Emoticons & Emojis as Evidence: Interpreting Digital Wordless Communication

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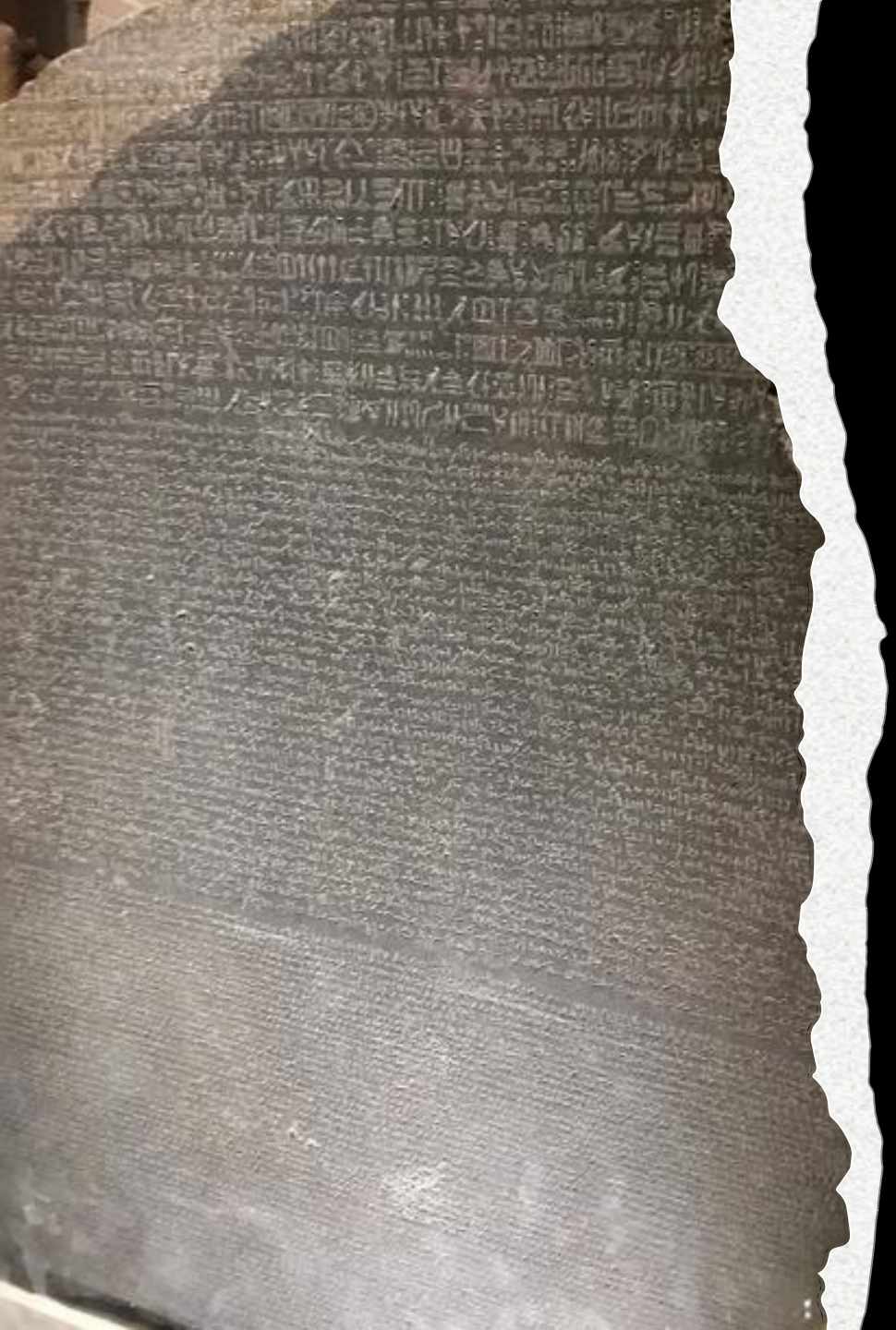
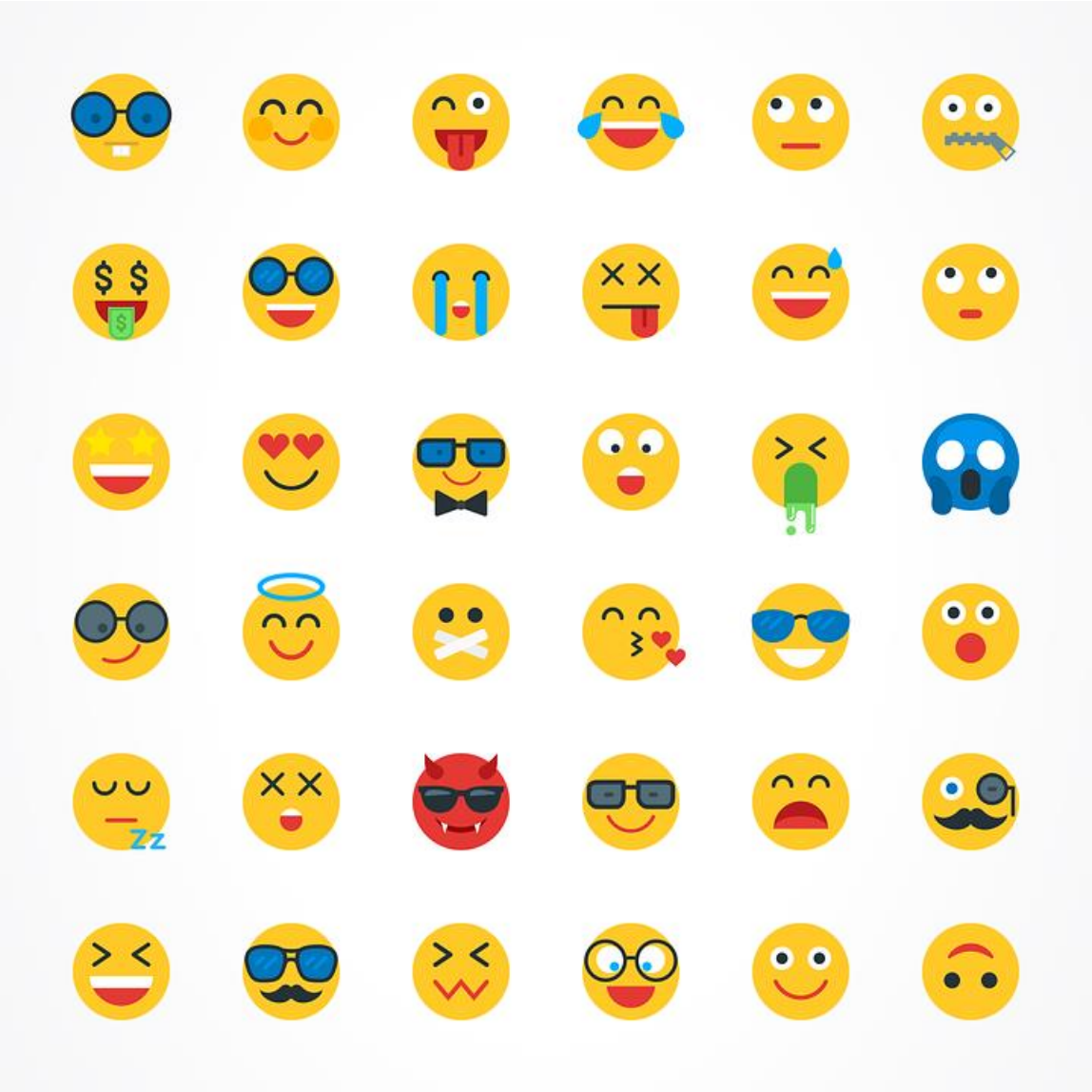


If a picture is worth a thousand words…

Emoticons & Emojis



As dictionary.com would say:

"Emoji: a small digital picture or pictorial symbol that represents a thing, feeling, concept, etc., used in text messages and other electronic communications and usually part of a standardized set: *She texted me an emoji of 'money with wings,' which probably means she's out shopping."*

Discussion

How many of you have had an emoji issue in a case? What was the context?

What are your greatest concerns when it comes to emojis?

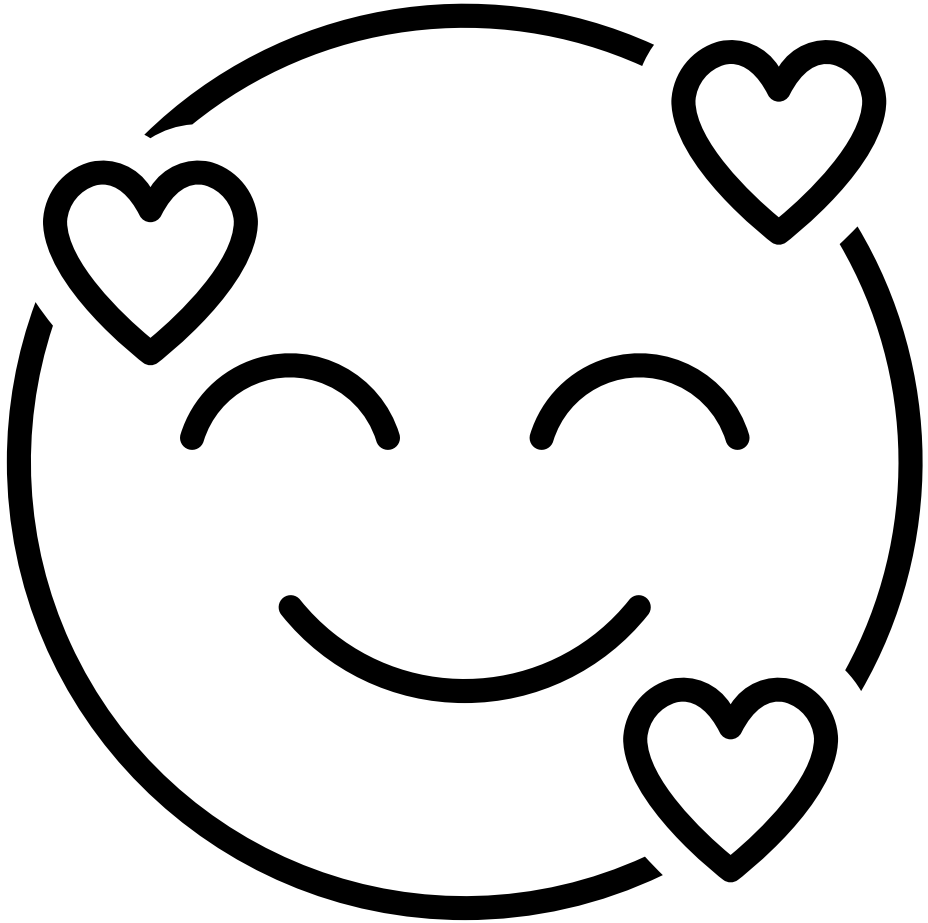
Can you think of a way this would come up in your cases?

"'No matter how specialized your court,' he said, 'emoji evidence is coming for you.'" -- Professor Goldman

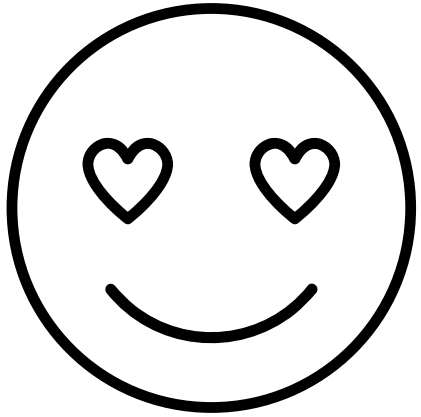
Suzy St. John, Em😊jis and the Law: The New Digital Language, Coming to a Courtroom Near You, American Bar Association (Feb. 17, 2023)

Putting Your Emoji Knowledge to the Test

What does it mean?

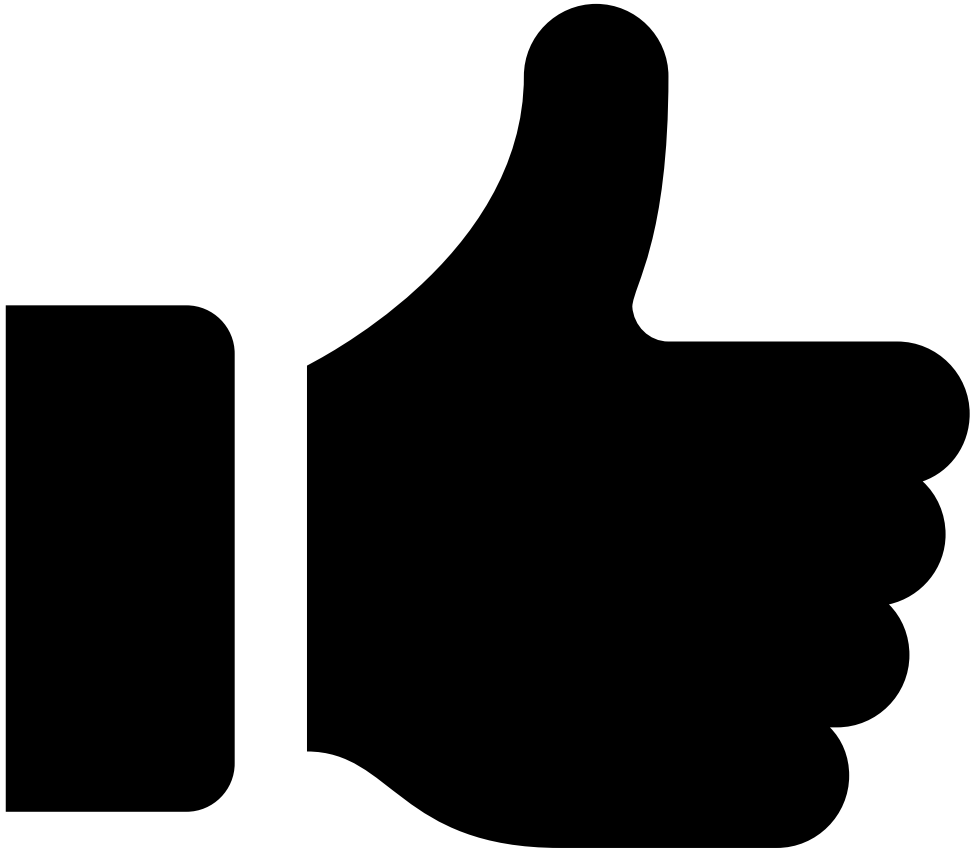


It is “sexually explicit?”



Did you accept the contract?

How about now?



Canadian judge rules thumbs-up emoji can represent contract agreement

- Buyer sends farmer an emoji of a contract with the following “please confirm flax contract.”
- Farmer responds with thumbs up emoji.
- Canadian Court ordered farmer to pay $61,442.00 for the contractual obligation created by emoji.

Source: Leyland Cecco, the Guardian (Jul. 6, 2023), available at: https://www.theguardian.com/world/2023/jul/06/canada-judge-thumbs-up-emoji-sign-contract

Or even :)

- Party argued that a party's attorney had stipulated that a party was guilty in an email.
- email read: "stipulate that my client is guilty. :)"
- Court's Conclusion: smiley face undercut the written statement → no stipulation reached.

Source: *United States v. Christensen*, Cause No. CR 06-085-BLG-RFC (D. Mont. Apr. 11, 2013)

Step #1: Deriving Meaning

"…emojis have 'no fixed emotional resonance, clear dictionary definition, or established grammatical rules for interpreting them in the various contexts in which they appear.'"

Source: Eric Goldman, Emojis and the Law, Washington Law Review, Volume 93 (Oct. 1, 2018), quoting Amanda Hess, Exhibit A: ;-), SLATE.

If you don’t know a word, what do you do?

Emoji Dictionaries

- From Washington v. McKenzie, 508 P.3d 205 (2022)
  - UNICODE: http://www.unicode.org/emoj i/charts-11.0/full-emoji-list.html
  - EMOJIPEDIA: https://emojipedia.org
- Other resources from Eric Goldman, Emojis and the Law, Washington Law Review, Volume 93 (Oct. 1, 2018).
  - Dictionary.com: https://www.dictionary.com/e/emoji/
  - Emoji Dictionary: https://emojidictionary.emojifoundation.com

BUT

“There is no singular, ‘objective’ interpretation of every emoji, and by their very nature, they cannot contain the same precise meaning to each person who perceives them.”

Source: Lyons, Samantha (2023) "Conviction on Interpretation, Advocate Adaptability, and the Future of Emojis and Emoticons as Evidence," *Seattle Journal of Technology, Environmental & Innovation Law*: Vol. 13: Iss. 2, Article 3.

What’s the Meaning?

- ❄
- 🍁 🍃 🍀 🥦 🍪 🧃
- 🧷
- 🚬
- 🐍
- 📸
- 🤡
- 🧢
- 🙏

- 💪
- 🔪
- 💀 ☠
- 💯
- 👀
- 🌽 ▨ ■ P ☆
- 💻
- 🐙

Step #2

“The context and the community matters” -- Judge Domitrovich

Source: Suzy St. John, Em😊jis and the Law: The New Digital Language, Coming to a Courtroom Near You, American Bar Association (Feb. 17, 2023)

Discussion:

- What is the “context?”
- What is the “community?”
- Where is there a potential for conflict?

Context

I love chocolate 💕

VS

I love you 💕

Finding Balance

How much does context matter?

Does the platform matter?

Does the method of communication matter?

When does an emoji become the “crux” of the communication?

Examples of Culture from Eric Goldman, Emojis and the Law, 93 Wash. L. Rev. 1227 (2018).

- Quote: A few examples of culture-specific meanings for emojis --
  - The Face Mask emoji might symbolize illness in Japan and bank robbery in the United States.
  - The Eggplant emoji can be a phallic reference in the United States.
  - In Western cultures, cat emojis are associated with domestic companions; other cultures may view cats as sacred or edible.
  - Canadians use the Poop emoji as an ironic commentary about the world's overall crummy state.

Step #3: Getting the Context

- Where can you get the context?
- Weighing Evidence: the plain text vs. testimony
- Whose interpretation matters most? The sender? The receiver?

Be prepared to ask the question!

- You control the record.
- Don’t assume meaning.
- Just because you “get it,” does not mean a reviewing body will.
- Be prepared to “get to the point” and ask the pointed question: what does this mean?
- Record all relevant perspectives.
- Be persistent.

Discussion

Credibility and weight: if a witness cannot articulate the meaning, what does this mean for you?

Step #4: Decision Writing

Include the image

Appendix vs. in text

Description may miss the mark

Parting Advice

People In Int. of R.D., 464 P.3d 717, 734 (Colo. 2020).

- "…the contextual factors courts should consider include, but are not limited to (1) the statement's role in a broader exchange, if any, including surrounding events; (2) the medium or platform through which the statement was communicated, including any distinctive conventions or architectural features; (3) the manner in which the statement was conveyed (e.g., anonymously or not, privately or publicly); (4) the relationship between the speaker and recipient(s); and (5) the subjective reaction of the statement's intended or foreseeable recipient(s)."

Resources for Future Reading

- Eric Goldman, Emojis and the Law, 93 Wash. L. Rev. 1227 (2018). Available at: https://digitalcommons.law.uw.edu/wlr/vol93/iss3/4
- Lyons, Samantha (2023) "Conviction on Interpretation, Advocate Adaptability, and the Future of Emojis and Emoticons as Evidence," *Seattle Journal of Technology, Environmental & Innovation Law*: Vol. 13: Iss. 2, Article 3. Available at: https://digitalcommons.law.seattleu.edu/sjteil/vol13/iss2/3

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