

Joke or Threat? Emojis in the Courtroom

By: Tyler Parker

Did you send an emoji today? Probably. Emojis are “small images, symbols, or icons used in text fields in electronic communication (as in text messages, email, and social media) to express the emotional attitude of the writer, convey information succinctly, communicate a message playfully without using words, etc.”¹ Specifically, these wordless communications include emoticons (keyboard-generated), emojis (computer-generated), and other communications (GIFs, JPEGs, memes, and pictures).²

People are using emojis more and more. In the United States, emojis as evidence almost doubled from 2017 to 2018.³ However, judges need help deciphering their meanings in the courtroom. “Judges aren’t prepared for the influx [of emojis], especially ones who are older and may not be familiar with newer vernacular,” said Jason Levine, a Vinson & Elkins partner.⁴

The key word is intent. When determining the meaning and intent behind emojis, judges tend to look at all the surrounding circumstances, including the age and culture of the sender.⁵ For instance, in *Ghanam v. Does*, a Michigan court examined the circumstances surrounding the defendant’s statements in a defamation case.⁶ In that case, the plaintiff sent the “sticking out tongue” emoji to the plaintiff.⁷ Because the emoji “makes it patently clear that the commenter was making a joke,” the court ruled that a reasonable person would not have found the statement to be defamatory.⁸ In other cases, the defendants were not as lucky because the surrounding circumstances tended to show some level of liability.⁹

To evaluate the circumstances of each emoji case, legal scholars suggest lawyers ask themselves and their clients the “what” questions, including:

- What do I see in the image? Can I put a name to what I see?
- What does the emoji remind me of? An emotion? A personal experience?
- What does my client think it means? Why?
- What do counterparties and third parties think it means? Why?
- How does context apply?¹⁰

Next time you send an emoji, think twice about its context before you hit send. After all, emojis are not *always* fun and games.

¹ *Emoji*, MERRIAM-WEBSTER DICTIONARY (11th ed. 2022).

² Heather King, *Emojis and Emoticons: How Courts and Litigators are Dealing with Interpretation of Digital Wordless Communications*, ABA (January 01, 2022), [https://www.americanbar.org/groups/law_practice/publications/law_practice_magazine/2022/jf22/king/\[https://perma.cc/S55X-BLQB\]](https://www.americanbar.org/groups/law_practice/publications/law_practice_magazine/2022/jf22/king/[https://perma.cc/S55X-BLQB]).

³ Samantha Murphy Kelly, *Emojis Are Increasingly Coming up in Court Cases. Judges Are Struggling with How to Interpret Them*, CNN BUSINESS (July 8, 2019), <https://www.cnn.com/2019/07/08/tech/emoji-law/index.html> [<https://perma.cc/N27A-KV6G>].

⁴ King, *supra* note 2.

⁵ *Id.*

⁶ *Ghanam v. Does*, 845 N.W.2d 128, 144 (Mich. Ct. App. 2014).

⁷ *Id.* at 145.

⁸ *Id.* at 146.

⁹ *Commonwealth v. Danzey*, 210 A.3d 333 (Pa. Super Ct. 2019); King, *supra* note 2.

¹⁰ Olga Mack, *Emojis and Visual Literacy: A Guide for Lawyers*, BLOOMBERG L. (June 21, 2021), <https://news.bloomberglaw.com/us-law-week/emojis-and-visual-literacy-a-guide-for-lawyers> [<https://perma.cc/47DQ-XFBS>].