some form of signature.⁴⁸ Given the parties' frequent electronic communication and conduct, the court found that the final exchange of text messages effectively memorialised the Letter of Intent as an offer and acceptance. Additionally, the court reasoned that the typed signature at the end of the text sufficiently indicated the sender's intent to authenticate the message, as the brokers consistently included their names in messages containing material terms while omitting them from informal discussions.⁴⁹ A similar judgment was given by the court in *Donius v. Milligan*.⁵⁰ In *Karaduman v. Grover*,⁵¹ a New York State court adjudged text messages as having the import of letters and e-mails. The dispute revolved around a text message agreement between a landlord and a tenant, wherein the landlord had agreed to refund the tenant on account of the premises being damaged. However, the landlord later reneged on his promise. The court ruled in favour of the tenant, extending the reasoning from decisions ruling that e-mail agreements are valid and enforceable and held that the text message agreement constituted a valid contract. Likewise, in the case of *Starace v. Lesington Law Firm*⁵², the defendant had sent a proposed arbitration agreement via text message, to which the plaintiff simply responded, "Agree." The court ruled that this response constituted valid

⁴⁶ *McBride v McBride*, [2024] NSWSC 45

⁴⁷ *St John's Holdings, LLC v Two Electronics, LLC*, 2016 WL 1460477 (2016)

⁴⁸ Dreyer (n 44)

⁴⁹ Cozen O'Connor, 'Text Messages Add New Layer of Risk to Deal-Making in the Modern Age' (*Lexology*, 9 June 2016) <<https://www.lexology.com/library/detail.aspx?g=c8a3c189-88d2-4c69-a4ed-8eff08d292cc>> accessed 26 March 2025

⁵⁰ *Donius v Milligan*, 2016 WL 3926577

⁵¹ *Karaduman v Grover*, 63 Misc.3d 1217 (A)

⁵² *Starace v Lesington Law Firm*, No 1:18-cv-01596-DAD-SKO (ED Cal Jun 27, 2019)

acceptance and enforced the arbitration agreement, reinforcing the principle that digital communications can establish legally binding contracts. However, in *Truman v. Brown*⁵³, it was held that multiple communications that cannot be “reliably read to constitute an integrated agreement bearing definite terms” will not be enforced by a court, no matter how many texts or e-mails have signatures affixed. In 2011, in the case of *CX Digital Media v. Smoking Everywhere*⁵⁴, the United States District Court for the Southern District of Florida ruled that an instant message exchange could validly modify a written agreement containing a “no-oral modification” clause. The court found that if an exchange constituted a valid offer and acceptance, an online instant message exchange can satisfy this requirement.

Social Media Posts and Public Offers: Concerning the issue of general offers in the sphere of social media contracts, in 2010, rapper Ryan Leslie tweeted what appeared to be a public offer of a reward for the safe return of his lost MacBook. Mr. Augstein, who found and returned the laptop, sought to claim the reward, relying on the tweet as a binding promise. Applying the principle stated in *Lefkowitz v. Great Minneapolis Surplus Store, Inc.*⁵⁵ that a clear, definite and explicit advertisement could constitute a binding offer, the District Court of New York ruled that Leslie’s tweet offering a reward was a public, unilateral offer meant to induce performance and was legally enforceable.⁵⁶ Moreover, the court adjudged that the video, along with the reward offer being made on multiple social media outlets, was sufficient for any reasonable person who read the offer contained in the tweet to believe it to be a serious one, rendering it legally binding.⁵⁷

Contracting with Emojis: Emojis have become integral to digital communication, allowing users to convey emotions, reactions and even complex messages with a single symbol. Most contracts are formed by the use of words. However, courts have increasingly had to determine whether an emoji constitutes a valid expression of intent in contract formation, raising questions about clarity, mutual assent and enforceability in digital communications. There are only a few judicial precedents on this issue, leaving significant uncertainty in how courts interpret emojis in contractual disputes. While emojis add flexibility to modern contracting, their use has introduced new legal ambiguities, as these symbols can be

⁵³ *Truman v Brown*, 434 F.Supp.3d 100

⁵⁴ *CX Digital Media v Smoking Everywhere*, No 09-62020-Civ (SD Fla Mar 23, 2011)

⁵⁵ *Lefkowitz v Great Minneapolis Surplus Store, Inc.*, 251 Minn 188, 86 N.W.2d 689 (1957)

⁵⁶ *Augstein v Leslie*, 2012 WL 4928914

⁵⁷ Kristen Chiger, ‘When Tweets Get Real: Applying Traditional Contract Law Theories to the World of Social Media’ (2013) 3(1) *Arizona State University Sports and Entertainment Law Journal* 11

interpreted in multiple ways. On one hand, they can serve as a quick and informal way to indicate agreement, acknowledgement or intent. On the other hand, emojis rely on context, cultural understanding and subjective interpretation, unlike words, which have established legal definitions. The case which primarily brought this issue to the forefront was the Canadian case of *South West Terminal Ltd. (SWT) v. Achter Land & Cattle Ltd.*⁵⁸ In this case, the court held that using the thumbs-up emoji as a response to a contract would be taken as a valid acceptance. SWT had had a long-standing business relationship with Achter Land & Cattle, negotiating grain contracts via phone calls followed by text confirmations. Chris Achter had previously confirmed contracts with responses like “Looks good” and “Yup”, consistently delivering as agreed. In March 2021, the plaintiff sent a flax contract via text, and the respondent replied with a thumbs-up emoji but later claimed it only acknowledged receipt. The court ruled in SWT’s favour, holding that the emoji, given their history, constituted valid acceptance, reinforcing the legal weight of digital communications in contract formation.

A similar issue arose in the English case of *Southeaster Maritime Ltd v. Trafigura Maritime Logistics Pte Ltd.*⁵⁹, where the court once again had to determine whether a thumbs-up emoji constituted contractual acceptance. After a telephonic conversation, the conflict emerged when a buyer sent a ‘thumbs up’ emoji in response to a texted photo of the contract. The buyer argued that it only signified receipt, not acceptance of the alleged offer. However, the court held that a reasonable person would consider the emoji as constituting contractual acceptance.⁶⁰ While these cases focused on whether an emoji could signify acceptance, courts have also considered their role in broader contractual disputes. In *Dahan v. Shacharoff*⁶¹, an Israeli small claims court ruled on the legal significance of emojis in contract negotiations. After receiving enthusiastic messages filled with positive emojis from a prospective renter, a landlord removed his apartment listing, assuming the lease would proceed. However, the renters never followed through, leading the landlord to sue for bad faith negotiations. The court held that the renters’ messages, including emojis, objectively signalled intent, making

⁵⁸ *South West Terminal Ltd (SWT) v Achter Land & Cattle Ltd*, 2023 SKKB 116

⁵⁹ *Southeaster Maritime Ltd v Trafigura Maritime Logistics Pte Ltd*, [2024] EWHC 255

⁶⁰ Ria Garg and Ananya Garg, ‘Emoji Contracts: Seal it with a Click!’ (*The Indian Review of Corporate and Commercial Laws*, 14 August 2024) <<https://www.irccl.in/post/emoji-contracts-seal-it-with-a-click>> accessed 26 March 2025

⁶¹ Herzliya Small Claims Court, “Dahan v Shacharoff” (2017) Historical and Topical Legal Documents 1515

the landlord's reliance reasonable.⁶² In *Friel v. Dapper Labs, Inc.*⁶³, the court refused to dismiss a lawsuit against Dapper Labs for allegedly violating securities laws by selling NBA Top Shot NFTs without SEC registration. To establish that these NFTs were investment vehicles, plaintiffs had to prove that buyers expected profits from the company's efforts. The court found that Dapper Labs' marketing, including tweets featuring emojis like a rocket ship, a rising stock chart and a money bag, objectively signalled financial gain. While the tweets did not explicitly mention "profit", the court held that these emojis conveyed an expectation of returns, reinforcing the legal significance of emojis in digital transactions.⁶⁴ In India, the use of emojis in legal settings is relatively novel and less frequent than in countries like the USA, France or Australia. Nonetheless, with the rise of digital communication, Indian courts are beginning to acknowledge that emojis play a vital role in understanding the parties' intent.

LEGAL CHALLENGES AND AMBIGUITIES

The formation of contracts via social media presents several legal challenges and ambiguities, primarily due to the informal and dynamic nature of online communication. Unlike traditional contracts, where intent and agreement are often explicitly documented, interactions on platforms like WhatsApp, Twitter or Instagram may lack clear demarcation between casual conversations and legally binding commitments. The absence of formal signatures, evolving platform policies and jurisdictional complexities further complicate the enforceability of such agreements. Courts have had to determine whether social media exchanges satisfy fundamental contract law principles, leading to varying interpretations depending on context and jurisdiction.

Mistake of Identity: In face-to-face communications, there is a strong presumption that each party intends to deal with the person physically present before them. However, in digital interactions, especially on social media, one party may not always be certain of the other's identity. Fraudulent individuals can easily fabricate identities, impersonate others or use pseudonyms or fake accounts to enter into agreements under false pretences. This creates a

⁶² Aditya Ganju and Honeyshya Raj R V, 'The legal impact of Emojis: Interpretation and implications in Courtrooms around the world' (*Bar and Bench*, 30 August 2024) <<https://www.barandbench.com/view-point/legal-impact-of-emojis-interpretation-implications-courtrooms>> accessed 23 March 2025

⁶³ *Friel v Dapper Labs, Inc*, 657 F. Supp. 3d 422

⁶⁴ Timothy Murray, 'Contracting by Emoji' (*LexisNexis*, 28 April 2023) <<https://www.lexisnexis.com/community/insights/legal/practical-guidance-journal/b/pa/posts/contracting-by-emoji>> accessed 27 March 2025

risk where one party may unknowingly contract with a person they did not intend to engage with. Since social media platforms do not always require identity verification, distinguishing between legitimate and fraudulent users becomes a challenge.⁶⁵ A party may enter into an agreement believing they are dealing with a reputable individual or business, only to discover later that the other party was using a false identity. This issue is particularly relevant in fraud cases, where scammers use social media to deceive individuals into contractual agreements that they never intended to enter.⁶⁶ Moreover, cross-border transactions conducted through social media complicate matters further. A deceived party in a social media contract may struggle to seek legal recourse due to difficulty in identifying and locating the other party. Traditional contract law principles rely on the ability to identify the contracting parties, but in the digital realm, the lack of uniform regulations regarding identity verification poses a significant hurdle to enforcement. Unlike traditional contracts, where background verification is easier, social media platforms often provide little to no verification, leaving parties vulnerable to fraudulent contracting.⁶⁷

Unintentional Contracting: The informal nature of communication on social media increases the risk of unintentional contracting. A simple response to a message, such as a “thumbs up” emoji or a casual confirmation, may be interpreted as acceptance of an offer, even if the party did not intend to be legally bound. In other words, if the offeree has carelessly given the appearance of assent, whether the offeree approves of it or not, a contract will be made in this situation. Courts in multiple jurisdictions have begun recognising that digital interactions, including emojis, can constitute contractual assent, holding individuals responsible for the impressions their messages create. This raises concerns for businesses and individuals who may unintentionally form agreements without a clear intention to do so.⁶⁸ This places the burden on the sender to ensure clarity in their responses, as courts may uphold contracts based on reasonable reliance. Just as non-verbal cues like nodding or sign language can indicate agreement, emojis can also create enforceable obligations and even form the basis for claims like promissory estoppel if they induce reliance that results in legal or financial consequences.⁶⁹ For example, a potential buyer may comment on a seller’s post

⁶⁵ Garg and Garg (n 60)

⁶⁶ Rajsee Khedkar, ‘The Legal Landscape of Digital Contracts: Formation, Enforceability, and Emerging Challenges’ (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-18186-the-legal-landscape-of-digital-contracts-formation-enforceability-and-emerging-challenges.html>> accessed 30 March 2025

⁶⁷ *ibid*

⁶⁸ Garg and Garg (n 60)

⁶⁹ Murray (n 64)

expressing interest in a product, and the seller may interpret it as a binding commitment to purchase. Similarly, businesses that engage with customers through social media may unintentionally create obligations by responding affirmatively to inquiries about services or pricing. The ambiguity of digital communication, where tone and intent are harder to interpret, makes it difficult to determine whether a legally binding contract was formed. This issue is exacerbated by the lack of uniform legal standards governing digital contract formation, leading to uncertainty in enforcement.⁷⁰

Hurried Contracting: Social media platforms facilitate instantaneous communication, which can result in parties entering into contracts without adequate deliberation. Unlike traditional contracts that require negotiations, written agreements and legal review, social media agreements can be finalised through messages, comments or digital signatures within seconds. The speed at which these contracts are formed increases the likelihood of misunderstandings, incomplete terms and disputes over obligations. Parties may agree to terms without fully considering their implications, leading to future conflicts when one party realises they entered into an unfavourable or unclear agreement. Many users also hurriedly accept privacy policies, terms of service and other contractual clauses without reading them, unknowingly binding themselves to terms that may have significant legal consequences.⁷¹ This problem is particularly prevalent in business deals conducted over social media, where informal discussions can quickly escalate into contractual obligations. A business representative may casually agree to a proposal in a chat without realising they have committed their company to a binding agreement. Additionally, influencers and content creators frequently engage in brand deals over direct messages, where terms are loosely defined and obligations may not be established. The absence of structured contract formation processes in these interactions increases the risk of rushed decision-making and disputes over contract validity.⁷²

Interpretation and Ambiguity in Digital Contracts: E-contracts formed via social media often involve complex legal and technical mechanisms that are not easily understood by laypeople. Unlike traditional contracts that rely on straightforward written agreements, digital contracts may incorporate digital signatures, cryptography and encryption to verify identity and intent. These complexities make it difficult for parties to understand their contractual

⁷⁰ Garg and Garg (n 60)

⁷¹ *ibid*

⁷² *ibid*

obligations fully, increasing the risk of unintentional breaches or disputes over contract terms. Individuals without a legal background may struggle to interpret the terms of service agreements and privacy policies they agree to when engaging in social media transactions.⁷³ Additionally, inconsistent terminology used across different social media platforms and legal frameworks creates ambiguity in contract formation. The same contractual phrase or term may have different legal interpretations depending on the jurisdiction or platform where the contract is formed. This inconsistency makes it challenging to enforce agreements and determine liability in cases of contract disputes. Without a standardised approach to digital contract formation, parties may face legal uncertainty regarding their rights and obligations, leading to increased litigation and enforcement challenges.⁷⁴ The rapid evolution of technology further complicates the interpretation of digital communications, particularly with emojis. While some emojis are universally recognised, variations exist across different device manufacturers and operating systems. An emoji sent from one device may not appear as intended on another, sometimes displaying as a blank box or an entirely different symbol. Additionally, software updates can phase out old emojis or introduce new ones, leading to inconsistencies even between users of the same platform.⁷⁵ Cultural differences also create significant ambiguity in emoji-based communication. The thumbs-up emoji, for example, is commonly understood as approval in many cultures but is considered offensive or dismissive in others, including Afghanistan, Greece, Italy and Iran. In some contexts, it may even represent a numerical value rather than agreement.⁷⁶ Moreover, there is no official dictionary defining emoji meanings, leaving interpretation open to individual perception, generational differences and contextual nuances.⁷⁷ Emoji meanings can differ based on context, personal usage and even the sender's mood. Unlike written language, which has established definitions and legal interpretations, emoji communication remains largely subjective. The absence of a central authority overseeing emoji design further exacerbates these challenges, as the same emoji may appear differently across devices.⁷⁸ These ambiguities introduce uncertainty in

⁷³ Khedkar (n 66)

⁷⁴ *ibid*

⁷⁵ Stefan A Rubin, 'From 🤖 to 🤖: Can Emojis Create a Legally Binding Contract?' (*Shutts & Bowen LLP*, 19 March 2023) <<https://www.shutts.com/business-and-legal-insights/can-emojis-create-a-legally-binding-contract>> accessed 24 March 2025

⁷⁶ Garg and Garg (n 60)

⁷⁷ Murray (n 64)

⁷⁸ Stephen M Kramarsky, 'Thumbs Up or Thumbs Down: New York Court Analyzes Meaning and Impact of Emoji in Contract Negotiations' (*Law.com*, 14 November 2022) <<https://www.law.com/newyorklawjournal/2022/11/14/thumbs-up-or-thumbs-down-new-york-court-analyzes-meaning-and-impact-of-emoji-in-contract-negotiations/?sreturn=20250727152235>> accessed 27 March 2025

contract formation and can lead to disputes over intent, with some parties even leveraging this uncertainty to their advantage in legal arguments.

Jurisdictional Challenges: Jurisdictional issues pose significant challenges in enforcing contracts made via social media. Traditional contract law relies on principles such as the place of contract formation and the location of the parties to determine jurisdiction. However, social media contracts often involve parties located in different countries, making it difficult to establish which legal system applies. The borderless nature of digital interactions complicates enforcement, as courts must determine whether they have the authority to hear disputes arising from contracts formed across multiple jurisdictions.⁷⁹ For example, an Indian buyer may enter into a contract with a seller based in the UK through a social media platform hosted in the US. In the event of a dispute, determining which country's laws govern the contract can be highly complex. While parties can specify a governing law in their agreements, many social media contracts are formed informally without clear jurisdictional clauses. This lack of clarity can result in conflicting legal interpretations and difficulties in enforcing judgments across borders. Courts may refuse to enforce contracts if they lack jurisdiction, leaving parties without legal recourse in cases of breach.⁸⁰

Loss of Data and Privacy Concerns: Unlike traditional paper contracts that can be physically stored and retrieved, social media contracts rely on digital records that are vulnerable to data loss, hacking and manipulation. Messages, comments and posts that form the basis of contractual agreements may be deleted, making it difficult to prove the existence of a contract in legal disputes. Social media platforms do not always provide reliable records of digital interactions, and parties may struggle to retrieve crucial evidence needed to enforce agreements.⁸¹ Additionally, privacy concerns arise when personal and financial data are shared during contract negotiations on social media. Many businesses require users to register and provide personal information before engaging in transactions. However, there is no guarantee that this information will be securely stored or protected from misuse. Data breaches, identity theft and unauthorised data sharing are common risks associated with social media transactions. Sometimes, businesses may sell or misuse consumer data, leading

⁷⁹ Khedkar (n 66)

⁸⁰ Khedkar (n 66)

⁸¹ *ibid*

to privacy violations and legal liabilities. The lack of robust data protection laws across all jurisdictions further complicates the enforcement of privacy rights in social media contracts.⁸²

RECOMMENDATIONS

Given the increasing role of digital communication in contract formation, parties must take proactive steps to prevent misunderstandings and legal disputes. Unlike traditional written agreements, text messages, e-mails and emojis can blur the lines of intent, making it crucial to establish clarity in business transactions. To prevent misunderstandings in digital contracts, parties should use clear language, set internal policies on electronic negotiations and ensure their communications reflect true intent. These precautions help reduce ambiguity and strengthen enforceability in online agreements. By taking the following precautions, individuals and businesses can reduce ambiguity and strengthen the enforceability of their agreements in the digital space.

- One of the most effective safeguards is explicitly clarifying whether a communication is legally binding. In fast-paced exchanges, a simple message or emoji could be misconstrued as acceptance of a contract. To prevent this, parties should carefully review messages before sending them and even use disclaimers such as ‘subject to contract’ or ‘on negotiation only’ to indicate that discussions are still preliminary and are not yet legally binding.
- If parties intend to finalise a contract via instant messaging, they should proactively preserve relevant communications to prevent disputes. Since digital messages can be easily lost or deleted, businesses and individuals should use software to archive message streams or manually save important conversations through screenshots.
- Parties should exercise caution when communicating electronically, especially if key terms have already been discussed, to avoid unintentionally forming a binding agreement. Moreover, businesses should educate their employees and representatives on the legal implications of digital communications to prevent misinterpretation and unintended contractual obligations.
- Businesses should also establish clear internal policies regarding electronic communications. Only authorised individuals should be permitted to negotiate or

⁸² *ibid*

enter into contracts. Those without contracting authority should explicitly state their limitations and use disclaimers to avoid unintended obligations.

- Additionally, companies can include contractual clauses specifying how agreements may be amended or modified, ensuring that instant messages do not inadvertently alter existing contracts.

CONCLUSION

The rise of e-contracts has introduced significant legal complexities, particularly in their formation and enforcement. While digital communication offers convenience and efficiency, it also raises challenges that must be addressed to ensure seamless transactions. Given that contract requirements vary depending on the nature of the agreement and the governing law, determining the validity of an e-contract often depends on factors like the inclusion of essential terms and the intent of the parties involved. The interpretation of digital exchanges, including text messages and emojis, further complicates contract formation. Courts increasingly consider prior dealings and the context of communications to assess whether a binding agreement was intended. However, legal precedents on this issue remain limited, especially in India, where courts have yet to develop a comprehensive framework for addressing contracts formed through emojis or instant messaging. To mitigate risks, parties should prioritise clarity in contractual communications and, whenever possible, formalise agreements through signed written documents rather than relying on digital shorthand or pictorial symbols. As the use of emojis in business communications continues to grow, Indian courts may eventually have to address their role in contract law. Until then, ensuring explicit and unambiguous contract formation remains the most effective way to avoid disputes and unnecessary litigation.