



# Bugg's Lawspeak

A Legal English summary from the new Lawspeak blog

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



## Bugg's Boilerplate

Lawspeak is not coming to an end but merely changing its format. We will be continuing to publish it until the beginning of next year as a separate newsletter. But in 2015 Lawspeak will be switching completely across to the blog.

So, I would suggest you get your mouse ready for action and start clicking!  
See you on the blog.

If you are redrafting your order forms or other contract documentation you may want to consider the issues of contract formation. Try to specify in the offer itself (e.g. the order form) how and when it can be accepted. In particular, the problems of unilateral offers and acceptance by performance encountered by a rather "unwanted" Santa Claus are in our lead article today.

Stuart Bugg

Nürnberg  
November 2014

## Unilateral contracts not always wanted

This poster forms a unilateral offer in common law. A *unilateral contract* at law is defined not as a one-party agreement or declaration, but rather as a contract which is formed by a *unilateral offer* (i.e. an offer to the world at large or a specified group or a single person and intended to be accepted by performance) being accepted. Case law has excluded general advertisements or general sales "puff" from forming the basis for contracts because of a lack of intention to enter into legal relations. But the infamous "wanted poster" and the offer of a reward are often regarded as forming contractual offers and, if accepted, contracts.

But in business a unilateral offer is often unwanted. An offer made should be clearly and expressly made on the basis it will be accepted in a specified way, e.g. by letter or email, not by performance! Otherwise, the other party can claim you made a unilateral offer and it is now accepted by performance.



## Blogs away!

The news blogs of Augustin & Bugg have been launched this month along with a streamlined "corporate identity." The intersecting triangles of the new logo are symbolic for the interfacing of the common and civil law systems within which we work.

We have also set up some new blogs to help keep our clients and interested parties more easily "in-the-know." As part of the changes we are slowly moving Lawspeak to the new blog format.

Those of you still interested in keeping up your Legal English, commercial and contract law (and other matters slightly related thereto!) should visit the blog. The advantage of the new format will be that we can keep you informed on an on-going basis and not just once a month.

So, come and try the new Lawspeak blog by going to:  
<http://lawspeak.augustinbugg.com/>



## Format and drafting

Modern drafting involves breaking up large blocks of text and setting out provisions clearly so that the purpose and meaning is easy to understand and unambiguous. But be careful!

Consider the following example taken from a lease:

*11. If during the term of the lease the premises are destroyed or damaged, then*

*(a) Either the lessor or the lessee may terminate the lease without compensation to the other.*

*(b) The termination will not affect the rights of either party in relation to earlier matters.*

*(c) On the happening of the damage or destruction, the rent abates proportionately.*

*(d) If the lessor wants to demolish or rebuild to the extent that (in the lessor's opinion) the lessee's right of quiet enjoyment is appreciably diminished, the lessor can give six months' notice to terminate the lease.*

QUESTION: On the basis of the above wording, can the lessor still require the lessor to vacate the premises even if the premises have not been "damaged or destroyed"?

The answer, according to the court, was a negative one<sup>1</sup>. 11(d) has always to be read in accordance with the opening sentence of the section and is not intended to create a general power beyond the scope of the circumstances of destruction or damage.

This may not have been what was intended by the lessor when it made the contract. But it is what the words on the paper mean.

Stuart Bugg practises law in Nuremberg, Germany with the law firm of Augustin & Bugg. He is specialised in contract and commercial law and is also qualified as a barrister and solicitor (New Zealand) and solicitor (England & Wales). Stuart has been actively involved in legal and communication training for both lawyers and non-lawyers for many years and has written several books and articles on the subjects of contract law and Legal English. ▽

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## Nürnberg Seminar Workshops 2015

with Stuart Bugg

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

- 1. Introduction to Working with Contracts**  
23-24 January 2015  
Hotel Victoria Nürnberg
- 2. International Sales Contracts in English**  
6-7 February 2015  
Hotel Victoria Nürnberg
- 3. Contract Management and Boilerplate Clauses**  
17-18 April 2015  
Hotel Victoria Nürnberg
- 4. English for Legal Assistants**  
19-20 June 2015  
venue: to be announced
- 5. German Contracts in English**  
17-18 July 2015  
Hotel Victoria Nürnberg

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

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<sup>1</sup> see *Spathis v Hanave Investment Co. Pty Ltd* (2001) NSW ConvR 55-983. This example was used in *Modern Legal Drafting* by Peter Butt & Richard Castle, Cambridge University Press 2 ed. p177