



Lawspeak...

Augustin & Bugg

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A monthly Legal English newsletter on contract and commercial matters

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Bugg's Boilerplate

Keep it short short, sweet and simple:

When drafting legal documents, especially contracts, the best solution is always to use plain, simple language. Avoid jargon or foreign terminology wherever this is not clearly understood by the parties.

In other words, use plain English. Exactly the same applies if you are using another language, *mutatis mutandis*. ☺

Have fun with the drafting!

Stuart Bugg

Nürnberg
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Beware of Latin lovers ...and stick to plain English

It is very tempting to assume that Latin terms and phrases so loved by jurists would form a cross-border language understood by lawyers and judges all around regardless of colour or creed or legal system. Indeed, it would be a great comfort to our treasured concepts of universal justice (not to mention the need to understand foreign colleagues in other languages) but alas, it is not to be.

Excessive Latin in legal documents and especially contracts can only result in confusion and frustration. Although Romans contributed a great deal to modern legal systems with their legal teachings, their Latin words have been reinterpreted, adjusted and mispronounced for so many centuries that their true precision and effect is often lost in the mists of time. Indeed each system or jurisdiction today seems to prefer to indoctrinate its own unique tried and true phrases at the local law schools. For the English law student it was always settled law that the *ejusdem generis* rule of interpretation keeps "*exempli gratia*" out of most contracts and that in criminal matters the principle of *domus sua cuique est tutissimum refugium* applied (at least sometimes). But who understands this. Thus, what should always have been the Esperanto of the law, has often become a Tower of Babel of confusion.

What happens when a common law lawyer's rescission *ab initio* was confronted with the German colleagues' *ex tunc*, or when *culpa in contrahendo* could not equate with promissory estoppel. Why do Americans and Australians sometimes understand the *contra proferentum* rule differently for limitation of liability cases? The confusion is even greater if you add non-legal, non-native speakers and a further third party language with bizarre pronunciations. So would a business person anywhere in the world understand a contractual award of property *ex aequo et bono* for all parties or could a French customer forgive an English service provider for offering to pay money *in lieu* of performance? I am not so sure...it's enough to drive a lawyer to seek *garden leave*.

Certainly, foreign terms (and legal jargon) do not serve always to promote understanding and clarity. And it doesn't matter if the words are of Latin, French or even English origin. If you are working in English, say it in English, but make sure it's plain English.* Contracts are there to be understood...not admired for their complexity. Otherwise, it may be a true case of *volenti non fit injuria* for each word drafted! ▼

* <http://www.plainenglish.co.uk/campaigning/past-campaigns/legal.html> has more information on Plain English and the law. In addition, a useful guide to basic Latin phrases and terms can be found at <http://legum.org/>

Top Twenty Contract Terminology Quiz

Do you understand the following? Can you explain these terms in simple plain English to your clients? (The solutions are in the **February** edition of **Lawspeak...**) So, you had better sharpen up your pencils and get started:

1. time is of the essence
2. a Romalpa clause
3. without prejudice (in an offer of settlement)
4. an invitation to treat
5. garden leave
6. a unilateral contract
7. an adhesion contract
8. the construction of a contract
9. a Himalaya clause
10. a Chinese wall
11. *pro rata*
12. rescission (of a contract)
13. cancellation (of a contract)
14. in camera
15. *et al*
16. a non-reliance clause
17. avoid a contract
18. misrepresentation
19. warranty
20. rectification

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Nürnberg Seminar Workshops with Stuart Bugg

Places (participants limited to 14 per seminar) are still available in the following seminars:

1. **Introduction to Working with Contracts in English**
28 Feb.-1 March 2014
Hotel Victoria Nürnberg
2. **Masterclass on Boilerplate Clauses in Contracts**
11-12 April 2014
Hotel Victoria Nürnberg

REGISTRATION FORMS etc.: augustinbugg.com/en/we-do/seminars/

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 or see our homepage at augustinbugg.com/en/we-do/seminars/ for further details and seminar programmes. ▸