



UNIVERSITI
TEKNOLOGI
MARA

Cawangan Kedah
Kampus Sungai Petani

Voice of Academia

Academic Series of Universiti Teknologi MARA Kedah

VoA 2021
Volume 17 Issue 1

COMMITTEE PAGE

VOICE OF ACADEMIA

Academic Series of Universiti Teknologi MARA Kedah

Chief Editor

Dr. Junaida Ismail

*Faculty of Administrative Science and Policy Studies,
Universiti Teknologi MARA Cawangan Kedah, Malaysia*

Editorial Team

Aishah Musa

*Academy of Language Studies,
Universiti Teknologi MARA Cawangan Kedah, Malaysia*

Syahrini Shawalludin

*Faculty of Art and Design,
Universiti Teknologi MARA Cawangan Kedah, Malaysia*

Etty Harniza Harun

*Faculty of Business Management,
Universiti Teknologi MARA Cawangan Kedah, Malaysia*

Khairul Wanis Ahmad

*Facility Management & ICT Division,
Universiti Teknologi MARA Cawangan Kedah, Malaysia*

Suhaida Abu Bakar

*Academy of Contemporary Islamic Studies Department,
Universiti Teknologi MARA Cawangan Kedah, Malaysia*

Editorial Board

Professor Dr M. Nauman Farooqi

*Faculty of Business & Social Sciences,
Mount Allison University, New Brunswick, Canada*

Professor Dr Kiyomet Tunca Caliyurt

*Faculty of Accountancy,
Trakya University, Edirne, Turkey*

Professor Dr Diana Kopeva

*University of National and World Economy,
Sofia, Bulgaria*

Professor Dr Sivamurugan A/L Pandian

Universiti Sains Malaysia, Malaysia

Associate Professor Dr Wan Adibah Wan Ismail
*Faculty of Accountancy,
Universiti Teknologi MARA Cawangan Kedah, Malaysia*

Dr Azlyn Ahmad Zawawi
*Faculty of Administrative Science and Policy Studies,
Universiti Teknologi MARA Cawangan Kedah, Malaysia*

Dr Azyyati Anuar
*Faculty of Business Management,
Universiti Teknologi MARA Cawangan Kedah, Malaysia*

Dr Neesa Amera Mohammed Salim
*Faculty of Art & Design,
Universiti Teknologi MARA Cawangan Kedah, Malaysia*

Dr Muhamad Khairul Anuar Zulkepli
*Academy of Contemporary Islamic Studies Department,
Universiti Teknologi MARA Cawangan Kedah, Malaysia*

Dr Mohd Nasir Ayub
*Academy of Contemporary Islamic Studies Department,
Universiti Teknologi MARA Cawangan Kedah, Malaysia*

Content Reviewer

Associate Professor Ts Dr Asmadi Mohammad Ghazali
Universiti Teknologi MARA

Associate Professor Dr Fadzilah Azni Ahmad
Universiti Sains Malaysia

Associate Professor Dr Nur Hisham Ibrahim
Universiti Teknologi MARA

Associate Professor Dr Mahadir Ladisma @ Awism
Universiti Teknologi MARA

Associate Professor Dr Noor Zahirah Mohd Sidek
Universiti Teknologi MARA

Associate Professor Dr Rizaimy Shahrudin
Universiti Teknologi MARA

Associate Professor Dr Yarina Ahmad
Universiti Teknologi MARA

Dr Azita Ahmad Zawawi, Senior Lecturer
Universiti Putra Malaysia

Dr Azyyati Anuar
Universiti Teknologi MARA

Dr Azlyn Ahmad Zawawi
Universiti Teknologi MARA

Dr. Anida Mahmood
Universiti Teknologi MARA

Dr Junaida Ismail
Universiti Teknologi MARA

Dr Mahadzir Ismail
Universiti Teknologi MARA

Dr Mohamed Samsudeen Sajahan
Universiti Teknologi MARA

Dr. Mohd Nasir Bin Ayub
Universiti Teknologi MARA

Dr Norhidayah Ali
Universiti Teknologi MARA

Dr. Nur Hafeeza Binti Ahmad Pazil
Universiti Sains Malaysia

Dr Nur Zafifa Kamarunzaman
Universiti Teknologi MARA

Dr Radzliyana Radzuwan
Universiti Teknologi MARA

Dr Siti Zuliha Razali
Universiti Sains Malaysia

Dr Zubir Azhar
Universiti Sains Malaysia

Language Reviewer

Dr Wan Irham Ishak
Universiti Teknologi MARA

Aishah Musa
Universiti Teknologi MARA

Bawani Selvaraj
Universiti Teknologi MARA

Nor Aslah Adzmi
Universiti Teknologi MARA

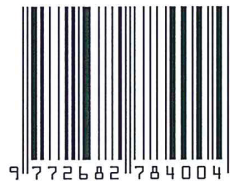
Norfaridatonasmah Abd Kadir
Universiti Teknologi MARA

Samsiah Bidin
Universiti Teknologi MARA

Shafina Md Salleh
Universiti Teknologi MARA

Sharina Saad
Universiti Teknologi MARA

e-ISSN: 2682-7840



Copyright © 2021 by the Universiti Teknologi MARA, Kedah

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or any means, electronic, mechanical, photocopying, recording or otherwise, without prior permission, in writing, from the publisher.

© Voice of Academia is jointly published by the Universiti Teknologi MARA Caawangan Kedah, Malaysia and Penerbit UiTM (UiTM Press), Universiti Teknologi MARA Malaysia, Shah Alam, Selangor.

The views, opinions and technical recommendations expressed by the contributors and authors are entirely their own and do not necessarily reflect the views of the editors, the Faculty or the University.

TABLE of CONTENTS

POTENSI MASJID SEBAGAI PRODUK PELANCONGAN DI MALAYSIA Azarudin Awang ¹ , Zainuddin Zakaria ² , Mohd Sabri Abdul Ghafar ³ , Noralisa Ismail ⁴ , Zuraini Jusoh ⁵	1 - 9
AN INVESTIGATION ON UNIVERSITY STUDENTS' PERCEPTIONS ABOUT ICEBREAKERS IN CLASSROOMS Che Nooryohana Zulkifli ¹ , Mohamad Putera Idris ²	10 - 19
A STUDY ON AIR POLLUTION INDEX IN SABAH AND SARAWAK USING PRINCIPAL COMPONENT ANALYSIS AND ARTIFICIAL NEURAL NETWORK Norwaziah Mahmud ¹ , Nur Elissa Syazrina Zulkifli ² , Nur Syuhada Muhammat Pazil ³	20 - 29
CHARACTERISTIC PERFORMANCE CUSTOMER RELATION MANAGEMENT: A CASE STUDY TECHNOLOGY EDUCATION INSTITUTION IN MALAYSIA Muhamad Fairos Mohamad Shah	30 - 36
ILLEGAL STREET HAWKERS ISSUE FACING THE LOCAL AUTHORITIES IN SARAWAK: A CASE STUDY OF URBAN STREETS IN KUCHING CITY Noni Harianti Junaidi ¹ , Anisa Safiqah Othman ²	37 - 54
EMOJI & EMOTICON-RELATED LEGAL ISSUES Nor Azlina Mohd Noor ¹ , Ahmad Shamsul Abd Aziz ²	55 - 62
GRADUATES' EMPLOYABILITY: ENHANCING STUDENTS' OVERALL PERFORMANCES Fatin Adilah Razali ¹ , Shafinaz Lyana Abu Talib ² , Naqiah Awang ³	63 - 72
PLAYING E-SPORT AMONG UNIVERSITY STUDENTS: BENEFITS AND DISADVANTAGES Nurul Nadiah Rasdi ¹ , Ahmad Najmie Rusli ²	73 - 80
FACTORS FOR FINANCIAL RESTATEMENTS: CASE OF PUBLIC LISTED COMPANIES IN MALAYSIA Shafinaz Lyana Abu Talib ¹ , Fatin Adilah Razali ² , Zaini Ahmad ³	81 - 96
PERCEIVED ORGANIZATIONAL SUPPORT AND JOB STRESS ON TURNOVER INTENTION: CONCEPTUAL PAPER Roshidah Safeei	97 - 104
IS EMERGING FOREIGN EXCHANGE MARKET EFFICIENT? Soofiyah Aiman Sanadi ¹ , Bee-Hoong Tay ²	105 - 115
THE IMPACT OF PERFORMANCE EXPECTANCY ON PURCHASING TRAVEL PRODUCTS VIA ONLINE TRAVEL AGENTS WEBSITES: GENDER AS MODERATOR Safwan Marwin Abdul Murad ¹ , Arunnaa a/p Sivapathy ² , Annuar Aswan Mohd Nor ³	116 - 128
LOGAN MULTI-FUNCTIONAL DIGITAL CLOCK Nik Nur Aneesa Zamzurri ¹ , Norarifah Ali ² , Izza Syahida Abdul Karim ³	129 - 152
HIBAH AL-UMRA DAN HIBAH AL-RUQBA DARI PERSPEKTIF MAZHAB AL-SYAFIE Nurfarhana Mohd Daud ¹ , Mohd Asyadi Redzuan ² , Dziauddin Sharif ³ , Siti Noor Ain Binti Aziz ⁴ , Mahasin Saja@Mearaj ⁵ , Aflah Isa ⁶	153 - 162
KAJIAN KONSEPTUAL TENTANG KESEDARAN BERWAKAF DALAM KALANGAN KAKITANGAN UITM CAWANGAN KEDAH Azyyati Anuar ¹ , Rohayati Hussin ² , Nurul Mazrah Manshor ³ , Noor Hidayah Kasim ⁴ , Daing Maruak Sadek ⁵	163 - 172
PREVENTION IS BETTER THAN CURE: A CASE OF PARENTS' DECISIONS OF CHILDREN VACCINATIONS Johan Mukhlis Jan Zakri ¹ , Mohd Nazir Rabun ² , Mohamad Syafiqir Rahman Mohamad Nazir ³	173 - 192
PUBLIC INTENTION TO REPORT CHILD ABUSE IN MALAYSIA: A CROSS SECTIONAL STUDY Nurul Hidayana Mohd Noor ¹ , Sharifah Hanis Syamimi Ghazali ² , Nurul Nabila Huda Abu Bakar ³	193 - 203
APLIKASI TEKNIK PEMOTONGAN LASER DALAM REKABENTUK PRODUK BATIK MERBOK Normaziana Hassan ¹ , Mas Ayu Zainal @ Ismail ² , Zaidi Yusoff ³ , Ahmad Fazlan Ahmad Zamri ⁴	204 - 218
MASALAH BERKAITAN FORMAT SURAT RASMI DALAM KALANGAN PENSYARAH BAHASA DI UITM CPP Raja Rosila Raja Berahim ¹ , Noraziah Mohd Amin ² , Nur Afiqah Ab. Latif ³ , Noor Azli Affendy Lee ⁴ , Melati Desa ⁵ , Che Nooryohana Zulkifli ⁶ , Boon Yih Mah ⁷	219 - 231
CONFLUENCE OF COSTUME AND MAKE UP IN DEFINING COMMUNISIM VIA INDEPENDENT DOCUMENTARY Mohd Nor Shahizan Ali ¹ , Neesa Ameerah Mohamed Salim ² , Faryna Mohd Khalis ³	232 - 242

EMOJI & EMOTICON-RELATED LEGAL ISSUES

Nor Azlina Mohd Noor¹, Ahmad Shamsul Abd Aziz²

^{1,2}School of Law, UUM College of Law, Government & International Studies, Universiti Utara Malaysia

ARTICLE INFO	ABSTRACT
<p>Article history:</p> <p>Received July 2020</p> <p>Received in revised form Aug 2020</p> <p>Accepted Oct 2020</p> <p>Published Jan 2021</p>	<p><i>Emoji and emoticon are the most important inventions in the history of communication. During the early days, emoticon and emoji were perceived as an aid in communication by helping people to clarify the tone of online texts. Even though sometimes the meaning really does not matter, the meaning of emoji and emoticon themselves were highly subjective and promoted an ambiguity. Though ambiguous, emoji and emoticon do convey meaning and legal practitioners need to consider when they will be legally binding or conveying intentions. Hence, the intriguing focus of this article is exploring the challenges that will be posed of the legal fraternity on the method usage in constructing the meaning of the emoji and emoticon and the judicial responses in Malaysia. This article is a conceptual paper applying a doctrinal legal research method particularly via a library research. This article concludes that the legal fraternity especially Malaysian judiciaries need to equip themselves with the legal framework with regards to the emoji and emoticon. The legal statutory interpretation needs to be extended into a wider scope to incorporate the emoji and emoticon. Due to the overwhelming used of digital application using emoji and emoticon in media social, the legal dispute will be foreseeable in the near future.</i></p>
<p>Keywords:</p> <p>Emoji, Emoticon, Judicial Interpretation, Technology, Digital, Malaysia</p> <p>Corresponding Author:</p> <p>norazlyna@uum.edu.my</p>	

©2021 UiTM Kedah. All rights reserved.

1. INTRODUCTION

Emoji and emoticon are the most important inventions in the history of communication. Their importance is on how the users express themselves in social Medias. The emergence of digital application using emoji and emoticon has become richer and more complex. It sparks the communication revolution by simplifying the incorporation of visual imagery into text-based communication (Goldman, 2018). Emoji and emoticon went viral when phone and computer software sellers designed programs to support these new forms of expression. Both tools have become a language of choice for the young generation.

New emoji and emoticon are added to the list of family every year resulting their use in more widely understood connotations. For example, certain emoji, such as the aubergine 🍆 and peach 🍑, have well-known connotations beyond representing flora. Twitter has been actively introducing emoji, ranging from entertainment to politics and history. Though emojis may be cute and fun, their usage can lead to misunderstandings with significant legal stakes such as whether someone should be obligated by contract, liable for sexual harassment or sent to jail (Goldman, 2018).

This kind of major development in human communication will have many far reaching effects on society including the law. Emoji and emoticon-related legal issues generally will fall into two broad categories. Firstly, emoji that contribute to misunderstandings will require judicial interpretation. Secondly, emoji raises questions about the scope of their protection under intellectual property laws (Goldman, 2018). Mertz (2007) pointed out that our social world is dependent on the use of language and the way people talk which turn out to be crucial in almost every imaginable context that human being participated. Literary works can even be rewritten entirely in emoji. For instance, Berels (2017) contended that the William Shakespeare works "to be or not to be, that is the question" once wrote in emoji to be 😊/🤔👉👉.

During the early days, emoticon and emoji were perceived as an aid in communication by helping people to clarify the tone of online texts. The emotional flexibility of emoji and emoticon is part of what makes the symbols so fun to use. Even though sometimes the meaning really does not matter, the meaning of emoji and emoticon themselves were highly subjective and promoted an ambiguity. Though ambiguous, emoji and emoticon do convey meaning and legal practitioners need to consider when they will be legally binding or conveying intentions. Hence, the intriguing focus of this article is the challenges posed to the legal fraternity on the method to use in constructing the meaning of the emoji and emoticon and what is their legal implication.

2. THE BIRTH OF EMOJI AND EMOTICON

Goetzman (2017) stated that an emoticon is a typographic display of a facial representation, used to convey emotion in a text only medium like :-). This sideways smiley face was first credited to a Pittsburgh computer scientist professor Scott Fahlman from Carnegie Mellon University in 1982, followed shortly by its opposite, the sideways serious face :-(. Earlier, Hess (2015) contended that Fahlman was widely credited with inventing the keyboard-rendered facial expression when he first proposed '😊' as a character sequence for joke markers and '😞' for non-jokes markers or serious post which had been quickly evolved into a marker for displeasure, frustration or anger (Hess, 2015).

The word "emoji" comes from Japanese which means picture character. Emoji is also known as pictographs. The Oxford English Dictionary defines an emoji as a small digital image or icon used to express an idea, emotion, etc., in electronic communications. This definition has been frequently, but not universally adopted by courts (Goldman, 2018). There are variety of judicial definition of emoji as follows;

No	Definition	Case Law
1	An 'emoji' is a small digital image or icon used to express an idea or emotion in electronic communications	<ul style="list-style-type: none"> In re L.F., 2015 WL 3500616, *1 n.2 (Cal. Ct. App. June 3, 2015); People v Moye, 2016 N.Y. Misc. LEXIS 1553, *13 n.5 (N.Y. Sup. Ct. Mar. 31, 2016); Ragonauth v. Bisailon, 2016 WL 3451762, *2 n.2 (Conn. Superior Ct. June 1, 2016); Murgia v. Commonwealth, 2017 Va. App. LEXIS 141, *12 n.2 (Va. Ct. App. May 30, 2017)

2	Emoji are small, stylized images used to express ideas and emotions or to depict objects in electronic communications	<ul style="list-style-type: none"> Graham v. Prince, 2017 U.S. Dist. LEXIS 111521 *7 n.3 (S.D.N.Y. July 18, 2017)
3	Emoji are a series of symbols that represent emotions and other abstract ideas	<ul style="list-style-type: none"> State v. McBride, 2016 Iowa App. LEXIS 1246, *2 n.5 (Ia. Ct. App. Nov. 23, 2016)
4	Emoji is "is a pictograph included in a text message	<ul style="list-style-type: none"> Enjaian v. Schlissel, 2015 WL 3408805, *6 n.9

The word "emoticon" is a portmanteau of the word's "emotion" and "icon." Merriam-Webster Dictionary defines emoticons as a group of keyboard characters (such as :-)) that typically represents a facial expression or suggests an attitude or emotion and that is used especially in computerized communications (as e-mail). In other words, emoticons are letters, numbers and other standard keyboard characters sequenced into a pictograph (Goldman, 2018).

3. JUDICIAL RESPONSE ON THE USE OF EMOJI AND EMOTICON

Language is very important in every discipline of knowledge especially in law, as law has once been described as a profession of words (Nor Hayati & Noor'Aza,2016; Mellinkoff, D., 1963). Reading a legal text is often less than just reading it for a single meaning. A reading of a legal text is always a reading of a variety of possible meanings. This is so as legal materials involving reading, writing and speaking using a full sense of language. Thus, in doing these things, it is a way of maintaining a culture, largely a culture of argument, which has a character of its own (White, 1981).

Goldman (2018) argued that the legal system actually has substantial experience in interpreting new forms of content. This is so as historically, the legal language, normally contains a substantial amount of technical vocabulary and a number of distinct (often archaic) features (Tiersma, P.M., 2010), making it difficult for a lay person to understand (Nor Hayati & Noor'Aza,2016). Thus, legal system should also be equipped to handle emoji. Goldman (2018) identified some special attributes of emoji's that create extra interpretative challenges.

It is a core judicial function to interpret communication since questions arise in virtually every legal doctrine and legal practice area. Common law court systems also have centuries of expertise interpreting communications including non-textual content such as signs, symbols, and logos (Kiry & McMahon, 2018). Emoji are another type of content requiring judicial interpretation. Emoji related to misunderstandings are inevitable when two people consider the same emoji rendering that they may interpret both the sentiment and semantic meaning differently (Miller, 2016; Gesenhues, 2018).

Dozens of court opinions have already referenced emoji or emoticons, and the rate is accelerating (Goldman, 2017). Emoji are showing up as evidence in court more frequently with each passing year. Between 2004 and 2019, there was an exponential rise in emoji and emoticon references in US court opinions, with over 30 percent of all cases appearing in 2018 (Lee, 2019). Emoji appear in virtually every area of the law, but the most common cases of emoji involved sexual abuse, in which the perpetrator and victim exchange sexual banter as well as in cases of employment discrimination.

DNA, software, hardware, screenshot and viral words had no legal meaning three decades ago. Emoji and emoticons are now the subjects of judicial debate as courts and legal practitioner seek to understand their meaning and what probative value they serve in trials. British courts are beginning to interpret emoticons in the service of determining the state of mind of the poster or considering if there has been an element of malice in cases of defamation, stalking, and threats. Every case that includes a digital record presents a high-stake venue for arguing over what emoticons really mean (Saife, 2014).

While emoji often raise routine interpretative issues, (Schnoebelen, 2015), emoji also can create some unexpected and novel challenges to judicial interpretative processes (Hess, 2015). Courts have always had to interpret nonverbal cues like shrugs and winks that arise in face-to-face conversations, but digital symbols are something new and the courts' understanding of emoji and emoticon use is limited at best. Even though courts are evaluating emoticons as evidence, but nobody really knows what they really mean (Hess, 2015). It is undisputable that, the courts have dealt with non-verbal, non-written communication before but there are a few emoji-specific challenges that the courts have not yet considered. These arise from the way emoji were developed and how they are conveyed between users and platforms (Oliver, 2018).

Courts have already categorized and applied emoji functions using standard judicial interpretative tools. Thus, courts can identify when mixed message emoji reverse the meaning of text. For example, the court in *United States v. Christensen*, 2013 U.S. Dist. LEXIS 52464, determined that a smiley emoticon converted text into a joke, which caused the text to mean the exact opposite. In this case Christensen claims Neuhardt violated attorney-client privilege and the Sixth Amendment by offering, in an e-mail to the prosecutor accompanied by an emoticon, to 'stipulate that my client is guilty. :)' No one took Neuhardt's frivolous e-mail as an actual stipulation.

Nevertheless, another court in the case of *Apatoff v. Munich Re Am. Servs.*, 2014 U.S. Dist. correctly identified smileys as text supplements that enhanced the messages' emotional valence or intrinsic attractiveness. In this case, Ms. Scerbo (respondent) began her email with a 'smiley face emoticon,' asking ':-) did Ray chat with you about Elaina?'. Plaintiff argues that this is a reference to Plaintiff's termination, to which Mr. Mauch responded 'Yes he did. Thank you for your help. That deserves a big :-))!!!'. The court believes that a reasonable jury could find that the 'emoticons,' attached to the emails of two Munich Re managers late in the day on which Plaintiff was terminated, are evidence that the decision-makers at Munich Rewere happy to be able to terminate Plaintiff.

These two rulings demonstrate that courts regularly interpret emojis successfully, including recognizing that a symbol (in the two cases, the smiley emoticon) can perform different functions. This supports a hypothesis that many emojis pose routine interpretative challenges to courts (Goldman, 2018). Accordingly, courts in a number of jurisdictions have already considered the use of emojis in messages (Oliver, 2018).

In *Re Nichol* [2017] QSC 220, an unsent text message deemed to be a last will and testament included consideration of a smiley emoticon. There is a paperclip symbol on the left hand side of "My will" and a smiley face on the other side. The Court found this informality did not prevent it constituting a will. The absence of an emoji was raised in a claim before the Fair Work Commission for unfair dismissal by a baggage handler who included the statement "We all support ISIS" in a Facebook post and claimed it was sarcastic (*Singh v Aerocare Flight Support Pty Ltd* [2016] FWC 6186[OE(1)]) (Oliver, 2018).

Furthermore, across the ditch in New Zealand a judge stated that the words "You're going to f***ing get it", followed by an aeroplane ✈️ emoji from an ex-partner were threatening and indicated he was "coming to get her". This is arguably a pretty clear threat

though, even without the emoji. Meanwhile, in the US high profile trial of Ross Ulbricht, founder of Silk Road, the court considered whether a jury should be shown messages including emoticons to prevent them being presented misleadingly. The less than perfect result was that lawyers read the texts to the jury and said the word "emoticon", to indicate an emoticon had appeared, without further description. US courts have also ruled on the use of a smiley face to indicate sarcasm, happiness or a wink but this is a basic and widely used emoticon.

The upside-down face 🙄 emoji for instance, can convey sarcasm, passive aggression, or irony. It's the visual opposite of the ordinary smiley emoji, which might lend to the interpretation that the meaning of the text is the opposite of what it seems. Newer, less common or more intricate emoticons might present greater challenges (Oliver, 2018). While Goldman (2018) and Shaban (2019) has said recent cases with emoji have not broken new ground on interpreting the images in the courtroom, but he sees the rise of animated and personalized emoji as a coming challenge for judges and lawyers, as they leave open even more rooms for multiple interpretations.

4. INTERPRETING LEGAL LANGUAGE IN MALAYSIA

The main statute concerning the legal interpretation in Malaysia is Interpretation Acts 1948 and 1967. The 'writing' or 'written' in Malaysia includes typewriting, printing, lithography, photography, electronic storage or transmission or any other method of recording information or fixing information in a form capable of being preserved. Section 4(1) further explained that where any word or expression is defined in a written law, the definition shall extend to all grammatical variations and cognate expressions of the word or expression defined. The term of 'words' includes figures and symbols. Hence, being a symbol, emoji and emoticon can literally be attributed to the meaning of words and is subject to the legal interpretation. Interpreting non-written language such as physical gestures should not be something new to the courts.

Technically, the legal interpretation was embedded in the way how statutes to be interpreted. The most important rules for the interpretation or construction of statutes are those suggested by common sense (William, 2006). There are four general principles or approaches developed by the judges to assist in the interpretation and construction of statutes namely, the literal approach, the golden approach, the mischief approach and the purposive approach. The rules of interpretation indicate what a court should do in the absence of an expressed or implied intention to the contrary. Nevertheless, the rules of construction do not have any binding forces (Mohamed, 2014). As regard to the interpretation of legal documents, it is no hard and fast rule to determine it. The court usually will look at the legal document as a whole and give effect to the intention of the drafters as appears from the wording of the document. Brkic and Anderson (1988) proposed four types of legal document as follows

- a) First, there are those legal documents that systematize and style extant customary and non-customary law.
- b) Second, there are legal documents that are cast ab novo in a process during which the drafters have little or no control over the text.
- c) Third, there are legal documents constructed ab novo whose text is largely determined by the drafters.
- d) Fourth, there are legal documents which are cast for other than legal purposes, but which function also as legal documents.

Emoji and emoticon have widely been used in WhatsApp Messenger and Telegram Messenger application. Even though, there has not been any test brought to the Malaysian

court related to emoji and emoticon, there have been many instances where the Malaysian Courts have allowed Whatsapp messages to be adduced as evidence. For instance, in the case of Mok Yii Chek v Sovo Sdn Bhd & Ors [2015] MLRHU 196, the High Court held that printouts of e-mails and WhatsApp messages fall within the wide meaning of "document" under the Evidence Act 1950. As such, those printouts can be treated as any other printed document when it comes to admissibility.

Furthermore, even though emoji is not the ground of the argument in the case of Datuk Wira SM Faisal Sm Nasimuddin Kamal v. Emilia Hanafi & Ors [2017] 1 LNS 1373, it is probably the first written judgment in Malaysia featuring an emoji which is the heartache 📄 emoji. The 1st Defendant who was the wife of the Plaintiff had uploaded a video recording taken after the proceeding in the Syariah Court to determine their matrimonial dispute. The video clip displayed the hostile behaviour and use of force by Plaintiff outside the courtroom towards both his 2nd child and wife. The wife then posted the video clip on her Instagram account with the caption "A mother's heartache 📄". The Plaintiff, then sued the Defendants for publishing the video clip. Notwithstanding that the video clip went viral because of the heartache 📄 emoji caption, the High Court struck out the Plaintiff's case. The court held that the video recording that was published was indisputably a recording of an actual and real incident and therefore, cannot be refuted as being the truth. From the case, it shows that the Malaysian Court is actually preparing themselves to accept the use of technology in its decision making.

For now, due to the current development in the law of emoji and emoticon, legal practitioners should be advising their clients to avoid emoticon and emoji in business dealings. The chance of misinterpretation is high and compounded by the differences on different legal platforms and versions. But more than that, no one wants their client to be the test case for emoji interpretation in Malaysia. It is high time for the Malaysian judiciary to be ready on the method to use in constructing the legal meaning of the emoji and emoticon. It would be a catastrophe if emoji starts to show up in court cases exponentially and the court at that time is not prepared to face it.

5. CONCLUSION

The legal fraternity especially Malaysian judiciary needs to equip themselves with the legal framework relating to the emoji and emoticon. Currently, there has not been any test case brought to the Malaysian court. Nevertheless, due to the overwhelming used of digital application using emoji and emoticon in media social, the legal dispute will be foreseeable in the near future. As the emoji law is remained unsettled, it is only going to get more complicated as technology evolves. The legal statutory interpretation needs to be extended into a wider scope to incorporate the emoji and emoticon.

ACKNOWLEDGEMENT

The authors would like to express gratitude to Universiti Utara Malaysia and Ministry of Higher Education Malaysia for their support in funding this paper through the Fundamental Research Grant Scheme entitled: Formulating a Legal Framework on Digital Inheritance in Administration of Estates in Malaysia -(FRGS/1/2019/SSI10/UUM/02/2)

REFERENCES

- Berels, R. A. (2017). Take Me Seriously: Emoji as Evidence. Retrieved online on April 5, 2019 from <http://digitalcommons.law.msu.edu/king/261>.
- Bркиć J., Anderson N. (1988) Drafting and Interpreting Legal Documents. In: Kevelson R. (eds) Law and Semiotics. Springer, Boston, MA. https://doi.org/10.1007/978-1-4613-0771-6_5.

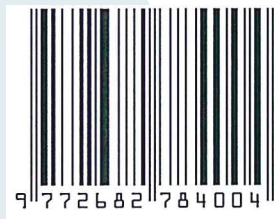
- EMOGI Research Team, 2016. 2016 Emoji Report. Retrieved online on January 1, 2019 from (http://cdn.emogi.com/docs/reports/2016_emoji_report.pdf).
- Gesenhues, A. (2018). Twitter Emoji Ad Targeting Is Still New Territory for Some Brands, *MARKETING LAND*, Mar. 29, 2018 retrieved online on April 5, 2019 from <https://marketingland.com/twitter-emoji-ad-targeting-is-still-new-territory-for-some-brands236907>).
- Goldman, E. (2018). Emojis and the Law, Retrieved online on January 1, 2019 from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3133412).
- Goldman, E. (2017). Frequency of Courts' References to Emojis and Emoticons over Time, *TECH. & MKTG. L. BLOG* (June 21, 2017), Retrieved online on April 5, 2019 from <http://blog.ericgoldman.org/archives/2017/06/frequency-ofcourts-references-to-emojis-and-emoticons-over-time.htm>.
- Hess, A. (2015). Evidence of Life on Facebook. Retrieved online on March 3, 2019 from <https://slate.com/technology/2015/04/social-media-and-the-law-if-youre-claiming-emotional-distress-dont-appear-happy-on-facebook.html>.
- Kirley, E. & McMahon, M. (2018). The Emoji Factor: Humanizing the Emerging Law of Digital Speech, *___ TENN. L.REV.*
- Lee, D. (2019) Emoji are showing up in court cases exponentially, and courts aren't prepared. Retrieved online on April 5, 2019 from <https://www.theverge.com/2019/2/18/18225231/emoji-emoticon-court-case-reference>.
- Mellinkoff, D. (1963). *The Language of the Law*. Boston: Little, Brown and Co.
- Mertz, E. (2007). *The Language of Law School: Learning to "think Like a Lawyer"*: Oxford University Press.
- Miller, H. et al, @016). "Blissfully Happy" or "Ready to Fight": Varying Interpretations of Emoji, *Proceedings of the 10th International Conference on Web and Social Media, ICWSM 2016*, p. 259 (2016), Retrieved online on April 5, 2019 from http://www-users.cs.umn.edu/~bhecht/publications/ICWSM2016_emoji.pdf.
- Mohamed, A.A. (2014). *Malaysian Legal System*. CLJ Publication: Kuala Lumpur.
- Nor Hayati Abd Samat & Noor 'Aza Ahmad (2016) *Legalese: Will It Be There To Stay?* Proceeding Of Seminar On Law & Society, School of Law, Universiti Utara Malaysia.
- Oliver, E. (2018) *Emojis in Law: Making a Mess of Messaging*. Retrieved Online on April 8, 2019 FROM <http://insight.thomsonreuters.com.au/posts/emojis-in-law>.
- Saife, L. (2014). *Handbook of Social Media and the Law* .Retrieved online on April 5, 2019 from <https://www.taylorfrancis.com/books/9781315797854>.
- Shaban, H. (2019). Your honor, it's an eggplant: Lawyers call for guidance on interpreting emoji. Retrieved Online On April 8, 2019 from https://www.washingtonpost.com/technology/2019/02/22/your-honor-its-an-eggplant-lawyers-call-guidance-interpreting-emoji/?noredirect=on&utm_term=.d27086e2471c.
- Schnoebelen, T. (2015). Humans Can Barely Understand Emojis. Will Machines Do Any Better? *QUALCOMM SPARK*, Sept. 18, 2015, <https://www.qualcomm.com/news/spark/2015/09/18/humanscan-barely-understand-emojis-will-machines-do-any-better>.

Scull, R. (2016). Emoji as Language and Their Place outside American Copyright Law, 5 N.Y.U. J. INTELL. PROP. & ENTER. L. 381, 385-88.

Tiersma, P.M. (2010). The Origins of Legal Language (Legal Studies Paper No. 2010-45, Loyola Law School, Los Angeles). Retrieved online on April 5, 2019 from <http://ssrn.com/abstract=1695226>.

White, J. B. (1981). Law as Language: reading law and reading literature. Tex. L. Rev., 60, 415.

Williams, G. (2006). Learning the Law. 13 edn. Sweet & Maxwell: London.



Cawangan Kedah
Kampus Sungai Petani

e-ISSN: 2682-7840

