

NOTES ON THE STYLE OF THE LAW

Social media in court judgments

by

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≈ social media ≈ judgments ≈ court style ≈ technology



THE recent case of *Riley v Sivier*¹ is, in one sense, a very conventional defamation case. The defendant published a defamatory article about the claimant, a well-known television presenter. The claimant subsequently sued, and Steyn J awarded damages of £50,000 as well as an injunction for the removal of the defamatory article from the defendant's website. However, from a style perspective, the case is an illustration of the challenges and pitfalls of discussing (often transient) social media platforms in judgments.

For instance, at para 22, Steyn J begins discussing 'tweets' without any context or explanation of what a tweet is. Steyn J compounds this by, in the next paragraph, using without any definition the term 'quote tweeting'. It is irrelevant that Steyn J already knows the odd idiolect of the Twitter corporation or that most of her Ladyship's readers *in 2022* already know these terms. A judgment has a far wider audience than the immediate present. Lawyers regularly consult authorities which are centuries old, and thus judges have a responsibility to future lawyers to avoid making their precedents contingent on prior knowledge of past technology. Given that as this post went to press, it was unclear for precisely how much longer Twitter would continue to exist, it is entirely plausible that within five years Twitter will be as mystifying to a new generation of lawyers as Telex, in older authorities, is to lawyers today.²

It is courtesy to these lawyers of the near future, for whom Twitter may be no more than a punchline about billionaire hubris, to include concise explanations of non-standard internal-Twitter language like 'tweet' and 'quote tweet'. Alternatively, one could easily avoid this problem by using the first phrase 'posting on the Twitter microblogging website' and subsequently 'Twitter posting' in lieu of 'tweet'. The same is true

¹ [2022] EWHC 2891, KBD

² See, *eg*, *Entores Ltd v Miles Far East Corporation* [1955] 2 QB 327, CA

for non-standard punctuation; the use of the @ symbol on Twitter only seems clear to those who are quite familiar with the site. Otherwise, it is not obvious.³

Another issue of technological terminology comes at para 28, where her Ladyship refers to a “quizzical face” emoticon.⁴ This is problematic for several reasons. First, the preferable term for this icon of a quizzical face is ‘emoji’ (which Steyn J uses elsewhere in the judgment). Although the two terms can overlap in usage, the standard convention according to the *Encyclopædia Britannica* is that ‘emoticons’ are made of ‘punctuation marks, letters, and numbers’ whereas ‘emoji’ are strictly pictographic in nature.⁴ More importantly, given that (for unclear reasons) there is no actual use of the Unicode emoji character in the judgment, it is essential that the description of the emoji correspond to the exact Unicode identifier. Instead, there is no ‘quizzical face’ emoji! How are we to know what Steyn J meant? Did her Ladyship want us to picture U+1F928 ‘Face with One Eyebrow Raised’ or U+1F914 ‘Thinking Face’? In theory one could try to find the original Twitter postings and view the emoji used in them, but both Twitter posts and Twitter itself is transient. There is no guarantee the reader of the judgment can find the originals, and thus precision is absolutely called for when glossing emoji.

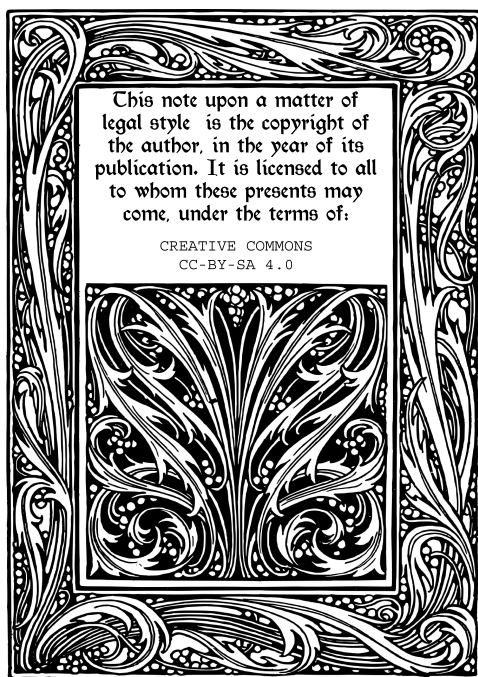
Finally, this judgment shows the risks of improper capitalisation. Steyn J is inconsistent in her Ladyship’s capitalisation of ‘Twitter’, sometimes beginning it with a lowercase ‘t’.⁵ Today, this may seem like a simple error (because it is well-known Twitter is a proper noun). To readers of the future, this might appear to be a semantic distinction, with each usage signalling different meaning in the unknown jargon of a long-dead social media platform. Care should be taken to use transient terminology consistently so as to avoid creating future misunderstandings.



³ The use of the symbol on Twitter is distinct from the use of the symbol in e-mail, for example.

⁴ C Graham ‘What’s the Difference Between Emoji and Emoticons?’, *Encyclopædia Britannica*, accessed 19 Nov 2022.

⁵ See, *eg*, para 33



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