

## 👍👍👍 DOES A THUMBS-UP MEAN A CONTRACT? 👍👍👍

Out of a simple court case in Saskatchewan, Canada, last month, a very interesting legal conclusion emerged that may have far-reaching social significance: an emoticon, in this case a thumbs-up 👍, constitutes a legally binding contract.

An issue in this case was whether a farmer in Saskatchewan agreed to sell 87 metric tons of flax to a buyer in 2021. The buyer signed the contract and sent a photo of the contract in a text message to the farmer, who responded by sending a thumbs up emoji. The farmer claimed that "the thumbs up emoticon simply confirmed that I had received the contract for the sale of flax". He stated that he understood the text to mean that "the full contract would follow by fax or email." However, the buyer objected that when he texted a photo of the contract to the farmer's mobile phone, he wrote: "Please confirm flax contract." So when the farmer replied with a thumbs up emoji, the buyer assumed that the farmer had agreed to the contract. In his decision, the judge quoted the definition of the thumbs-up emoticon from dictionary.com and said that the term is "used to convey agreement, approval, or understanding in digital communication." Thus, the court concluded that the contract was made with a "thumbs up" 👍.

How would that be in Slovakia?

First of all, it should be said that a contract does not have to be "in writing" in the sense that it does not have to be a separate paper or a separate document. If two people make an agreement, e.g. via email or WhatsApp, that one party is selling and the other is buying, and they agree on a price, a contract has probably been made. But this does not apply to all types of contract. For example, you cannot transfer real estate in this way, where a highly formal form of contract applies.

But what about an emoticon such as a thumbs up 👍? Is it an expression of consent under Slovak law?

Under Slovak law, a contract is formed when one of the parties makes an expression of intent to enter into a contract. This is referred to as a draft contract. The draft contract must be sufficiently definite and must imply the intention of the proponent to be bound if it is accepted. However, in order for a contract to be concluded, the party to whom the proposal is addressed must make a timely declaration or take other timely action from which their assent can be inferred. Such action shall be deemed to be acceptance of the proposal. I believe that if, by virtue of an electronic communication between the parties, one of the parties were to send the other a specific draft contract, for example, in a case similar to what happened in Canada, and the other party gave a thumbs up 👍 to such a draft contract, it is quite likely that such a manifestation could be deemed to be assent to the contract. I can imagine such an argument in court. So be careful what emoticon you use. 😊

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