



# Lawspeak...

A monthly Legal English newsletter on contract and commercial matters

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reception@augustinbugg.com

Welcome to **Lawspeak**  
and yet another newsletter !



Stuart Bugg\*

I hope **Lawspeak** does not end up being just another junk email attachment amongst the ever-increasing information daily flood we all have to struggle with.

Instead I would prefer to think that this newsletter will provide you with short, but useful monthly insights into Legal English concerning contracts in particular and commercial law in general.

From the point-of-view of a common law lawyer practising in Germany there is certainly a lot to do and even more to discuss and comment on. So there is certainly no lack of material or subjects to cover. Life at the legal interface between the European languages and the common and civil law systems can be very challenging – I trust that I can share some of those challenges with you.

It will also be a chance to let you know about my up and coming seminars in Nuremberg.

Of course, I would very much appreciate any comments or feedback you may have on the newsletter or seminars or any of the subjects covered. Just drop me a line at [reception@augustinbugg.com](mailto:reception@augustinbugg.com).

Regards


Stuart Bugg ▽

## Nürnberg Seminar Workshops 2013 with Stuart Bugg

REGISTRATION FORMS etc.: [augustinbugg.com/en/we-do/seminars/](http://augustinbugg.com/en/we-do/seminars/)

- 1. Legal English:**  
the Common Law System and Legal Language  
2-3 August 2013  
NH Hotel Nürnberg City
- 2. Boilerplate Clauses in Contracts**  
13-14 September 2013  
NH Hotel Nürnberg City
- 3. German Law Contracts in English**  
coming to terms with cross-border and cross-system contracts  
20-21 September 2013  
NH Hotel Nürnberg City
- 4. Working with Contracts in English – Workshop**  
8-9 November 2013  
NH Hotel Nürnberg City
- 5. Masterclass on Contracts in English: Update 2013**  
latest cases and developments  
22-23 November 2013  
NH Hotel Nürnberg City

For further information on the above seminars and workshops please contact us by telephone +49 (0) 911 945 8867 or by email [seminar@augustinbugg.com](mailto:seminar@augustinbugg.com) or see our homepage at [augustinbugg.com/en/we-do/seminars/](http://augustinbugg.com/en/we-do/seminars/) for further details and seminar programmes.

\*  Stuart G. Bugg practises law in Nürnberg, Germany with the law firm of Augustin & Bugg. He is qualified as a barrister (New Zealand) and solicitor (England & Wales, New Zealand) and studied philosophy and politics at Victoria University, Wellington and the University of Auckland, New Zealand. He is actively involved in legal and communication training for both lawyers and non-lawyers and has written several books and articles on the subjects of contract law and Legal English. ▽

## When is an email "writing" and what exactly constitutes a "signature"?

Would a contract agreement requiring "writing" with a "signature" allow emails to be used?

Recent case law in England may be moving us that way, certainly in relation to guarantees and statutory requirements under the Statute of Frauds. Although the general rule of freedom of contract accepts several means of agreeing to contractual obligation, there are certain exceptions which require that specific contracts are evidenced in a particular manner. Such is the case with the Statute of Frauds 1677, s. 4 of which requires that a guarantee must be in writing and signed by the guarantor or a person authorised by the guarantor in order to be binding:

*"...the Agreement ... shall be in Writing and signed by the party to be charged therewith".*

In *Golden Ocean Group Limited v Salgaocar Mining Industries PVT Ltd and another* [2012] Civ 265, the English Court of Appeal examined the Statute of Frauds in relation to modern business practice. The court noted the reality that in the 21<sup>st</sup> century many contracts were negotiated and agreed by way of email. In the present case of a charterparty (agreement to charter space on a ship for the transport of goods), a contract was established on the basis of a guarantee "written" in an email

It was contended that such guarantee was not enforceable under s. 4 Statute of Frauds 1677. However, the English Court of Appeal held that a chain of emails satisfied the requirements of s. 4 ("writing") and that one "hard copy" paper document was not necessary. Moreover, the Court held that a name typed into an email (not an automatic footnote) would suffice to establish a "signature" for the purposes of s. 4 of the Statute of Frauds.

**In the light of this case and expected developments by way of analogy in the future it is essential in your common law contracts to expressly agree if communications such emails or faxes are to be regarded as "writing" or not. ▽**

## To the satisfaction of a party

Contracts: How is "to the satisfaction of [a party]" wording interpreted?

Is a promise to do something to the satisfaction of a party creating an "illusory promise" \*that makes a contract invalid or void because it is to be interpreted purely subjectively? Thus, a party would have no binding obligation for example to pay for goods or services at all because it has full discretion simply to determine (arbitrarily) that it is not "satisfied" with the goods or services. In some circumstances this may be the case, but generally common law courts will usually prefer the approach that, in order to make a contract valid, either:

a) such "satisfaction" wording creates an objective standard of "reasonable" satisfaction or, b) a party has a duty to act "in good faith" (as in U.S. state law) and its standard of satisfaction cannot violate such a principle to act in good faith.

**In contracts always try to establish objective standards or specifications. If this is not possible, at the very least use the wording "to the reasonable satisfaction of ..." to avoid the threat of an invalid contractual provision on the basis of an illusory promise.**

*\*illusory promise = an agreement to do something that is so indefinite one cannot tell what is to be done or the performance is optional. Therefore, the other party need not perform or pay since he/she got nothing in what he/she may have thought was a contract.*

**U.S.State Case Law on Illusory Promises (California): *Mattei v. Hopper*, <http://scocal.stanford.edu/opinion/mattei-v-hopper-29765> ▽**



### Legal:

Augustin & Bugg GbR  
Allersbergerstr. 185  
90461 Nürnberg

Tel. +49 (911) 945 88 88  
Fax +49 (911) 945 88 90

lawspeak@augustinbugg.com  
[www.augustinbugg.com](http://www.augustinbugg.com)