

## CASE ANALYSIS: CARLILL VS. CARBOLIC SMOKE BALL CO

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### INTRODUCTION

Contract law has evolved in various aspects and dimensions over time, putting out landmark cases and judgements. One such case was Carlill v. Carbolic Smoke Ball Co. Under the contract law, it marks a landmark case for communication of acceptance. This provides commercial uncertainty due to the concept of unilateral contracts. The case therefore gives a clear view of the concept of General offer as well. This paper will try to concur the usage of the term acceptance and general offer under the contract law. The decision of the House of Appeals would be discussed in regard to the acceptance of a contract where there is no communication made.

### FACTS OF THE CASE

<sup>1</sup>The petitioner of the case is Ms. Carlill and the defendant is the Carbolic Smoke Ball Company. The defendant issued a strategy for advertising its medicine named, 'carbolic smoke ball' which was said to be a cure for influenza, cough, cold, etc. In the advertisement, the defendant promised to pay pound 100 to anyone who had used the medicine for fifteen days as per the instructions of the company and still gets a fresh episode of influenza. As the company in the advertisement promises after using the medicine for fifteen days as per the instructions of the company, no one gets down with influenza back. For the proof the company even claimed that it has deposited pound 1000 in the Alliance Bank for the same.

The plaintiff Carlill seeing the advertisement bought the medicine and used it for a certain period of time as per the instructions of the company but even after following the due procedure, she got a fresh episode of influenza which led to her consequent file of suit against the company who is the producer of the medicine. The manufacturing company was of the opinion that: (1) there was no intention to enter into a legal relationship with anyone by advertising, (2) the company said that the advertisement was not an offer as it was not made to any particular person and the offer cannot be made to public, (3) the company also stated that

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<sup>1</sup> Simpson, A. W. B. "Quackery and Contract Law: The Case of the Carbolic Smoke Ball." *The Journal of Legal Studies*, vol. 14, no. 2, 1985, pp. 345–89. *JSTOR*, <http://www.jstor.org/stable/724433>. Accessed 10 Oct. 2023.

there was no communication of acceptance to the offer by the offeree which does not hold a binding contract. These three opinions of the manufacturing company raised some questions.

### **COMMUNICATION OF ACCEPTANCE**

A contract is said to be completed when the party provides its assent or acceptance to it. A contract is said to be complete when it comes to the knowledge of the other party. For a constituting a valid contract the party needs to provide its acceptance to it, acceptance given by a third party on behalf of the parties to the contract cannot be held valid. The communication of acceptance has to be provided by the offeree to the offeror in a contract. However, in the case of a general offer, the communication of acceptance is not required.

### **THE CONCEPT OF GENERAL OFFER**

An offer may be made to the world at large is called a general offer but however the contract is not made with all the world. A general offer can be accepted by any member of the public for due consideration and it is binding. Not only in the case of *Carlill vs Carbolic Smoke Ball Co.* but also in India the case of *Lalman Shukla vs. Gauri Datt* was a case under the concept of general offer wherein the servant was sent by the master to trace his missing nephew and with that he also announced a reward for anyone who had found his nephew and this stands as an example of a general offer made to the public at large. Acceptance by conduct: In all cases of general offers that are unilateral they demand some acts in return for the promise. General offers usually require acceptance by performance and such conduct is known as an implied offer. In such an offer the conduct or act is required, and performance by the act can be a sufficient acceptance without any notification. The case *Carlill vs. Carbolic Smoke Ball Co.* is the classic case of a unilateral contract or a general offer.

### **DEFENDANT'S ARGUMENTS**

The defendant tried to raise every contention possible so that the plaintiff's suit against the defendant could be proved wrong. The defendant gave the following as its argument:-

- 1) The advertisement of the medicine was a mere marketing strategy to boost the sales of the product and there was no intention by the manufacturer to create a legal intention and this does not amount to any promise.

- 2) Secondly, Ms. Carlill had used the medicine in private which does not prove whether she used it as per the instructions of the company and there was no communication of acceptance in favour of the offer to the company which is important to constitute a contract between the parties.
- 3) The company also stated that if there would have been any contract then it would be wagering in nature.

### PLAINTIFF'S ARGUMENT

- 1) The plaintiff argued that the advertisement done by the company was not a mere source of boosting its sales rather the company had the intention of entering in a contract as it had deposited 1000 pounds in the Alliance Bank which stands as proof for the same.
- 2) Ms. Carlill had used the medicine as per the instructions provided by the company i.e. and still after some time she had met with influenza all over again.

### ANALYSIS

Was there any binding contract between Ms. Carlill and the manufacturer of the Carbolic smoke ball?

In view of the argument from the defendant's side, the defendant argued that their offer did not have a binding impact to constitute a valid contract. The reason behind this was that the advertisement did not amount to a proper promise and it was just a mere strategy to boost the sales of the medicine. The plaintiff on the other hand, argued that the offer did have a binding effect because the advertisement offer clearly agreed that if the medicinal product was not effective then there would be a compensation of 100 pounds and the deposition of 1000 pounds in the bank was the proof that the company had the intention to enter into an agreement to constitute an offer.<sup>2</sup>

Section 2(b) of The Indian Contract Act 1872, states that a proposal when accepted turns into a promise. The court's stance was that the promise made by the company was binding and the advertisement was not vague and solely for the purpose of increasing sales but they constituted an offer, offering 100 pounds if the medicine did not work amounts to a consideration.

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<sup>2</sup> Carlill v. Carbolic Smoke Ball (n 2)

Was there any binding contract between Ms. Carlill and the manufacturer of the Carbolic smoke ball?

Was there a Unilateral contract or Bilateral contract between the parties?

In view of the argument from the defendant's side, the defendant had the opinion that there was not a valid contract between the parties as for a valid contract the communication of acceptance should be provided. Ms. Carlill didn't send any acceptance on her behalf be it expressed or implied. The court's stance on this was, that Justice Lindley was of the opinion that there was no requirement of communication of acceptance to an offer in such case because the advertisement made by the manufacturer was termed as to be a 'general offer'.<sup>3</sup>

A general offer is an offer made to the public at large and there is no requirement of communication of acceptance in case of a general offer. This reason held the defendant's argument as vague. Justice Bowen offered his reasoning that if anyone fulfills the condition of a general offer by performing it is also implied as an acceptance of the offer. Therefore, a special notification of acceptance is not required in such offers and cases.

Was there a Unilateral contract or Bilateral contract between the parties?

The term general offer is also known as 'unilateral contracts', and it is defined as an offer made to the world at large, and its communication for acceptance is not required thereof. Both sides of the parties do not hold an equal obligation towards each other. In the case above the defendant gave their reasoning as the advertisement was just a marketing strategy and there was no intention to enter into an offer with the public at large, however, the advertisement proved to be a unilateral contract between the parties.<sup>4</sup>

In the advertisement, it was stated that whosoever performs the conditions stated in the advertisement and still gets infected will be allowed the compensation of 100 pounds as per the company. Even if the act of performing requires communication of acceptance here it stands as an exception. – JUSTICE LINDLEY<sup>5</sup>

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<sup>3</sup> Contract law and entrepreneurship: an analysis of Carlill v. carbolic smoke ball co.; Hein online

<sup>4</sup> Contract law

Advertisements; Enforcement; Notice; Offer and acceptance; Unilateral contracts.

[Cov. L.J. 2018, 23\(1\), 142-144](#)

<sup>5</sup> Clive Coleman, 'carbolic smoke ball: fake or cure?' (BBC RADIO, 5 November 2009)

According to LORD JUSTICE BOWEN if the advertisers choose to make extravagant promises then they are paying to make them, thus it cannot be amounted to just puff and they should be bound by it. The Lordship also stated that procuring the advertisement was a request by the defendants to the public for the usage of the medicinal product then it stands as a proper general offer and for the person who uses it and goes through inconvenience then it becomes sufficient to constitute a contract.

The judges agreed to the suit filed by the plaintiff and therefore dismissed the appeal by the defendant and agreed by making the plaintiff entitled to the compensation.

The effect of *Carlill vs Carbolic Smoke Ball Co.* on the contract law was that this case clarified the concept that unilateral contracts can be set out by anyone if he/she makes an offer to the world or the public at large also known as a general offer. After this landmark case and keeping in mind the concept and impact of general offers the companies have become more careful while advertising about the products.

## CONCLUSION

The case of *Carlill v. Carbolic Smoke Ball Co.* is a frequently cited case in terms of acceptance under the contract law. The case introduces the concept of unilateral contracts. The judgement of the case was put as:

The *Carbolic Smoke Ball Co.* lost its argument. The Court of Appeal rejected all the reasonings and arguments presented by the defendant and held that Ms. Carlill's suit regarding receiving 100 pounds as a reward was correct. It was a fully binding contract between the parties even though there was no communication of acceptance. The company has serious intentions to enter into a contract as it had deposited 1000 pounds in the Alliance Bank as proof.

The court held that Ms. Carlill should be compensated adequately as stated in the advertisement i.e. 100 pounds for the inconvenience she suffered.

## CONCLUSION (VIEWPOINT)

In my opinion, the judgment provided in the case of *Carlill v. Carbolic Smoke Ball Co.* stands justifiable. Ms. Carlill is bound to be compensated by the company. 'Even though no communication of acceptance was provided to the manufacturer the offer stood valid.' In cases of general offers or unilateral contracts, one is not bound to convey its acceptance. The

company even had the legal intentions to enter into a legal relationship with the party as the deposition of 1000 pounds in the Alliance Bank stands as proof for the same. There was no proof regarding the fact whether Ms. Carlill used the medication as per the directions provided by the company or not but however, but that does not stand of much importance. The court therefore did not agree to the arguments provided by the company in its defence.

