

# Text Like The World Is Watching: Creating a Binding Contract

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**PRACTICES** International, Shipping, Europe, Middle East and Africa, Shipping Dispute Resolution, Offshore Oil and Gas, Offshore Oil and Gas Dispute Resolution

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In *DAZN Limited v Coupang Corp*<sup>1</sup> the Court of Appeal upheld the High Court's expedited judgment that a binding contract was reached in relation to broadcasting rights in South Korea for the 2025 FIFA Club World Cup (**CWC**), an international competition of the best men's football club teams, following negotiations by way of emails, WhatsApp messages and telephone calls.

## Background

As the sole owner of the broadcasting rights of the CWC, FIFA licensed them to DAZN Ltd. (**DAZN**), a U.K. streaming and entertainment platform, so authorising DAZN to sublicense them in different territories. Coupang Corp. (**Coupang**), a South Korean e-commerce company, sought such a sublicense from DAZN for co-exclusive broadcasting rights to stream the CWC in South Korea. A local team had qualified, piquing interest in the CWC amongst South Koreans.

The main issue was whether through the exchange of various emails, WhatsApp messages and telephone calls between four key party representatives, and as Coupang maintained, a binding contract had been reached. Against the background of DAZN receiving a late, and substantially higher, third party offer for the sublicense, DAZN contended that the Coupang negotiations had only resulted in a non-binding agreement in principle. Consequently, Coupang commenced proceedings in the Commercial Court, and given the imminent start of the CWC in June 2025, an expedited trial was ordered in May 2025.

## Preliminary Issue Trial

Specific performance for DAZN to provide the broadcasting rights to Coupang (together with protective injunctive relief)<sup>2</sup> was ordered by His Honour Judge Pelling KC. He held that a contract had been concluded by two emails, set within the context of other WhatsApp messages and telephone conversations.

## DAZN's Appeal

To challenge the judge's conclusion that a contract had been reached by the email exchange, DAZN appealed on 3 grounds<sup>3</sup>, to determine whether there was (i) a contractual offer, (ii) an unqualified acceptance and (iii) an intention to create legal relations.

The leading judgment from the Court of Appeal was provided by Lord Justice Popplewell, who began with a helpful reminder of the (undisputed) legal principles to be applied in deciding whether parties have concluded a legally binding contract and when communications between the parties can be considered.

Relying on the Court of Appeal decision in *Smit Salvage BV v Luster Maritime SA (Ever Given)*<sup>4</sup>, Popplewell LJ emphasised that:

- i. The Court should look at the whole course of the negotiations, both before and after those that are said to constitute the making of a binding contract (which in this case, included messages exchanged by the informal WhatsApp Messenger service and noting the change in conduct and language after the contract was said to be concluded).
- ii. Parties are the masters of their contractual fate in deciding which terms are essential.
- iii. Communications must be interpreted by reference to the substance and sense of what is said.
- iv. The requirement of urgent contractual performance is relevant.

Applying these legal principles to the parties' communications as a whole, Popplewell LJ found that DAZN and Coupang had reached an agreement by which they intended to be immediately and legally bound by the exchange of the two emails in question. They constituted a valid offer and clear acceptance.

Factors that supported this decision included that:

- i. An agreement in principle on the essential terms of the deal as well as other more minor terms had been agreed in advance of the agreement on the price.
- ii. It was common in the industry to reach an agreement on the terms of a deal orally or informally by WhatsApp and then follow it up with a more formal step in an email.
- iii. The language used in the key emails was consistent with offer and acceptance.
- vi. Subsequent communications from both parties confirmed that they both thought they had reached a binding concluded agreement.
- vii. Indeed, DAZN suggested that Coupang should get on with marketing as soon as possible without waiting for the formalisation of a long form agreement.

Similarly, the absence of any "*subject to contract*" language further supported the notion that both parties intended to be legally bound, rather than it being conditional upon a formal signed contract.

The requirement of urgency in respect of the performance of the contract made it more likely that both parties intended to be immediately legally bound.

Accordingly, DAZN's appeal was dismissed in its entirety, affirming the decision of the Commercial Court that a binding contract had been reached by a clear offer and unequivocal acceptance by email.

## **Conclusion**

Here, the absence of a signed formal written agreement did not preclude the Commercial Court or Court of Appeal from determining that the parties had concluded a legally binding contract.

Those involved in the negotiation of contracts should beware that:

1. If all the essential elements of contract formation can be readily identified, namely offer, acceptance, intention to create legal relations and consideration, a court will not hesitate to find that a binding agreement, capable of enforcement, has been concluded.
2. If the intention is that the execution of a written contract will signify the commencement of legally binding relations, parties must be transparent about that objective.
3. Use clear and unambiguous language, in oral and written communications, however informal, and for however long they continue.
4. The absence of “*subject to contract*” language is not decisive, but when used, it is a good indicator of when parties anticipate being legally bound to each other.

<sup>1</sup>[2025] EWCA Civ 1083

<sup>2</sup>The injunctive relief was designed to protect Coupang’s ability to enjoy its broadcasting rights.

<sup>3</sup> DAZN also appealed on 2 other grounds but related to the injunctive relief.

<sup>4</sup>[2024] EWCA Civ 260 and as discussed in our alert “[Entering Into a Binding Contract – Recent Lessons From the English Courts](#)”.