



# ENGLISH CONTRACT LAW: STILL FIT FOR PURPOSE IN THE TWENTY FIRST CENTURY?

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## TRANSCRIPT

Hello, it's Roger Halston here. I'm the module convener for Contract law, and I'm going to speak today about a very recent case which involved the sale of the broadcasting rights for the 2025 World Cup. And the novel point here was that many of the communications in this case were via WhatsApp.

So the title of the blog Is English Contract law still fit for purpose in the 21st century? Now, the basic principles of our contract law were really the product of the 19th century. Subsequently, they've had to accommodate changes in business practise.

And what will be the primary focus today? Changes in technology. An obvious example of changes in business practise would be the rise of standard form contracts.

These standard form contracts are often presented on a take it or leave it basis and so they therefore present a challenge and difficulty for traditional principles of agreement. And you will recall the case of Butler Machine Tool against Ex-Cell-O when the Court of Appeal had to grapple with this modern contractual form. But perhaps more challenging to accommodate are the changes in communication technology and the basic principles of contract formation arose from a time when contracts were predominantly made orally or in writing via post.

Now you'll recall a distinction is drawn in this context between instantaneous and non instantaneous communications. And non instantaneous communications are sometimes subject to the unusual postal rule. That is the rule which derives from Adams and Lindsell and Henthorn and Fraser, that a properly addressed letter of acceptance is effective upon posting, and that distinction between instantaneous and non instantaneous has had to be applied in relation to modern forms of communication.

And so in a case called Thomas V BPE Solicitors in 2010, it was established that emails are to be regarded as an instantaneous form of communication and so the postal rule would be inapplicable. And a similar approach was recently applied by the Court of Appeal in DAZN against Kupang. And that is the focus of this block.

The case concerned negotiations for the FIFA World Cup 2025 broadcasting rights. The parties negotiated via a series of WhatsApp messages before sharing a summary of their deal terms by email. A late arrival bid came in and this raised the question of whether the original parties had already reached a binding contract.

The Court of Appeal held that they had. The parties had used the language of offer and acceptance and the email confirmation was unequivocal. The case is therefore maybe a cautionary reminder that informal negotiations can give rise to binding high value

contracts, as well as the a recognition of WhatsApp messages as a means of communication between contractors.

The result in the case is evidence of the ability of 19th century contract principles to adapt to 21st century business technology. But put differently, it is also evidence that English courts are always keen to support and promote business by upholding and enforcing deals that make commercial sense. The English law of contract is as fit for purpose in the 21st century as it was when created in the 18th century.

Thank you very much. Hope you enjoyed this blog.