

# THE CHANGING FACE OF CONTRACT LAW IN THE DIGITAL ERA IN NIGERIA: A COMPARATIVE ANALYSIS\*

## Abstract

*The growth of technology has greatly impacted many areas of human endeavours and this has birthed the introduction of digital contracts. These digital contracts have impacted the traditional concept of formation of contract in such areas as the use of electronic signatures and emojis with positive and negative effects. In this respect, this paper aims to comparatively examine the effect that the digital era has impacted on the traditional concept of contract law in Nigeria and some other countries using the doctrinal methodology of research. The paper found that the current legal regime in Nigeria has not adequately responded to the changes that have occurred in contractual transactions as a result of the rise in digital contracts. This paper concluded by recommending the enactment of a single piece of legislation to regulate contracts that are entered into electronically or digitally in order to bring coherence and legal certainty in the digital contracts arena.*

**Keywords:** Digital, Technological, Emojis, Electronic Signatures, Contracts.

## 1. Introduction

There is no gainsaying the fact that change is constant and this has affected all spheres of human endeavours including contractual transactions. This has occasioned a broadening of the law on contract in order to accommodate this development. In this respect, the traditional law of contract principles relating to offer and acceptance have been modified and expanded mainly as a result of the advancement in technology. The modern development in technology has given birth to a digital era which has created modern technological tools like computers, the internet, smart phones and other digital devices. With the introduction and adoption of these digital devices, the traditional paper based concept of contracts must of necessity be expanded to accommodate contracts entered into through digital devices. Therefore, the effect of these digital devices has a tremendous effect on the traditional concept relating to the formation of contracts in Nigeria.

To this end, this paper will examine the changes that have occurred under the law of contract in Nigeria in the digital era in order to ascertain the effects and challenges that these changes have brought. To effectively discuss this topic, this paper is divided into five sections. Section one is on introduction. Section two examines the innovations brought about on the formation of contracts in Nigeria as a result of the use of digital devices. Section three discusses the challenges associated with contracts entered into digitally in Nigeria while section four undertakes a comparative analysis of the changes that have occurred under the law of contract in some selected jurisdictions like the United States of America and the United Kingdom. Lastly, section five contains the conclusion and the recommendation of the paper.

## 2. Digital Innovations on the Formation of Contracts in Nigeria

A contract is defined as 'an agreement which the law will enforce or recognise as affecting the legal rights and duties of the parties'.<sup>1</sup> It can also be defined as an agreement between two or more entities which creates an obligation that is binding and enforceable.<sup>2</sup> The law of contract requires the presence of the elements of offer, acceptance, consideration and intention to enter into legal relations before a contract can be said to have been formed and entered into by the parties to the contract.<sup>3</sup> These ingredients are *sine qua non* to the formation of any binding contract.<sup>4</sup>

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<sup>1</sup> IE Sagay, *Nigerian Law of Contract* 3<sup>rd</sup> ed. (Ibadan: Spectrum Books Ltd, 2018), 1.

<sup>2</sup> Garner, B.A., *Black's Law Dictionary*, 11<sup>th</sup> Edition (Texas: West Publishing Co, 2009).

<sup>3</sup> *Inua v. First Bank of Nigeria Plc* [2016] 2 NWLR (Pt. 1495) 89.

<sup>4</sup> *Kabo Air v. Tarfa* [2004] 6 WRN 135.

Traditionally, the law of contract recognises three different types of contracts and they are written contracts, parol (oral) contracts and contracts implied by the conduct of the parties. While a written contract envisages that the parties will put down the terms of the contract in writing, a parol contract is based on the spoken words of the parties. However, the 21<sup>st</sup> century has brought with it advancement in technology in nearly all activities of human endeavours including agreements which occur between various people particularly, as humans have become increasingly interconnected with digital platforms.

Thus the way contracts are formed, interpreted, and enforced is evolving rapidly, reflecting the complexities and interconnection with the digital age. Before the advent of online transactions and communications, traditional face-to-face interactions and paper-based contracts prevailed in Nigeria. Nowadays, many agreements happen online such as purchase of items on online platforms/websites or simply agreeing to terms and conditions on websites. These kinds of contracts are regarded as digital contracts.

A digital contract is 'the process of creating, managing and executing legally binding agreements using electronic means'.<sup>5</sup> These electronic means include the use of telephones, social media apps, electronic signatures and emojis. They could also be by emails, online forms, or even just clicking a button to agree to a request online. Digital contracts have led to the growth of 'smart contracts' which are self executing contracts with the terms of the contracts directly written into codes.<sup>6</sup> It is therefore pertinent at this stage to discuss these technological innovations that have changed the face of contract law in Nigeria as a result of the use of digital devices.

### **2.1. Electronic Signature**

Where a contract is written or is embodied in a document, it is the position of the law that the contractual document must be signed by the parties before same can become a contract *strictu sensu* and can be regarded as binding on the parties to the contract. This view is supported by the position of the law which regards any unsigned document as a worthless document. In the case of *Gbadamosi v Biala*<sup>7</sup>, it was held that 'an unsigned document is a worthless piece of paper and therefore cannot confer any legal right or benefit on any party who seeks to rely on it'. Therefore, parties to a written agreement are advised to sign the said agreement if they want the terms of the agreement to be binding and enforceable.

Traditionally, the parties to the contract are expected to manually and physically append their signatures on the contractual document. But where the parties to the contract live far away from each other, they are expected to send the contractual document by post or through courier to each other in order to sign same. This requirement of manually signing of contractual documents created some problems with regards to the timely performance of many contracts especially those contracts where the parties are in different towns or countries. In order to sign such contractual documents, the parties have to travel a long distance at a great risk and expense. This anomaly has resulted in many contractual documents not being executed.

However, with the coming of the digital age and the invention of internet technology, the signing of contractual documents can now be done electronically or digitally. In this respect, documents which are in a digital format can be signed electronically or a handwritten signature of the parties to the contract can be scanned and imputed into the digital format of the document. This innovation of

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<sup>5</sup>Available at <<https://www.top.legal>knowledge>digital-contracting>>, accessed 4<sup>th</sup> January, 2025.

<sup>6</sup>SJ Ochayi, PO Onasanya and NG Ikpeze, 'Blockchain Technology and Smart Contracts: Emerging Legal Issues and Enforcement Challenges in Nigeria' *Achievers University Law Journal* [2024] (4) (1) 123.

<sup>7</sup>(2014) LPELR-24389 (CA).

electronic signature (also known as 'E-Signature') has widened the scope of the law with regards to the law of contract. The use of electronic signatures gained traction in contractual documents during the COVID-19 pandemic period when the world was on lockdown and most businesses were operating on digital or online platforms. Thus, electronic signatures are of great advantage as it is a faster process of execution of documents where the parties are in different locations.

However, in order to fully appreciate the effect of electronic signatures on contractual documents, it is pertinent at this stage to discuss the validity and recognition of electronic signatures under Nigerian law. In this regard, this paper will now examine the legal framework regulating the use of electronic signatures in Nigeria. To this end, some legal instruments including the Evidence (Amendment) Act 2023, the Cybercrimes (Prohibition and Prevention) Act, 2015 and the Companies and Allied Matters Act (CAMA) 2020 will be examined in order to provide a better understanding of the validity of electronic signatures in Nigeria.

### **2.1.1. The Evidence (Amendment) Act 2023**

The Evidence Act 2011 did not recognise the use of electronic signatures on documents and as a result, any document or court process that is intended to be tendered in evidence in court, especially affidavits, must be signed manually before the commissioner for oaths. This created a situation where deponents must physically appear before the commissioner for oaths to swear before their affidavits can be signed and filed by the commissioner for oaths. This requirement of physical appearance in court also led to a situation where parties and witnesses in cases who were living abroad were required to travel down to the particular court, usually at a great expense, to fulfill this difficult requirement of the law.

In order to mitigate the harshness of this law, the Evidence Act was amended in 2023 by introducing the use of electronic signatures in documents. Section 258 of the Evidence (Amendment) Act 2023 defines electronic signature as the 'authentication of any electronic record by a subscriber by means of the electronic technique specified in the Second Schedule and includes digital signature'. Furthermore, the said section 258 of the Evidence (Amendment) Act 2023 defines digital signature as 'an electronically generated signature which is attached to an electronically transmitted document to verify its contents and the sender's identity'.

To validate the use of electronic signature, section 84(c)(1) of the Evidence (Amendment) Act states that 'subject to the provisions of this section, any person may authenticate an electronic record by affixing his digital signature on it'. Where there is a requirement for the signing of a document or there are consequences for failure to sign a document, section 93(2) of the Evidence (Amendment) Act recognises the use of electronic or digital signature in satisfaction of the requirement of signature. For the sake of emphasis, the said section 93(2) of the Evidence (Amendment) Act states thus: 'Where a rule of evidence requires a signature, or provides for certain circumstances if a document is not signed, an electronic signature or digital signature satisfies that rule of law or avoids those consequences.'

From the above, it is clear that the Evidence Act has created a legal framework for the use of electronic and digital signatures in documents. However, the Evidence (Amendment) Act is not explicit on the use of electronic signatures on contractual documents. Therefore, we cannot conclusively argue that the provisions of the Evidence (Amendment) Act relating to electronic signatures apply to contractual documents. In this regard, we are not unmindful of the fact that the Evidence Act is a statute that regulates the admissibility and relevancy of evidence in court. To this end, the applicability of the electronic signature provisions in the Evidence (Amendment) Act to contractual documents is in doubt.

### **2.1.2 The Cybercrimes (Prohibition and Prevention) Act, 2015**

Another legislation that recognised the use of electronic signatures in Nigeria is the Cybercrimes (Prohibition and Prevention) Act 2015. Section 17(1)(a) of the said legislation provides that

'electronic signature in respect of purchases of goods, and any other transactions shall be binding'. By virtue of this provision, contractual documents relating to sale or purchase of goods or in any other contract can be signed electronically by the parties in the contract. This provision of the law clearly recognises the growing trend of electronic commerce in the commercial world. To this end, parties to a contract will be bound by such contractual documents that are executed electronically. This law has clearly widened the scope of execution of contractual documents from the manual signing to the electronic signing of such documents.

However, section 17(2) of the Cybercrimes (Prohibition and Prevention) Act 2015 invalidates and excludes the use of electronic signatures in contractual transactions relating to:

- (i) Creation and execution of wills, codicils and or other testamentary documents;
- (ii) Death certificate;
- (iii) Birth certificate;
- (iv) Matters of family law such as marriage, divorce, adoption and other related issues;
- (v) Issuance of court orders, notices, official court documents such as affidavit, pleadings, motions and other related judicial documents and instruments;
- (vi) Any cancellation or termination of utility services;
- (vii) Any instrument required to accompany any transportation or handling of dangerous materials either solid or liquid in nature; and
- (viii) Any document ordering withdrawal of drugs, chemicals and any other material either on the ground that such items are fake, dangerous to the people or the environment or expired by any authority empowered to issue orders for withdrawal.

From the above provisions of the Cybercrimes (Prohibition and Prevention) Act 2015, it is clear that the use of electronic signatures in contracts has been validated in contracts relating to the sale of goods and in any contract entered into online by the parties to the contract. Therefore, unlike the Evidence (Amendment) Act 2023, the provisions of the Cybercrimes (Prohibition and Prevention) Act 2015 relating to electronic signatures can be applied to digital contracts.

### **2.1.3 The Companies and Allied Matters Act 2020**

The Companies and Allied Matters Act 2020 (CAMA) is the legal framework for the regulation of corporate bodies in Nigeria. In order to promote commerce and contractual transactions, and in view of the tremendous growth of the digital and information technology space in Nigeria, section 101 of CAMA recognised the validity of electronic signatures by corporate bodies thereby encouraging the use of electronic signatures in contractual documents. The said Section 101 of CAMA provides thus:

A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be signed as a deed unless otherwise so required in this Part and that an electronic signature is deemed to satisfy the requirement for signing under this section.

By virtue of the above provision of CAMA, corporate bodies entering into contractual transactions can execute their contractual documents by appending the electronic signatures of the directors, secretary or any other official of the corporate body to the document. This provision will surely reduce the expenses that corporate bodies used to incur before now by paying for the travelling expenses of their officials to sign contractual documents that are prepared far away from the office of the corporate body. Again, this is a clear demonstration of the changing face of contract law in Nigeria with respect to the use of electronic signatures in contractual documents by the parties to the contract. Therefore, just like the Cybercrimes (Prohibition and Prevention) Act 2015, the provisions of CAMA relating to electronic signatures can be applied to contracts. However, the electronic signature provisions of CAMA can only apply to corporate bodies.

## 2.2 Emoji

According to the Oxford Advanced Learners' Dictionary Online, an emoji is 'a small digital image used to express an idea or emotion on social media, on the internet, in emails, etc.'<sup>8</sup> Therefore, emojis serve as a visual representation of human emotions, certain symbols and objects. Emojis are widely used online and they can be used in text messaging, social media messaging platforms and in any informal method of communication.<sup>9</sup> Emojis enable the sender of a chat to vividly express his feelings and emotions which at times may take many words to be expressed by texts.

There are some emojis that can be construed as giving consent to an idea or opinion that is expressed by someone else. For instance, the 'thumbs-up' emoji can be construed as an acceptance to an offer of a contractual nature. Thus, if A offers to sell an item to B through a WhatsApp message and B replies with a thumbs-up emoji to the offer from A, it can be construed that B has accepted the offer from A for the sale of the goods since an emoji can be seen as a digital icon that expresses the feelings and intent of its user.

There is no legal framework regarding the use of emojis in Nigeria and there is also no reported case on the interpretation of emojis in contracts in Nigeria. However, in the Canadian case of *South West Terminal Ltd v Achter Land and Cattle Ltd.*,<sup>10</sup> the claimant texted a photo containing a signed contract to the defendant and asking the defendant to confirm the contract. The defendant texted back with a thumbs-up emoji. Upon a suit filed by the claimant to enforce the contract, the defendant argued that the thumbs-up emoji he sent was nothing more than an acknowledgement that he received the message from the claimant. While rejecting the argument of the defendant, the court considered the principles on formation of contract which states that a contract is validly formed by the parties to a contract where an offer made by one party is accepted by the other party coupled with the intention of entering into a legal relationship and the furnishing of consideration. The court then held that the thumbs-up emoji that was texted by the defendant was an indication that the defendant accepted the offer of the claimant thereby entering into a contract with the claimant.

It is our considered view that the court in the case of *South West Terminal Ltd v Achter Land and Cattle Ltd* above applied the law of contract relating to formation of contract correctly and in accordance with common sense. In this regard, it is hoped that the Nigerian courts will be persuaded by the decision in the said case and will apply the reasoning in that case whenever a similar issue on the interpretation of the effect of a thumbs-up, or any other similar, emoji with respect to an offer of a contract comes up.

## 3. Challenges Associated with Contracts Entered into Digitally in Nigeria

As we have seen above in this paper, the growth of technology has enlarged the scope of formation of contracts in Nigeria. This technological innovation has mitigated greatly the challenges that are related to paper based contracts which are sometimes time consuming and costly compared to digital contracts. Furthermore, paper-based contracts may sometimes not offer the same level of security and accessibility as digital contracts which can be encrypted and stored in a secured online database. However, as laudable as the innovations that technology has brought into the arena of contracts are, contractual transactions entered into digitally pose some peculiar challenges and these challenges are examined hereunder.

First, the limitless nature of the internet and social media poses an unclear jurisdictional boundary within which contracts operate. Parties to a contract may reside in different countries, each with its own set of laws and regulations governing contractual relationships. This intricate web of legal

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<sup>8</sup> Available at <<https://www.Oxfordlearnersdictionaries.com/definition/English/emoji>>, accessed 28<sup>th</sup> December, 2024.

<sup>9</sup> 'Emoji meanings: Types of Emojis and what do they mean', available at <<https://www.91mobiles.com/hub/emoji-meanings>>, accessed 28<sup>th</sup> December, 2024.

<sup>10</sup> [2023] SKKB 116].

frameworks requires a detailed understanding of international law and conflict of laws principles. Therefore, it is advisable for the parties to a contract that are residing in different jurisdictions to first understand the applicable rules in those jurisdictions before they enter into contracts digitally.

Second, the rise of digital technology and social media also presents unique challenges in terms of contract performances and enforcement. Where the parties enter into the contract digitally and in different countries, where the laws in both jurisdictions are different with respect to the performance and enforcement of digital or online contracts, this may cause some problems where there is breach of the terms of the contract. In this regard, it is expected that the parties to such contracts should ensure that they scrutinise the legal regimes in the jurisdictions of the parties.

Third, issues such as data privacy, cyber security, and intellectual property rights add layers to contractual disputes, requiring creative legal solutions that reconcile traditional legal principles with the realities of the digital world. In this respect, where the countries of origin or residence of the parties to the contract have different rules regarding data privacy, cyber security and intellectual property, this may affect or inhibit the ability of the parties to enter into the contract through digital means.

Fourth, contracts entered into digitally may give rise to fraud. Fraudsters may take advantage of the opportunities offered by digital and online contracts to super-impose the electronic or digital signature of unsuspecting members of the public into contractual documents especially with the rise of artificial intelligence (AI) and robotics. It is therefore critical for parties who intend to enter into any contracts digitally to ensure that they are dealing with the correct parties and not just any fraudster. In Nigeria, section 17(1)(c) of the Cybercrimes (Prohibition and Prevention) Act 2015 criminalises the fraudulent use of electronic signatures in any document and the said section provides thus:

Any person who with the intent to defraud and or misrepresent, forges through electronic devices another person's signature or company mandate commits an offence and shall be liable on conviction to imprisonment for a term of not more than 7 years or a fine of not more than N10,000,000.00 or to both fine and imprisonment.

Fifth, due to the high level of digital illiteracy in Nigeria which is assessed at over 50% in 2024,<sup>11</sup> the benefits that are available from the use of digital platforms to the public may not be fully accessed by many people in Nigeria. This is coupled with the level of poverty in Nigeria which may prevent some persons from purchasing and having access to digital devices such as computers, tablets and mobile phones that are internet enabled. Even when such devices are owned, the low level of computer literacy may prevent the users from fully understanding how such devices can be used in the negotiation and formation of contracts.

#### **4. The Position of the Law in other Jurisdictions regarding Digital Contracts**

Having examined the innovations brought about by the use of digital devices in contracts and the challenges posed by the use of digital devices in contracts in Nigeria, it is pertinent at this stage to undertake a comparative approach of the changing face of contract law in other jurisdictions of the world. To this end, the paper will analyse the legal position in the United States of America and the United Kingdom.

##### **4.1. United States of America**

In the United States of America, the proliferation of e-commerce platforms and digital transactions has led to the emergence of novel contractual issues. The courts are inundated with issues relating to the validity and enforceability of contracts that are formed electronically, as well as the application of

<sup>11</sup> I Oluyi, 'Digital Literacy in Nigeria Vs Unrealistic Projections', available at <<https://sciencenigeria.com/digital-literacy-in-nigeria-vs-unrealistic-projections>>, accessed 3<sup>rd</sup> January, 2025.

traditional contract law principles to online agreements. Similarly, the rise of smart contracts, which are self-executing contracts coded on blockchain technology, presents new challenges and opportunities for contract law in the United States.

Moreover, the enforceability of digital contracts has been supported by many decisions of the court over a long period of time in the United States. A case in point is that of *Specht v Netscape Communication Corp.*<sup>12</sup> where a Court of Appeal in the United States considered the issue of the enforceability of clickwrap licences<sup>13</sup> under the law of contract and held that the mere clicking of a download button cannot be equated as consenting with the licence terms where those licence terms were not conspicuous enough to the consumer that clicking the button meant agreeing to the licence.

Another notable case is that of *Zaltz v Jdate*,<sup>14</sup> where the court upheld the validity of an arbitration clause in an online dating website's terms of service. This case highlights the importance of clear and conscious presentation of terms in digital contracts. Thus, the courts in the United States have generally upheld the validity of digital contracts when the essential elements of contract law are met and when users have reasonable notice of the contractual terms.

Furthermore, the United States Federal Government and all the fifty States enacted a legislation in the year 2000 that governs the enforceability and conduct of electronic transactions known as the Electronic Signatures in Global and National Commerce Act (also known as the 'E-SIGN Act'). This law seeks to legalise electronic signatures in the United States and it allows a person to send digital contracts for the other party to sign electronically.<sup>15</sup>

Another notable legislation in the United States of America is the Uniform Electronics Transactions Act 1999 (also known as 'UETA'). The UETA is a uniform State law that was put together by the National Conference of Commissioners on Uniform States Law. The intendment of the law is to remove barriers to electronic commerce by validating and effectuating electronic records and signatures.<sup>16</sup> Before the enactment of UETA, it was left to individual courts to determine the issue of admissibility of electronics documents in evidence. The UETA treats any electronic signature, writing or document as if written on paper.<sup>17</sup> Similarly, the UETA provides for electronic contract negotiation, electronic signing of any contract, electronic amendment of written contracts and electronic delivery of a deed.<sup>18</sup> **Furthermore**, according to UETA, If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:<sup>19</sup>

- (a) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and
- (b) remains accessible for later reference.

#### **4.1.2. United Kingdom**

Similarly, the United Kingdom is witnessing significant changes in the law of contract as a result of technological advancement. 'Standard English law principles of contract of offer and acceptance apply equally to contracts formed electronically'.<sup>20</sup> In the case of *Thornton v Shoe Lane Parking Ltd*,<sup>21</sup> the Court of Appeal in the United Kingdom applied the traditional principles of law of contract

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<sup>12</sup> 306 F.3d 17 (2d Cir. 2002).

<sup>13</sup> A clickwrap contract or licence is a prompt that offers consumers of digital products the opportunity to accept or decline a digitally-mediated policy. See Jonathan A Obar and Anne Oeldorf-Hirsch, "The Clickwrap: A Political Economic Mechanism for Manufacturing Consent on Social Media", *Social Media + Society* (2018) (4) 3.

<sup>14</sup> 2013 WL 3369073.

<sup>15</sup> Electronic Signatures in Global and National Commerce Act, s.7.

<sup>16</sup> Uniform Electronics Transactions Act 1999, s. 3.

<sup>17</sup> D Witte 'Avoiding the Un-Real Estate Deal: Has the Uniform Electronic Transactions Act Gone Too Far?' *The John Marshall Law Review* (2002) 311.

<sup>18</sup> *Ibid.*

<sup>19</sup> Uniform Electronics Transactions Act 1999, s. 12.

<sup>20</sup> 'At a Glance: Electronic Contracts in United Kingdom', available at <<https://www.lexology.com/detail>>, accessed 8th January, 2025.

<sup>21</sup> [1971] QB 163.



regarding offer and acceptance on an electronic transaction between the parties when it held that a ticket machine at a parking lot amounted to an invitation to treat and the insertion of money into the machine by a motorist in order to obtain a ticket amounted to an offer. Therefore, the parking lot operators could reject the offer (where the machine malfunctions) without forming a contract. This case illustrates the importance of distinguishing between an invitation to treat and an offer, particularly in cases involving electronic transactions.

To avoid issues regarding whether or not acceptance has actually taken place or at which time a contract is in force between the parties, the Electronic Commerce (EC Directive) Regulations 2002 was enacted in the United Kingdom. This Regulation applies to internet contracts to ensure that when placing an order on the internet, a receipt is provided and the customers have the opportunity to identify and correct errors prior to placing their orders.<sup>22</sup> This Regulation also imposes a range of obligations on the operators of commercial websites including the obligation to provide users with certain information about the operator and its services.<sup>23</sup> Furthermore, it requires that service providers should provide terms and conditions applicable to the contract to the customer in a way that the customer may store and reproduce them.<sup>24</sup>

In addition to the Electronic Commerce (EC Directive) Regulations 2002 mentioned above, there are other laws in the United Kingdom like the Consumers Right Act 2015, the Consumer Contracts (Information Cancellations and Additional Charges) Regulation 2013 and the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) which govern digital contractual transactions. Similarly, the law on contract in the United Kingdom has been broadened to accommodate click wrap contracts. This kind of contract or licence has been commonly used in the software industry since the 1980. In the case of *Beta Computers (Europe) Limited v Adobe Systems (Europe) Limited*<sup>25</sup> the clicks wrap license agreements was enforced.

## 5. Conclusion

As we have seen in this article, the traditional concept regarding the formation of contracts has been widened with the introduction of digital technology. To this extent, the requirement of manual and physical signing of contractual documents has now been enlarged to include the use of digital signatures. Thus, parties to the contract who are in different locations can sign contractual documents electronically and with the speed of light. This has reduced the time and expenses that were incurred by parties to a contract that live in different towns and countries when they want to execute contractual documents. There is no doubt therefore that the introduction of digital technology in the contract arena is a positive and progressive step forward.

This paper has also shown that apart from electronic signatures, the use of emojis can sometimes constitute an acceptance to an offer that was made electronically or through a digital device. Therefore, parties that are negotiating contractual terms through the social media should be circumspect in the use of emojis in replying to text messages. As was seen in the Canadian case of *South West Terminal Ltd v Achter Land and Cattle Ltd*, it can be taken that a party has accepted an offer when the thumbs-up emoji is used by that party in reply to a contractual offer. However, the lack of a legal framework regulating the use of emojis in Nigeria and the dearth of Nigerian case law on this subject may scuttle the little progress that has been made in the use of digital devices in the formation of contracts.

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<sup>22</sup> Electronic Commerce (EC Directive) Regulations 2002, regulation 11.

<sup>23</sup> *Ibid*, Regulation 6.

<sup>24</sup> *Ibid*, Regulation 9(3).



Although there are challenges to the effective use of digital devices in contract formation in Nigeria, the paper has been able to show that the advantages of digital contracts far outweighs the disadvantages. In this respect, there is a need for policy makers to fashion out ways to address the challenges associated with contracts entered into digitally in Nigeria which are the limitless nature of the internet and social media, the issue of contract performances and enforcement, data privacy, cyber security, and intellectual property rights issues, and issues bordering on fraud.

Furthermore, as noted in the paper, the introduction of electronic signature in the Evidence (Amendment) Act 2023 may not apply to contracts. Similarly, although the Cybercrimes (Prohibition and Prevention) Act 2015 and CAMA 2020 have provisions relating to the use of electronic signatures in contracts, we are of the view that these provisions in these legal instruments are not robust and adequate enough to regulate the full spectrum of digital contracts. To this end, it is clear that there is no comprehensive legal framework regulating digital contracts in Nigeria unlike in the United States of America that has both the Electronic Signatures in Global and National Commerce Act ('E-SIGN Act') and the Uniform Electronics Transactions Act 1999 (also known as 'UETA') which clearly apply to contractual transactions.

In order to address this lacuna in the legal regime in Nigeria, we hereby recommend that a single piece of legislation should be enacted to regulate contracts that are entered into electronically or digitally. This piece of legislation should be made to cover such areas as the use of electronic signatures in contractual documents, the applicability of emojis in digital contracts, electronic contract negotiations, electronic amendment of written contracts, etc. This proposed piece of legislation will be a one stop shop for all digital contracts and it has the tendency of bringing coherence and legal certainty in the digital contracts arena in Nigeria.