

VALIDITY OF WHATSAPP BLUE TICKS AND EMOJIS AS EFFECTIVE ACCEPTANCE IN CONTRACT LAW

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Abstract

Traditional modes of business communication, such as face-to-face meetings, emails, phone calls, and text messages, are increasingly being displaced by mobile messaging platforms like WhatsApp and Telegram. WhatsApp, in particular, has evolved from a personal chat application into a dominant tool in professional settings, with over two billion users worldwide. Its features enable instant communication, client engagement, and efficient information sharing, making it integral to modern business operations.²

However, this digital shift raises important legal questions, particularly as to whether digital indicators such as WhatsApp's double "blue tick" read receipt and emoji reactions amount to acceptance under the law of contract.

*This paper examines that issue by first outlining the essential elements of a valid contract under Malaysian law and considering the recognition of electronic communications under the **Contracts Act 1950** and the **Electronic Commerce Act 2006**. It then evaluates the legal significance of WhatsApp indicators, specifically blueticks and emojis, by presenting both supportive and opposing perspectives, with reference to Malaysian and comparative jurisprudence. The paper concludes by emphasizing the need for clearer legal guidelines and updated frameworks that address the realities of digital communication while maintaining fairness and certainty in contractual relationships.*

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² Nor Azikin Mohd Omar, Nur Jijidiana Azmi and Nurshafawati Ahmad Sani, 'Is WhatsApp the Future of Workplace Communication?: Investigating the Use of WhatsApp in Decision-Making Episodes' (2020) 5(1) Journal of Nusantara Studies <<http://dx.doi.org/10.24200/jonus.vol5iss1pp414-442>> accessed 2 July 2025.

1.0 Introduction

In the present epoch of rapid development of Information and Communication Technology (ICT), instant messaging applications such as WhatsApp, Telegram, and other similar platforms have become indispensable for both personal and professional communication, including legal and commercial transactions. These platforms have moved beyond traditional text-based exchanges, incorporating features such as WhatsApp's double "blue tick" read receipt and emojis, which now play a central role in shaping how messages are interpreted.

This development has redefined the nature of communication, replacing short message service (SMS) as the dominant text-based medium. Conversations today are enriched with emojis, GIFs, and other visual elements that convey emotions, acknowledgment, or even agreement.³ Emojis, in particular, have evolved from being decorative symbols to meaningful tools of expression that may, in certain contexts, reflect contractual intent. Their widespread use is evident in Malaysia, where studies show that Malaysians are among the highest global users of emojis.⁴

However, the very features that enhance convenience also give rise to legal uncertainty. Some users disable the "blue tick" read receipt to avoid the perceived pressure of immediate replies, which can create misunderstandings in communication. A common situation arises when an offer sent via WhatsApp is marked as "read" through the blue tick without a reply, or when the recipient replies only with an emoji such as a thumbs-up, an "OK" gesture, or a smile. This situation raises a pertinent legal question: can such digital indicators amount to valid acceptance in the eyes of the law?

This issue is particularly significant in Malaysia, where WhatsApp is widely used in business and employment contexts, and where contracts are often initiated or concluded via these informal channels. The challenge becomes even more complex with the growing role of artificial intelligence (AI) and automated responses, which test traditional notions of consent and intention in contract formation.

³ Azarith Sofia Aziz and Kong Yie Xuan, 'The Use of Emojis in Business Communications: Exploring Emojis & Acceptance in Contracts' (*Azmi & Associates*, 19 December 2023) <<https://www.azmilaw.com/insights/the-use-of-emojis-in-business-communications-exploring-emojis-acceptance-in-contracts/>> accessed 3 July 2025.

⁴ Intan Nasia Amalina and Yasir Azam, 'Cultural Interpretation of Emoji in Malaysian Context' (2020) 89 *European Proceedings of Social and Behavioural Sciences* <<https://doi.org/10.15405/epsbs.2020.10.02.70>> accessed 10 July 2025.

2.0 Contract Formation under Malaysian Law

2.1 Essential Elements of a Valid Contract

Under Malaysian contract law, which is primarily governed by the **Contracts Act 1950** (hereinafter referred to as ‘**the Act**’), a valid and enforceable contract arises only when all the essential elements are present. These include offer, acceptance, consideration, intention to be bound, mutuality, capacity and legality.⁵

Section 2(a) of **the Act** defines a proposal as the act of one party signifying to another their willingness to do or abstain from doing something, with the intention of obtaining the other’s assent to such act or abstinence. Once a valid offer is made, **Section 2(b)** of **the Act** provides that a valid acceptance has to be an “expression of assent” to the offer’s terms.⁶ This acceptance must be absolute and unqualified;⁷ any attempt to vary the terms of the offer amounts to a counteroffer,⁸ which does not bind the original offeror.

In accordance with **Section 9** of **the Act**, acceptance may be given orally, in writing, or through conduct, but as a general rule, silence does not amount to acceptance.⁹ Although **the Act** does not prescribe special formalities for acceptance, it must be communicated within the time prescribed in the offer or within a “reasonable time.” When determining whether a valid acceptance exists, courts will consider the broader context, including the conduct and communication between the parties.

In addition, for a contract to be binding, the parties must have intended to create legal relations,¹⁰ a presumption that usually exists in commercial transactions unless rebutted. The final requirement is consideration, as stipulated in **Section 2(d)** of **the Act**, which refers to something of value exchanged for the promise, without which the contract is void. In the context of online or digital transactions, consideration is usually straightforward, such as the payment of money via credit card or electronic transfer in return for goods or services.

⁵ *Bekalan Sains P&C Sdn Bhd v Bank Bumiputera Malaysia Bhd* [2011] 5 MLJ 1, 32; [2011] 1 LNS 232, CA.

⁶ *Gay Choon Ing v Loh Sze Ti Terence Peter* [2009] SGCA 3. See also Edwin Peel, *Treitel on The Law of Contract* (15th edn, Sweet & Maxwell 2020) [2-015].

⁷ Contracts Act 1950, s 7(a).

⁸ Yam Kumar Yonjan, ‘An Analysis on Major Elements of a Valid Contract under Muluki Civil Code, 2074’ (SSRN, 14 August 2019) <<https://dx.doi.org/10.2139/ssrn.3437233>> accessed 25 July 2025

⁹ *Felthouse v Bindley* [1862] EWHC CP J35.

¹⁰ *Sri Kajang Rock Products Sdn Bhd v Mayban Finance Bhd* [1992] 1 CLJ 204.

2.2 Digital Communication and Acceptance of WhatsApp Messages in Malaysia

The integration of digital communication technologies into everyday interactions has complicated the legal analysis of what constitutes valid acceptance. In the context of instantaneous communication methods such as WhatsApp, email, and other messaging services, Malaysian courts generally apply the principle that acceptance becomes effective only when it is brought to the knowledge of the offeror.¹¹ This means that unless the offeror actually receives and understands a clear communication of acceptance, no binding agreement is formed.

The mere act of reading a message, as indicated by the double “blue tick” feature in WhatsApp, is insufficient to satisfy the legal requirement for acceptance,¹² because it only provides evidence that the message has been seen, not that the recipient has agreed to its terms. Although digital acknowledgements, such as text confirmations, can serve as acceptance if they are clear and unequivocal, a read receipt alone does not meet this threshold.¹³

This distinction becomes especially significant in cases involving automated or AI-generated responses.¹⁴ For example, if an offer sent via WhatsApp is met with an automated response such as "OK," the legal question becomes whether such a reply constitutes valid acceptance. To date, Malaysian courts have not issued binding precedents on whether automated messages can amount to valid acceptance, and no legislative amendments have been enacted to address this technological development. Based on existing principles, however, the courts are likely to assess such situations by examining whether the reply, automated or otherwise, reflects a genuine intention to enter into a legal agreement. Without clear evidence of intentional consent, neither a blue tick nor an automated acknowledgment would likely be regarded as constituting valid acceptance in the eyes of the law.

Despite these challenges, Malaysian courts have recognized the evidentiary value of digital communications, including SMS and WhatsApp messages, in contract-related disputes. In *Yam Kong Seng & Anor v Yee Weng Kai*,¹⁵ the Federal Court affirmed that SMS, as the

¹¹ *Entores v Miles Far East Corp* [1955] 2 QB 327 (CA) 335; *Brinkibon Ltd v Stahag Stahl* [1983] 2 AC 34 (HL) 41.

¹² Nicole Leong, ‘Enforceability of Non-Standard Form Contracts’ (*Asia Law Network*, 25 June 2021) <<https://learn.asialawnetwork.com/2021/06/25/enforceability-non-standard-form-contracts/>> accessed 20 July 2025.

¹³ Donal Nolan, ‘Offer and Acceptance in the Electronic Age’ (2010) *Andrew Burrows and Edwin Peel (eds), Contract Formation and Parties (OUP 2010)* <<https://ssrn.com/abstract=3082505>> accessed 20 July 2025.

¹⁴ Soliu Jamiu Ishola, ‘The Impact of Artificial Intelligence on Contract Law: A Legal Analysis’ (2024) <<https://ssrn.com/abstract=4891306>> accessed 22 July 2025.

¹⁵ [2014] 4 MLJ 478.

predecessor of WhatsApp, is admissible as evidence. Although the presence of a blue tick does not itself amount to legal acceptance, it may still carry evidential weight, particularly in employment disputes where the credibility and conduct are in question.

This position is consistent with the decision in *Mok Yii Chek v Sovo Sdn Bhd & Ors*,¹⁶ where the court held that WhatsApp messages qualify as documentary evidence under the **Evidence Act 1950**, provided they are relevant and properly authenticated. Similarly, in *Shen Yong Engineering Works Sdn Bhd v Damai Residence Sdn Bhd & Ors*,¹⁷ the High Court held that WhatsApp messages as contemporaneous and reliable evidence, holding that the defendant had acknowledged its indebtedness through such communications. The principle was further extended in *Shamsudin bin Mohd Yusof v Suhaila binti Sulaiman*,¹⁸ where the court upheld an agreement that was partly concluded through WhatsApp messages and partly through oral communication.

From these authorities, it is clear that Malaysian courts accept WhatsApp messages as admissible evidence and, in certain circumstances, as proof of contractual terms or acknowledgment of obligations. This judicial recognition extends the legal significance of digital communications and opens the door for broader consideration of whether features such as blue ticks and emojis may, in specific contexts, amount to effective acceptance in contract law.

3.0 WhatsApp Blue Ticks and Contractual Acceptance

3.1 Arguments Against Recognition

The WhatsApp blue tick, while ubiquitous in modern communication, falls short of the legal threshold for valid acceptance; at best, it only shows a message was opened, but it does not establish the assent required by contract law. **Section 2(b) of the Act** makes clear that acceptance must be an active, definitive, and unqualified expression of assent. A blue tick, however, is a passive, system-generated notification that only confirms message delivery and reading, not

¹⁶ [2015] MLJU 2374.

¹⁷ [2023] MLJU 104.

¹⁸ [2017] MLJU 2236.

intention to accept an offer.¹⁹ As such, without an express or implied affirmative response, there is no consensus ad idem and thus no contract.²⁰

Moreover, in the context of digital communication, its evidentiary value is inherently ambiguous by nature. While it indicates that a message has been opened on the recipient's device, none of these confirm that the recipient has understood the offer, especially if it involves complex terms, agreed to it, or intended to accept it. Accidental openings, partial previews, or ongoing deliberation may all trigger the notification. Such ambiguity is incompatible with **Section 7(a) of the Act**, which required acceptance to be "absolute and unqualified". Thus, treating a blue tick as conclusive would risk binding parties without genuine consensus, thereby undermining the principle of free consent set out in **Section 13 of the Act**.

Practical difficulties further reinforce this objection. Firstly, technical glitches may, on occasion, cause blue ticks to appear even when a message has not actually been read. In situations where a device is shared, such as within families or small businesses, multiple individuals may have access to the same WhatsApp account, making it difficult to ascertain the identity of the actual reader.²¹ Most critically, the burden of proof rests on the offeror to establish that a specific individual not only read the message but also that it signified agreement. Given the inherently passive and ambiguous nature of the blue tick, meeting this evidentiary threshold is highly problematic, if not impossible, in the absence of additional corroborating evidence.

3.2 Arguments Supporting Recognition

Despite these weaknesses, the blue tick cannot be dismissed entirely. In certain contexts, it may support a finding of valid acceptance, particularly where the surrounding context demonstrates unequivocal consent.

First, exceptions to the general rule that silence cannot constitute acceptance, as affirmed in *Felthouse v Bindley*,²² provide a potential pathway. One such exception arises when silence is

¹⁹ Omar Nabil, 'WhatsApp Read Receipts Explained: How to Identify & Turn Them Off' (*Rasayel*, 2 October 2024) <<https://learn.rasavel.io/en/blog/whatsapp-read-receipts/#what-are-whatsapp-read-receipts>> accessed 2 August 2025.

²⁰ Leong (n 11).

²¹ Fareez Shah & Partners, 'The Power of WhatsApp as Evidence in Court' (*Fareez Law*, 20 March 2019) <https://fareezlaw.com/malaysia/the-power-of-whatsapp-as-evidence-in-court/?utm_source=chatgpt.com> accessed 4 August 2025.

²² (1862) 142 ER 1037.

expressly initiated by the offeree. In *Re Selectmove Ltd*,²³ the court suggested, in obiter statement, that silence could amount to acceptance where the offeree proposed it as a mode of assent and the offeror raised no objection. Applied here, if parties mutually agree that a blue tick shall signify acceptance, and no objection is raised, it may satisfy **Section 7(b)** of **the Act**, which recognized acceptance “in some usual and reasonable manner” where not otherwise prescribed. While the relevant statement in *Re Selectmove Ltd* was obiter,²⁴ it remains a persuasive authority suggesting that silence, or analogous conduct, may amount to acceptance where it is expressly initiated by the offeree and assented to by the offeror. This indicates that, in principle, the blue tick could perform a similar function under Malaysian law.

A second exception lies in a consistent course of dealing.²⁵ If parties have repeatedly treated blue tick as confirmation of agreement in prior transactions, such conduct may give rise to an implied agreement. For example, where a supplier routinely messages “Ship 100 units?” and the buyer responds only with a blue tick before taking delivery, the twentieth repetition of this practice may establish a binding expectation that a blue tick equals acceptance. This approach is supported by **Section 9** of **the Act**, which recognizes that acceptance may be expressed or implied through conduct. Accordingly, where the parties’ past practice demonstrates that blue ticks are treated as assent, such conduct may potentially satisfy the legal threshold for acceptance.

Another ground in support derives from the principle of estoppel. In *Entores Ltd v Miles Far East Corp*,²⁶ Lord Denning recognized that for instantaneous communications, acceptance is effective upon receipt by the offeror, and an offeror may be estopped from denying acceptance where their own fault prevents acknowledgement. Transposed into the WhatsApp context, if a blue tick evidences receipt of the offeree’s acceptance, but the offeror fails to notice it due to negligence or a technical fault, estoppel may prevent them from denying the contract. In such circumstances, the blue tick could serve as evidence of effective communication of acceptance, thereby invoking estoppel to preclude the offeror from denying the contract.

²³ [1995] 1 WLR 474.

²⁴ *Ibid* (n 22).

²⁵ *Vitol SA v Norelf Ltd* [1996] AC 800.

²⁶ [1955] 2 QB 327.

4.0 Beyond Text: Emojis as Expressions of Acceptance

Having examined the arguments for and against treating WhatsApp blue ticks as valid acceptance, attention may now be directed towards another contemporary issue, which is the use of emojis in contractual communication. Consider, for instance, a scenario where A sends an offer to B via WhatsApp, and B responds with a smiley, “OK”, or thumbs-up emoji. Does this constitute a clear and unequivocal acceptance of the offer? This scenario highlights the tension between traditional contractual principles and the realities of modern communication, raising the need to examine whether emojis can be recognised as valid forms of acceptance.

4.1 Challenges of Emoji Use in Legal Context

In earlier times, the formation of contracts was highly formalized, often involving ceremonial signings or the use of seals for authentication.²⁷ In contemporary practice, however, contracts can be made and even modified within seconds through digital communication, sometimes with nothing more than the use of a single emoji. Despite the marvels of modern texting, with its speed and convenience, this one is fraught with peril. What once appeared to be a straightforward matter of offer and acceptance has become more complicated with the growing use of emojis in contractual and legal contexts.

Contracting through emojis, however, is fraught with traps for the unwary,²⁸ with the central challenges lying in their interpretation. Unlike written language, which is grounded in shared linguistic conventions, emojis lack a universally standardized meaning and are therefore prone to diverse and subjective interpretations.²⁹ A single symbol may give rise to multiple readings: for example, does a smiley face emoji signal acceptance of an offer, or is it merely an expression of courtesy? Likewise, could a sad face be understood as rejection, or instead as an expression of empathy? Such ambiguity creates the risk that parties may attach different meanings to the same emoji, resulting in misunderstanding. The significance of emojis heavily depends on context, cultural norms, and generational usage.³⁰ For instance, the thumbs-up emoji

²⁷ 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 22 July 2025.

²⁸ *Ibid* (n 27).

²⁹ Intan and Yasir (n 3).

³⁰ Edwina Oliver, ‘Emojis in Law: Making a Mess of Messaging’ (*Thomson Reuters*, 4 May 2018) <<https://insight.thomsonreuters.com.au/legal/posts/emojis-in-law>> accessed 20 August 2025.

is generally understood in Western contexts to signify approval or agreement.³¹ By contrast, in countries like Australia, Greece, or the Middle East, the same symbol is considered vulgar and even offensive,³² while younger generations may interpret it as passive-aggressive or dismissive.³³ Having said that, relying on emojis in contractual dealings is generally imprudent.

Importantly, this problem of interpretation is not confined to contract law alone. Though often used informally, emojis may carry greater legal weight than many realize.³⁴ A search of the Australasian Legal Information Institute database reveals that emojis have featured as evidence in over 240 cases in recent years.³⁵ Courts have likewise shown willingness to treat them as meaningful assertions or substitutes for words. For instance, in *Sewell v Daniel*,³⁶ the court considered whether a seller's use of a thumbs-up emoji could amount to a waiver of the buyer's contractual breach. Likewise, in *Friel v Dapper Labs, Inc.*,³⁷ where the use of emojis such as a rocket ship, stock chart and money bag in promotional materials was held to contribute to investors' reasonable expectations of profit, supporting a securities fraud claim. This illustrates how emojis, though casual in appearance, may carry weighty legal implications that extend beyond contracts, into areas such as securities law, tortious liability, and employment disputes.

To date, the Malaysian courts have not widely discussed whether emojis can indicate an intention to accept offers and thereby create contractual obligations. However, guidance may be drawn from the United States, where the validity of such acceptance has been determined on a case-by-case basis. In *Lightstone v Zinnex*,³⁸ the court declined to recognize a thumbs-up emoji as a valid signature, citing the absence of any prior course of dealings between the parties and the lack of evidence of a meeting of the minds in their text exchanges. Similarly, in *Bardales v Lamothe*,³⁹ the Court held that a thumbs-up emoji exchanged between estranged parents did not

³¹ Malcolm Campbell, 'Thumbs-Up Emoji – Acceptance of Contractual Terms in the Digital Era According to Canada' (*Coleman Greig Lawyers*, 22 August 2023) <<https://colemangreig.com.au/insights/publications/thumbs-up-emoji-acceptance-of-contractual-terms-in-the-digital-era-according-to-canada/>> accessed 20 August 2025.

³² Alex Rawlings, 'Why Emoji Mean Different Things in Different Cultures' (*BBC News*, 12 December 2018) <<https://www.bbc.com/future/article/20181211-why-emoji-mean-different-things-in-different-cultures>> assessed 30 July 2025.

³³ Brooke Steinberg, 'Gen Z Wants You to Stop Using This Popular Emoji' *New York Post* (26 October 2022) <<https://nypost.com/2022/10/26/gen-z-has-hidden-meanings-for-emojis-beyond-rude-thumbs-up/>> accessed 30 July 2025.

³⁴ Jennifer L Parent, 'To Emoji or Not to Emoji, that is the Question; The Legal Consequences of an Image' (*McLane Middleton*, 18 December 2024) <<https://www.mclane.com/insights/to-emoji-or-not-to-emoji-ji-that-is-the-question-the-legal-consequences-of-an-image/>> accessed 22 August 2025.

³⁵ Jennifer McKay, 'Could You Accidentally Sign a Contract By Texting an Emoji? Here's What the Law Says' (*The Conversation*, 17 April 2025) <<https://theconversation.com/could-you-accidentally-sign-a-contract-by-texting-an-emoji-heres-what-the-law-says-252287>> accessed 18 August 2025.

³⁶ [2020] U.S. Dist. LEXIS 63609.

³⁷ [2023] 657 F. Supp. 3d 422.

³⁸ [2022] N.Y. Misc. LEXIS 5925.

³⁹ [2019] U.S. Dist. LEXIS 186273.

amount to formal consent for the permanent relocation of their child overseas, as the surrounding context did not sufficiently demonstrate an intention to assent.

A further concern is that treating emojis as binding expressions of consent would risk opening the floodgates of litigation, as parties could increasingly call upon the courts to determine the meaning of various emojis.⁴⁰ Given the vast number of emojis already in circulation, along with the continual creation of new ones, it is not surprising if the courts may become overwhelmed with the task of interpretation. The challenge is further compounded by the fact that the same emoji can display differently across devices, platforms, and software versions, potentially altering the way a message is perceived.⁴¹ As a result, courts must grapple with issues, authenticity, accuracy, and relevance whenever emojis are adduced as evidence, thereby placing a significant burden on both litigators and judges.⁴²

4.2 Recognizing Emojis as Functional Acceptance

Despite these interpretive challenges and potential ambiguities, these difficulties do not automatically preclude emojis from being recognized as valid contractual acceptance. Established legal principles, statutory provisions, and recent comparative case law provide a framework through which emojis can be interpreted as conveying clear assent, thereby allowing courts to treat them as functional expressions of acceptance in appropriate contexts.

4.2.1 Fulfilment of Contractual Requirements

To conclude that emojis cannot constitute valid acceptance would be contrary not only to common law principles but also to common sense and the realities of modern communication. Once the essential elements of a contract are present, the crucial question is whether acceptance has been communicated clearly and unequivocally. Neither **the Act** nor common law prescribes

⁴⁰ Rachel Ng Li Hui and Wendy Tan Chen Wen, 'Will Your Thumbs-Up Emoji Get You Sued?' (*Thomas Philip Advocate & Solicitors*, 23 March 2024) <<https://www.thomasphilip.com.my/articles/will-your-thumbs-up-emoji-get-you-sued/#ftn16>> accessed 15 August 2025.

⁴¹ Vijaykumar Meti, 'The Legal Impact of Emojis: Challenges, Interpretations, and Regulatory Perspectives in Digital Communication' (2025) 8(1) *International Journal of Law Management and Humanities* <<https://ijlmh.com/wp-content/uploads/The-Legal-Impact-of-Emojis-Challenges-Interpretations-and-Regulatory-Perspectives-in-Digital-Communication.pdf>> accessed 30 July 2025.

⁴² Sanyogita Majgaonkar, 'Emojis: Unravelling the Legal Implications of Digital Expressions' (*DWF*, 7 October 2024) <<https://dwfgroup.com/en/news-and-insights/insights/2024/10/unravelling-the-legal-implications-of-digital-expressions>> accessed 10 August 2025.

that assent must be expressed in formal language, lengthy writing, or even in words at all.⁴³ As Corbin explains, in a passage consistent with **Section 9 of the Act**:

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.⁴⁴

Emojis fall squarely within this spectrum as they represent a form of “digital language” and constitute communication conduct in the same way as gestures or symbols.⁴⁵

What really matters here is the objective manifestation of assent, which is whether the offeree has demonstrated an intention to be bound by the proposal.⁴⁶ For example, replying to an offer with “I accept” is an indisputably valid acceptance. If the reply is “I accept 👍,” the thumbs-up emoji merely reinforces the clarity of agreement. Even if the words are omitted, a single 👍 in direct response to a definite offer may, in the appropriate context, serve the same legal function.⁴⁷ That said, if a reasonable person in the position of the offeror would interpret such an emoji as assent, then acceptance is validly communicated. This position finds support in *South West Terminal Ltd v Achter Land & Cattle Ltd*,⁴⁸ in which the Canadian court held that a thumbs-up emoji, sent in reply to a contractual offer, constituted valid acceptance as it objectively conveyed the requisite intention to be bound.

Accordingly, the law confirms that acceptance need not be confined to rigid linguistic forms. A thumbs-up emoji, if used in direct response to an offer, is a simple, efficient, and legally cognisable way of communicating agreement. To reject its validity would ignore the realities of digital communication and artificially constrain the principle that contracts rest upon mutual assent, however expressed.

⁴³ Ibid (n 42).

⁴⁴ Arthur Linton Corbin, *Corbin on Contracts* (St Paul: West Publishing Company 1993) § 1.19

⁴⁵ Keith Menscher, ‘Thank You, I Emoji Your Offer: Emoji Translating Acceptance in Contracts’ (2021) Student Works 1265 <https://scholarship.shu.edu/student_scholarship/1265> assessed 22 August 2025.

⁴⁶ Ibid (n 44).

⁴⁷ *J.B.B. Investment Partners, Ltd v Fair*, [2014] 232 Cal App 4th 974.

⁴⁸ [2023] SKKB 116.

4.2.2 Emojis as Electronic Signatures under the ECA

The **Electronic Commerce Act 2006** (hereinafter referred to as ‘**ECA**’) also lends significant weight to the argument that emojis may constitute a valid form of acceptance.⁴⁹ By expressly recognizing that contracts formed and expressed through electronic communications are legally valid and enforceable, the **ECA** establishes a statutory foundation for extending contractual principles to digital modes of expression. This recognition includes ‘the communication of proposals, acceptance of proposals, and revocation of proposals and acceptances or any related communication.’⁵⁰ Within this statutory framework, the use of an emoji in an electronic message could, in appropriate circumstances, be regarded as an expression of acceptance, thereby contributing to the creation of a binding agreement.

This argument gains further weight when considered alongside the provision on electronic signatures under **Section 9** of the **ECA**. This section sets out that an electronic signature is legally valid where it:

- (i) is attached to or is logically associated with the electronic message;
- (ii) adequately identifies the person;
- (iii) indicates that person’s approval of the information contained therein, and;
- (iv) is reliable in light of the purpose and circumstances.

Complementing this, **Section 5** of the **ECA** defines an electronic signature broadly as ‘any letter, character, number, sound or any other symbol or any combination thereof created in an electronic form adopted by a person as a signature.’ Therefore, given this expansive definition, an emoji, as a symbol created in electronic form, could qualify as an electronic signature if it satisfies the statutory requirement prescribed in **Section 9** of the **ECA**. As such, emojis may not only operate as a communicative expression of acceptance but also as a valid electronic signature, thereby strengthening the case for their legal recognition as a form of acceptance in contractual arrangements.

4.2.3 Addressing Ambiguity in Emojis

⁴⁹ Sofia and Xuan (n 2).

⁵⁰ Electronic Commerce Act 2006, s 7(2).

As noted in Section 4.1, a central challenge in using emojis in contractual contexts is their potential ambiguity: the same symbol can be interpreted differently depending on culture, context, or platform. However, this ambiguity does not automatically preclude emojis from serving as valid acceptance. Ambiguity is not unique to emojis; written language itself often carries multiple meanings depending on geography, culture, and social context.⁵¹ In this sense, emojis are not fundamentally different from words, since both require courts to interpret the intent and understanding of the parties within their specific circumstances.⁵²

Importantly, not all emojis are inherently ambiguous.⁵³ Widely recognized emojis, like the “thumbs-up 👍” or the “OK 🙌” emoji, generally convey clear assent or confirmation in commercial communications.⁵⁴ The key consideration is the objective manifestation of intent: if a reasonable person in the position of the offeror would interpret the emoji as assent, acceptance is communicated effectively.

Moreover, emojis reflect evolving modes of digital communication, much like linguistic innovations that courts have historically had to interpret.⁵⁵ Just as the meaning of words can shift over time, so too can the emotive and communicative force of emojis. The proper approach, therefore, is not to treat potential ambiguity as a barrier, but to assess how the emoji was received and understood by the parties within context. As one scholar observes: ‘Decoding pictures as part of communication has been at the root of written language since there was such a thing as written language.’⁵⁶ In this way, the interpretive challenges highlighted in 4.1 are addressed through objective contextual analysis, allowing emojis to function as valid expressions of contractual acceptance while maintaining the courts’ traditional role in interpreting intent.

5.0 Conclusion

⁵¹ Menscher (n 43).

⁵² Moshe Berliner, ‘When a Picture is Not Worth a Thousand Words: Why Emojis Should Not Satisfy the Statute of Frauds’ Writing Requirement’ (2020) 41 Cardozo Law Review <<https://cardozolawreview.com/wp-content/uploads/2020/10/8.-Berliner.41.5.9.FINAL-1-1.pdf>> assessed 20 August 2025.

⁵³ Salena Larson, ‘Emoji Can Lead to Huge Misunderstandings, Research Finds: Emoji Sometimes Mean What You Don’t Think They Mean’ (*Daily Dot*, 29 February 2020) <<https://www.dailydot.com/news/emoji-miscommunicate/>> assessed 20 August 2025.

⁵⁴ Menscher (n 43).

⁵⁵ Andy Bodle, ‘How New Words are Born’ (*The Guardian*, 4 February 2016) <<https://www.theguardian.com/media/mind-your-language/2016/feb/04/english-neologisms-new-words>> assessed 22 August 2025.

⁵⁶ Adam Sternbergh, ‘You’re Speaking Emoji: The Rapid Evolution of a Wordless Tongue’ (*NY MAG*, 16 November 2016) <<https://nymag.com/intelligencer/2014/11/emojis-rapid-evolution.html>> assessed 22 August 2025.

In conclusion, the growing use of digital communication platforms has introduced new challenges for legal interpretation worldwide, especially concerning what constitutes a valid contractual acceptance. While a WhatsApp blue tick alone is unlikely to be considered an acceptance, it can serve as a piece of evidentiary weight when viewed alongside other factors. In contrast, emojis, when interpreted objectively and within their proper context, can clearly convey assent and constitute a valid acceptance.

Although Malaysian courts have not yet addressed this issue, comparative authorities like the Canadian Court in the *South West Terminal Ltd* case⁵⁷ demonstrate that courts can and do recognize these digital expressions as legally binding. These precedents emphasise the importance for legal practitioners to remain alert to emerging jurisprudence and to develop strategies for addressing emojis in litigation.

More broadly, the challenges associated with emojis in digital contracting highlight the importance of legislative updates and clearer frameworks to ensure fair and consistent interpretation in legal contexts.⁵⁸ It is likely that Malaysian courts, when faced with such questions, would follow a similar path, examining the totality of the circumstances to determine if an unequivocal acceptance has been communicated. This approach would not only modernise contract law in line with contemporary practices but also uphold the fundamental principle of mutual consent at the heart of contractual relations.

⁵⁷ *South West Terminal Ltd* (n 46).

⁵⁸ Samia Awad Mohamed Hassan and Anan Shawqi Younes, 'Emojis As Expressions of Will in Contract Law: Legal Challenges and Judicial Perspectives' (2025) 5 *Journal of Lifestyle and SGD's Review* <<https://doi.org/10.47172/2965-730X.SDGsReview.v5.n03.pe04948>> accessed 20 August 2025.