



Bugg's Boilerplate

Contracts should not be a lottery. *Get it signed and in writing*: this is not only a rule of common sense but also a fundamental principle for commercial contracts and indeed, any agreement. Although they may help you with luck at the lottery (as we see in one of this month's cases), dreams and parol contracts are not a good foundation for doing business.

In contrast, on page 2 you will discover how working with the law can be a very bitter experience.



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(Unwritten) Dreams Do Come True!

It is not unusual in daily business situations to have an oral (parol) contract or collateral agreement. But the perils of this situation are widely reported especially in terms of proving the existence and exact conditions of such agreements. It was therefore rather refreshing to see the courts supporting a "happy end" (for at least one party) in such a situation. This case also provides an interesting insight into the day-to-day practicalities of the rules of interpretation and the burden of proof for implied contracts and terms.

In the case of *Kucukkoylu v Ozcan* [30 June 2014 [2014] EWHC 1972 (QB)] the trial court was required to settle a dispute between the claimant (C) and the defendant (D) regarding their entitlement to lottery winnings. D was employed by C. He had had a dream that he was holding a large bundle of cash with C standing in front of him. D was a strong believer in the power of dreams and interpreted it to mean that he and C would win the lottery. On January 30, 2012 a ticket was bought for the EuroMillions lottery which won the raffle prize of £1 million, which C claimed. It was D's case that he and C had agreed, either explicitly or impliedly, to jointly purchase the ticket and that he was entitled to one half of the proceeds of the win in accordance with their agreement. It was C's case that there had been no discussion or agreement as to sharing the ticket.

Judgment was entered by the court accordingly. For D to succeed he would effectively have to prove that a contract existed with C for the purchase of a lottery ticket jointly and that the terms of the contract gave rise either expressly or impliedly to an equal share of the beneficial interest, in the form of the prize money. On the balance of probability, D had had a dream which involved him and C and a large sum of money. D had then pestered C into playing the lottery with him. D suggested and C agreed that they would play the game "50/50" or "half and half" or words to that effect. They both contributed equally to the purchase price of the ticket. D went to the shop to play the lottery and gave C the tickets. D retained the receipt and the play slips. C later discovered that he had won and D challenged him about the ticket. C became angry and threatening and swore at D. Subsequently, through intermediaries, C attempted to persuade D to drop his claim. The effect of those conversations was that C and D had entered into a contract to jointly play the lottery on an equal basis. Either it was a term of the contract that any winnings should be shared equally or, alternatively, such a term should be implied. That represented the obvious but unexpressed intention of the parties and was also necessary to give business efficacy to the contract. The whole point of playing the lottery jointly was to hopefully share the winnings jointly. The phrase "50/50" or "half and half" was clearly intended to convey an equal right to the beneficial interest in any winnings. Accordingly, the prize money should be shared equally between C and D.

The lesson to be learnt is: get it in writing and signed!

Lawspeak...

Miscellaneous



Stuart G. Bugg practises law in Nürnberg, 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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Lawyers and Lemons

Last month we had UK "dog law", so I thought we could balance it out by crossing the Atlantic Ocean and look at the "lemon law" website of what would appear to be a legal advocate for the Californian citrus industry.

But if you were to know that so-called lemon laws in the U.S. relate to defective products (originally automobiles *cf.* German *Montagsauto*), then perhaps the website makes a bit more sense:

For more than 15 years, lawyer Elizabeth Agmon Gayle has been one of California's premier Lemon Law legal advocates. As a highly experienced California lemon law attorney and former counsel for a major auto manufacturer, Ms. Gayle has extensive knowledge of both sides of the California Lemon Law. As a client-focused attorney, she has seen countless cases to successful conclusion for many consumers, both those owning or leasing high-end foreign cars and those with moderately priced domestic vehicles.

Ms. Gayle works directly with consumers to dispute cases with both auto manufacturers and dealerships.

What is The Lemon Law?

Lemon Law is the common term used to describe a body of consumer protection laws in California outlined in the Song-Beverly Consumer Warranty Act. It got its nickname because people have traditionally referred to troublesome vehicles as "lemons."

The Song-Beverly Consumer Warranty Act requires the manufacturer of a new or used vehicle sold or leased with a manufacturer's written warranty to buy back or replace a vehicle that hasn't been repaired within a reasonable number of repair attempts. The California Lemon Law covers various vehicle types, including cars, trucks, vans, SUVs, motorcycles, motor homes as well as boats.

<http://www.lemoncarlawyer.com/index.html>

Nürnberg Seminar Workshops with Stuart Bugg for the remainder of 2014

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

- 1. Introduction to Working with Contracts in English**
26-27 September 2014
exact venue in Nürnberg to be announced
- 2. Update 2014: Masterclass on Developments in English Contract Law**
5-6 December 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. ▽