

CASE NOTE: DENMARK

CASE CITATION:

U 1959.40/1H

NAME AND LEVEL OF COURT:

Højesteret (Supreme Court)

DATE OF DECISION: **24 November 1958**

Secured indemnity bond; manuscript signature by a ball-point pen; validity

A secured indemnity bond signed with a ball-point pen could be registered (the Danish law on the registration of real property is based on the German 'Grundbuch' principle, that all transactions are registered, and the state offers a warranty (both negative and positive) of these being correct).

This decision of the Supreme Court overturned the decision of the appellate court (Østre Landret) (UfR 1958 A p 443). The Supreme Court found that 'ball-point pens are generally used for producing written documents formally written by pen and ink, and as there are, with respect to documents presented for registration, no scruples in acknowledging signatures by a ball-point pen, the appellants claim should be accepted.' The appellate court denied legal effectiveness to a manuscript signature because a ball-point pen was used, and not a fountain pen. The decision was based on the fact that the ink in the ball-point pen was not permanent, as required for long term storage.

The main rule in Danish law is that in order to achieve legal effectiveness, the medium used for drafting formal documents needs to be trustworthy. This case, however, illustrates that the courts also consider whether the medium used to draft the document and signature is generally used for drafting the same type of documents. Thus, if the medium has achieved such an incorporation that it can be considered normal use for drafting formal documents, the Danish courts will be prepared to accept it.

On this basis, the Danish courts have decided that documents signed with a pencil should not be accepted for registration by the Danish public authorities, cf. UfR 1928.340 VLK and UfR 2000.1869 VLK. Likewise, the Danish courts still do not accept formal documents printed directly from a PC with no manuscript signature physically appended to the document, cf. UfR 2001.252 ØLK (this case was subsequently appealed to the Supreme Court UfR 2001.1980 H, who reached the same conclusion).

**Case note by Professor Jon Bing and Jan Hvarre,
the correspondent for Denmark**