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VALIDITY OF THUMBS-UP EMOJI AS ACCEPTANCE OF CONTRACT

A. Introduction

A Canadian Court (**Court**),¹ in the *South West Terminal* case,² recently opined that using a thumbs-up emoji is a valid form of acceptance and thus forms a legally-binding contract.

B. Brief Facts

1. The petitioner, South West Terminal (**SWT**), regularly placed orders for deferred purchases of certain grains and seeds from the respondent, Achter Land & Cattle Ltd (**Achter**).
2. An employee each of SWT and Achter routinely contracted over the phone and text messages for such sales and purchases. In the present instance, the SWT employee (**SWT Employee**) sent a picture of the wet-inked signed contract via phone, and the Achter employee (**Achter Employee**) responded with a thumbs-up emoji (👍).
3. SWT contended that despite its requisitioning and Achter's apparent agreement, conveyed through a thumbs-up emoji, Achter's failure to deliver the goods constituted a breach of contract.
4. The question before the Court was whether there was a valid contract between the parties such that there was:
 - i. a meeting of minds; and
 - ii. certainty of terms.

C. Court's Judgment & Reasoning

The Court:

1. Opined that since the parties regularly contracted over text messages with acceptance from Achter in the form of "looks good", "ok", "yup" and subsequently effected deliveries to SWT, under the unique circumstances, the use of the thumbs-up emoji shall be considered to be a valid acceptance and hence, legally binding.
2. Held that the use of thumbs-up emoji constituted an electronic signature and was a valid way to convey the two purposes of a 'signature' – to identify the signatory and to convey Achter's acceptance of the contract.

¹ King's Bench for Saskatchewan.

² *South West Terminal (SWT) vs. Achter Land & Cattle Ltd.*, 2023 SKKB 116 and available [here](#).

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3. Adjudicated that, even apart from the unique circumstances of the case, the contract was legally executed via an electronic signature since the Canadian legislation allows an offer or acceptance *‘to be executed by an action in an electronic form, including touching or clicking on an appropriately designated icon or place on a computer screen or otherwise communicating electronically in a manner that is intended to express the offer, acceptance or other matter’*.³
4. Noted that the essential terms in the contract being parties (SWT & Achter), property (goods to be delivered), and price were certain and unambiguous, and therefore, the above acceptance constituted a valid contract.

D. Comments

This Canadian court’s judgment has given a new and wide interpretation in the jurisprudence of contract law. In the Indian context, the Indian Contract Act, 1872 (**ICA**) provides specific essential considerations for a contract to be legally valid.⁴ Section 8 of the ICA even addresses implied acceptance.⁵

While the Indian legislative⁶ and judicial approaches have hitherto been in favour of electronically executing contracts, practically enforcing a contract (where acceptance is made through a thumbs-up emoji) may be challenging as authentication of the signatory’s identity is crucial for concluding acceptance.

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³ As per Section 18 of (Canadian) Electronic Information and Documents Act, 2000.

⁴ The key conditions for a contract to be valid are:

- a. valid offer and acceptance,
- b. parties agreeing to the terms of the contract in the same sense,
- c. free consent,
- d. competence to contract,
- e. for a lawful consideration
- f. and terms and obligations of the contract must be lawful.

⁵ The Section prescribes that: *“The performance of the conditions of a proposal, or the acceptance of a consideration for reciprocal promise, which may be offered with a proposal, is an acceptance of the proposal.”*

⁶ Information Technology Act, 2000 (IT Act) recognizes digital signature and electronic signature. Section 10A of the IT Act deems contracts formed through electronic means valid.