

Insights

INSTANT MESSAGES, LASTING COMMITMENTS: THE PERILS OF INFORMAL CONTRACT FORMATION IN THE DIGITAL AGE

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SUMMARY

In 2025, contract negotiations unfold over oat milk coffees and digital channels where informal conversations often intermingle with serious commercial discussions. However, the Court of Appeal decision *DAZN Ltd v Coupang Corp* [2025] EWCA Civ 1083 ("**DAZN judgment**") is a stark reminder that, under English law, the substance of communications is a primary consideration in contract formation. Whether it involves a thumbs-up emoji or a simple "deal confirmed" one line email, businesses must exercise caution to avoid being held to the content of digital exchanges that may appear informal but could carry binding legal weight.

The DAZN judgment, handed down on 8 August 2025, illustrates that informality is no bar to the creation of an enforceable contract, even in the absence of more formally expressed terms or signed documents. In this case, a \$1.7 million deal for co-exclusive broadcasting rights to the FIFA Club World Cup was unwittingly sealed through a combination of WhatsApp messages, voice calls, and brief emails.

THE RULING

The DAZN judgment builds on a basis of case law enforcing contract formation by way of informal or less traditional means such as in *Southeaster Maritime Ltd v Trafigura Maritime Logistics Pte Ltd* [2024] EWHC 255 (Comm) and *Jaevee Homes Ltd v Fincham (trading as Fincham Demolition)* [2025] EWHC 942 (TCC) (see our thoughts on the latter, [here](#)). Together, these cases highlight that informal communications can create binding agreements despite use of the "subject to contract" label or expectations of later formalisation, depending on the surrounding context.

A HIGH-PROFILE WAKE-UP CALL: THE DAZN V COUPANG JUDGMENT

In *DAZN v Coupang*, the dispute originated from negotiations between DAZN (a global rights-holder) and Coupang (a prominent South Korean e-commerce company operating a streaming service) concerning the sublicensing of broadcasting rights for the 2025 FIFA Club World Cup in South Korea. The exchanges between the parties were largely informal, consisting of WhatsApp messages that outlined offers, prices, and terms. These culminated in two emails dated 27 February 2025 – where a representative of Coupang confirmed the price it was willing to pay for the grant of the broadcasting rights, on a co-exclusive basis with DAZN – and 3 March 2025 – where a representative of DAZN confirmed acceptance of the offer and indicated that a draft contract would be shared. A subsequent WhatsApp message was sent, which referred to the email as acceptance of the rights proposal. Later in March, DAZN informed Coupang of a rival (higher) bid. Coupang commenced legal proceedings, arguing that DAZN was not honouring its commitments and seeking injunctive relief to prevent DAZN offering the rights to the third party.

At first instance, it was held that a binding contract had been formed. The emails were deemed to constitute an offer and acceptance. DAZN appealed, contending that the messages did not demonstrate an intent to create legal relations. The Court of Appeal dismissed the appeal and upheld the existence of the contract. In doing so, the Court applied established principles of contract formation, and emphasised an objective assessment of the parties' words and conduct, providing essential guidance on how contracts may arise in informal settings.

First, in disputes of this nature, a court will consider the whole course of negotiations, both before and after the alleged point of agreement. This approach ensures that isolated communications are not viewed in a vacuum but are interpreted within the broader context of the parties' interactions, including any post-agreement behaviour that may indicate mutual understanding of a binding deal.

Second, parties are the masters of their own contractual fate, meaning they determine which terms are essential for a binding agreement, which has important implications:

- phrases such as "subject to contract" do not automatically preclude earlier contract formation - their effect depends on the conduct of the parties and the specific circumstances.
- even if there is a requirement for "reduction to writing" or where a formal document is anticipated, a binding agreement may still exist if the parties' actions demonstrate an unequivocal intention to be bound. The Court clarified that if the parties have agreed on the key elements and essential terms, the subsequent drafting of a document may merely formalise an already binding arrangement, particularly where urgency plays a role.

Third, words must be judged in their own context, recognising that business and commercial people may not employ the precise terminology that lawyers would use. The court should not evaluate contract formation against rigid "letter of the law" standards but rather assess whether individuals in the parties' positions would interpret the language as indicating offer and

acceptance. In DAZN, the informal, impressionistic phrasing—such as "excited to land this new deal" – was sufficient to convey intent when viewed objectively.

Fourth, urgency can be an indicative factor suggesting that the parties intend to be bound, even if further terms remain to be finalised. The impending start of the tournament created a time-sensitive environment, making it more likely that the parties wished to secure the deal without waiting for every detail to be documented.

As a result, the Court not only confirmed the binding nature of the contract, but also ordered specific performance, compelling DAZN to provide the broadcast feed, and granted an injunction to prevent distribution via third-party platforms.

TRACKING THE TREND: INFORMAL COMMUNICATIONS IN ENGLISH LAW AND BEYOND

The DAZN judgment builds on a growing body of case law (in England and elsewhere) where courts have upheld contracts formed through “informal channels”.

In *Southeaster Maritime Ltd v Trafigura Maritime Logistics Pte Ltd*, the court dismissed arguments that a WhatsApp message should be disregarded due to its “informal” nature. The judge rejected the argument that WhatsApp communications are of less significance than emails, emphasising that the platform used does not diminish the contractual significance of the messages exchanged. The judge noted that pre-contractual negotiations via informal means are admissible only in limited circumstances, but where they form part of the factual matrix, they can influence interpretation. This case illustrates how courts will not discount digital communications on the basis of an argument that they are casual, provided they objectively contribute to the whole course of dealings.

Similarly, in *Jaevee Homes Ltd v Fincham*, a £248,000 contract for demolition services was deemed to have been formed through a series of emails and shorthand WhatsApp messages, and not when a set of formal contract terms was later sent by email. A pivotal WhatsApp exchange involving casual language sealed the deal: the contractor asked, "*is the job mine mate?*" and the developer responded "*Yes,*" followed by a brief discussion on "monthly applications" for payment. The court rejected the developer's argument that the absence of essential terms – such as duration, start date, and precise payment provisions – meant that a contract had not been formed via WhatsApp, clarifying that in construction contracts, duration and start dates are not essential, as an implied term requires completion within a reasonable time and other gaps in a contract are filled by the Construction Act 1996 (see our full article on *Jaevee* [here](#)).

In the Canadian case of *South West Terminal Ltd v Achter Land & Cattle Ltd* 2023 SKKB 116, a thumbs-up emoji (👍) was held to constitute acceptance and a valid electronic signature for a flax supply contract under statutory requirements. The court applied an objective test, finding that the parties' prior pattern of informal confirmations ("ok," "yup") via text messages indicated intent to be

bound by this emoji. Although not binding on the English courts, Canadian judgments are of persuasive value to an English court and this ruling could well therefore influence future cases involving emojis or shorthand, particularly where conduct suggests agreement. This could be significant, as emoji use varies by user, with different users attaching different meanings to the same emoji, importing a degree of ambiguity.

These cases collectively demonstrate: alternative digital tools can create enforceable contracts without formal documents or despite "subject to" caveats.

PRACTICAL IMPLICATIONS: STRATEGIC CONSIDERATION FOR AVOIDING DIGITAL CONTRACT PITFALLS

The proliferation of digital negotiations offers efficiency but introduces substantial risks which must be managed.

Businesses should therefore consider the following:

- **Incorporate Clear Disclaimers:** Make clear from the outset that you wish to enter into a written contract. Send the contract to the other party as soon as possible and mark all negotiating correspondence (including seemingly informal messages) "subject to contract" or "non-binding discussion" in the meantime. While not an absolute safeguard – as outcomes depend on conduct and context – this at the very least signals a lack of immediate intent to be bound.
- **Designate Formal Channels and Protocols:** Reserve key confirmations, offers, and acceptances for formal channels like email. In urgent scenarios, use templates to capture essentials before informal exchanges. Establish internal protocols for approvals to prevent buyer's remorse situations, such as in DAZN, where premature acceptance of the Coupang offer led to DAZN later trying to back-track upon receiving a better offer from another party.
- **Clarify and Document Authority Limits:** Ensure that authority limits are clearly documented internally and communicated to the other party from the outset. Make it explicit when a negotiator does not have the authority to bind the company, so that the other side cannot later argue they reasonably believed that person had apparent authority to contract. Be mindful that correspondence from a person with actual power to bind a party (or the apparent authority to do so) will likely be relied upon by the other party, regardless of how informal or formal the communications may be.
- **Train on Language, Emojis, and Shorthand and use of informal channels:** Educate teams on the risks of ambiguous phrasing, emojis (e.g. 📄 as potential acceptance, per *South West Terminal*), or voice notes. There may also be regulatory compliance issues (for example if use of a particular platform does not comply with data privacy laws) so only platforms approved by the business should be used. Informality also creates a risk that terms will be implied to plug any contractual gaps, which means the terms of a contract could lack certainty.

- **Move to the contract stage as soon as possible and document the whole course:** Negotiate and actually sign the contract so it comes into existence. Maintain comprehensive logs of negotiations across platforms to provide context in disputes (especially if a formal contract is not subsequently signed). Be mindful of deletions or encryption, which can complicate evidence but do not negate objective intent.
- **Strengthen Contractual Safeguards:** Include entire agreement clauses and carefully drafted modification provisions in any formal documents. Consider including a clause that specifies:
 - **How** modifications must be made (e.g., "by way of a formal written amendment signed by authorised representatives of both parties");
 - **What** constitutes a signature (e.g., excluding electronic messages or requiring wet-ink or specified digital signature methods); and
 - **Which** communication channels are binding (e.g., excluding WhatsApp, text messages, or other informal platforms). This helps to avoid:
 - the risk of future email/WhatsApp correspondence being argued to constitute a formal written variation; and
 - any argument that key terms of the contract sit outside the formal written document in unmonitored WhatsApp (or other) chat channels.
- **Sector-Specific Considerations:** In construction (*Jaevee*), statutory schemes like the 1996 Act provide safety nets for gaps, but do not replace negotiated terms—ensure essentials are clear early. In media or high-urgency fields (*DAZN*), factor in time pressures, which may heighten the likelihood of binding intent.

RELATED CAPABILITIES

- Business & Commercial Disputes

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