

**Correspondence on legal meaning of
Consumer Credit Act 1974 s. 61(1)
by Francis Bennion**

08/12/11

From: John McGuckin by email to Francis Bennion

Good morning, Mr Bennion.

I have read, with great interest, your views concerning the use of 'plain' English in the drafting of legislation, and on the whole I would concur with your reasoning. In my humble opinion, law is a specialist sphere, & as with all professions, words, phrases & terminology have a particular function, often used as a concise & precise way of describing something which would otherwise require lengthy explanation. To add to this problem, how 'dumbed down' would this plain English need to be?

With this in mind, I have been having an academic discussion with some knowledgeable acquaintances concerning specific words used in the drafting of the CCA 1974. With reference to s 61 & the applicable terms, the word 'embodies' is used. The prescribed terms, however, have the word 'containing' attached. We seem to be going around in circles with our collective input based on the information we can glean from various available sources (including judicial interpretation; ie. 'Carey' et al). Therefore, may I impose upon your good self, as the architect of the instrument, to give an insight as to how you envisaged the words should be understood.

Regards,

John

Dear John,

This is a very good illustration of the principle that the legal meaning of a term depends on its context. Section 61(1) of the CCA says:

- (1) A regulated agreement is not properly executed unless—
 - (a) a document in the prescribed form *itself containing* all the prescribed terms . . . is signed in the prescribed manner both by the debtor or hirer and by or on behalf of the creditor or owner, and
 - (b) the document *embodies* all the terms of the agreement, other than implied terms, and
 - (c) the document is, when presented or sent to the debtor or hirer for signature, in such a state that all its terms are readily legible.

In considering the legal meaning of 'embodies' here one must realise that its context includes the words 'a document in the prescribed form *itself containing* all the prescribed terms etc.' This indicates that the term 'embodies' goes wider than terms contained in the document itself and also includes terms which are notionally brought into the document by being referred to in it. (1)(c) would not be complied with unless every term which is referred to but not contained in the document was physically attached to it when it was presented or sent to the debtor or hirer for signature.

Best wishes,

Francis Bennion

09/12/11

Dear Mr Bennion,

Thank you for your prompt response to my query, & I am deeply appreciative of your consideration. I am, however, totally stumped! I was under the impression that, while the prescribed terms have to be contained prominently within the document, other terms may be embodied in it provided that they are in another document which is clearly referred to in the signed agreement, & this is given to the debtor/hirer at the appropriate time. I must be missing something crucial, however, for I cannot find any reference to the requirement for it to be 'physically attached'. (I have spent some considerable time scouring my available research materials, hence my delay in replying to you).

May I, once again, please ask for your assistance.

Regards, & in hopeful anticipation,

John

12/12/11

Dear John,

There has to be a document (document A) which is in the prescribed form. Document A has to comply with two further requirements. (1) Document A must itself contain all the prescribed terms. (2) Document A has to embody all the express terms, whether prescribed or not. As a matter of simple English, document A cannot be said to *embody* a term unless either the term is contained in document A itself or is contained in another document (document B) which is both referred to in, and physically attached to, document A.

This rule was laid down to ensure that the debtor had only one physical object to cope with (a document by itself or a document together with a further document or documents all physically attached as by stapling). If two or more unattached documents would comply there would be a danger that one of them would become separated from the other or others. This has become particularly relevant since computers have made it possible to have some of the terms contained in a document which is available only on the internet.

You may reasonably ask why all this was not spelt out in the Act. My answer is that unfortunately drafters are compelled to condense in this way to avoid the length of the Act becoming unreasonable. In an article long ago I called this one of the four vices of statute law: see <http://www.francisbennion.com/1976/001.htm>

As explained in the article, I said the remedy was composite restatement and I actually went to the trouble of using this method for the CCA in my 4-volume looseleaf book *Consumer Credit Control*, first published in 1976.¹ In 2001, because of publishing complications, it ceased to be published.

Best wishes,

Francis

16/12/11

Dear John,

I think our recent correspondence would be of general interest. May I put it on my website?

¹ See <http://www.francisbennion.com/1976/004.htm>. For a celebratory lunch on the book's publication see [*Geoff* Please construct and insert short URL].

Best wishes,

Francis

Dear Mr Bennion,

Please excuse my delay in replying; my internet connection is not operating at present. I would be delighted for you to include our correspondence on your website.

I have been doing a little research into the etymology of the word 'embody', and I believe that the latin root is 'incorporare', which certainly survives in modern Italian, used in cooking terms to mean 'mix', or 'fold into'; a definite physical connection. You can't bake a cake by 'referring' to the eggs, can you!

Wishing you and yours the compliments of the festive season,

Warm regards,

John

Dear John,

Thank you. I will keep you informed.

I like your cake analogy. Perhaps we should assume it would be a Christmas cake!

Anyway, many thanks for your good wishes. I wish you all the same.

Best wishes,

Francis

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Any footnotes are shown at the bottom of each page

For full version of abbreviations click 'Abbreviations' on FB's website

References:

None