CARLILL v. CARBOLIC SMOKE BALL COMPANY (SMOKE BALL CASE)[1]

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INTRODUCTION

The English Contract Law has developed in some ways, resulting in several important cases that have shaped its ideas by presenting situations that challenge judges' preconceived notions. One such famous case that has gained recognition and become a vital resource for law students is Carlill v. Carbolic Smoke Ball Company. The English Court of Appeals rendered its judgement. The remarkable and intriguing subject matter of the judgement was the primary reason it became a landmark decision. Additionally, the presiding Coram had a great deal of sway over how the bench viewed the legal principles at issue in the case.

It was suggested in the old case of *Weeks v. Tybald* [2]that an offer must be made to a definite person. That case arose out of the defendant's affirmation to the public that he would give £ 100 to him that should marry his daughter with his consent. The plaintiff alleged that he did so and sued the defendant. However, it was held that it wasn't averted to whom the words were spoken. The challenge was that should a proposal of this nature, made to multiple parties, be approved, the proposer would become legally obligated to numerous agreements. But this was quickly overturned. The current stance is that the entire world may be made an offer. However, the contract is only established with the person who steps forward and complies with the proposal's requirements; it is only made with some worldwide.[3] The principle is thus stated in Anson: "An offer need not be made to an ascertained person, but no contract can arise until it has been accepted by an ascertained person."[4] An offer of this kind has already been seen *in Lalman Shukla v Gauri Datt*[5] which was addressed to the public generally.

[1] Carlill v Carbolic Smoke Ball Co Court of Appeal (1893) 1 QB 256 (CA)
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[2] *Weeks v Tybald* 1605 Noy 11: 74 ER 982
[3] Law of Contract A.K. Jain .pdf.pdfcoffee.com <https://pdfcoffee.com/law-of-contract-ak-jainpdf-pdf-free.html> Accessed: 8th May 2024
[4] Anson's Law of Contract (23rd Edn by A.G. Guest, 1971) 40.
[5] *Lalman Shukla v. Gauri Dutt. Neha Mohanty* 1913 SCC OnLine All 242: (1913) 11 All LJ 489

FACTS OF THE CASE

A company offered by advertisement to pay £100 to anyone "who contracts the increasing epidemic influenza, colds or any disease caused by taking cold, after having used the bail according to printed directions". It was added that "£1000 is deposited with the Alliance Bank showing our sincerity in the matter". "During the last epidemic of influenza many thousand carbolic smoke balls were sold as preventives against this disease, and in no ascertained case was the disease contracted by those using the carbolic smoke ball.[6]

"One carbolic smoke ball will last a family several months, making it the cheapest remedy in the world at the price, 10s., post free. The ball can be refilled at a cost of 5s. Address, Carbolic Smoke Ball Company, 27, Princes Street, Hanover Square, London."

The plaintiff, a lady, on the faith of this advertisement, bought one of the balls at a chemist's, and used it as directed, three times a day, from November 20, 1891, to January 17, 1892, when she was attacked by influenza. Hawkins, J., held that she was entitled to recover the 100%. The defendants appealed.[7]

LEGAL ISSUES

1. Whether there was any binding effect of the contract between the parties.[8]
2. Whether the contract in question requires a formal notification of acceptance.
3. Whether Mrs. Carlill was required to communicate her acceptance of the offer to the Carbolic Smoke Ball Company.[9]

ARGUMENTS OF THE PARTIES

Plaintiff's arguments

The plaintiff, on the other hand, argued that the promise was not vague and that the construction of the offer was such that it was clear that in case the product wasn't effective the company

[6] Avtar Singh and Rajesh Kapoor *Contract & Specific Relief* (13th Edition, 2022)
[7] (1893) 1 QB 256 (CA)
[8] 'Case analysis of Carlill v. Carbolic Smoke Ball Co - iPleaders' (*iPleaders*, 11 May 2024) <https://blog.ipleaders.in/case-analysis-carlill-v-carbolic-smoke-ball-co/> accessed 8 May 2024
[9] 'Case analysis of Carlill v. Carbolic Smoke Ball Co - iPleaders' (*iPleaders*, 11 May 2024) <https://blog.ipleaders.in/case-analysis-carlill-v-carbolic-smoke-ball-co/> accessed 8 May 2024

would reward a certain amount. Also to facilitate the same, the company had deposited a large amount in the Alliance bank account. Thus, their act of depositing the amount is proof of their intention to form an agreement from one side. The plaintiffs also proved that there was a consideration in the form of the money paid to buy the carbolic smoke ball.[10]

The advertisement was not an empty boast. It characterised most of the essentials that attribute a contract and more precisely a Unilateral Contract. Thus, the company has to fulfil its part of the bargain.[11]

Defendant's arguments

The Carbolic Smoke Ball Company argued that their offer didn't have a binding impact to form a valid contract. They reasoned that the words used in the advertisement did not amount to a proper promise because the advertisement was too vague in its terms to form a contract.[12]

Secondly, they argued that there was no specified time limit and no means of checking how the consumers were utilizing the smoke ball (product). For example, an unscrupulous consumer may have not used the product properly at all and then alleges the company into depositing the money according to the offer. [13]

Thirdly, there was no contract because to form a valid contract requires communication of intention to accept. In this case, Carlill didn't send any acceptance concerning the offer either expressly or impliedly or through any performance of an overt act.

Thus, it is clear that the advertisement was just a marketing strategy and the company didn't have any intention to form any form of a contract while making an offer to the world at large. [14]

[10] Carlill v. carbolic smoke ball co case by Vedangi at LEXCLIQ – LexCliq.<https://lexcliq.com/carlill-v-carbolic-smoke-ball-co-case-by-vedangi-at-lexcliq/> Accessed: 8 May 2024
[11] 'Case analysis of Carlill v. Carbolic Smoke Ball Co - iPleaders' (*iPleaders*, 11 May 2024) <https://blog.ipleaders.in/case-analysis-carlill-v-carbolic-smoke-ball-co/> accessed 8 May 2024
[12] Carlill v. carbolic smoke ball co case by Vedangi at LEXCLIQ – LexCliq.<https://lexcliq.com/carlill-v-carbolic-smoke-ball-co-case-by-vedangi-at-lexcliq/> Accessed: 10 May 2024.
[13] Carlill v. carbolic smoke ball co case by Vedangi at LEXCLIQ – LexCliq.<https://lexcliq.com/carlill-v-carbolic-smoke-ball-co-case-by-vedangi-at-lexcliq/> Accessed: 10 May 2024
[14] 'Case analysis of Carlill v. Carbolic Smoke Ball Co - iPleaders' (*iPleaders*, 11 May 2024) <https://blog.ipleaders.in/case-analysis-carlill-v-carbolic-smoke-ball-co/> accessed 8 May 2024

JUDGEMENT

The Carbolic Smoke Ball Company, represented by H. H. Asquith, lost its argument at the Queen's Bench. It appealed straight away. The Court of Appeal unanimously rejected the company's arguments and held that there was a fully binding contract for £100 with Mrs Carlill.[15]

It was held that the advertisement was not a unilateral offer to all the world but an offer restricted to those who acted upon the terms contained in the advertisement. The satisfying conditions for using the smoke ball constituted acceptance of the offer. Further, purchasing or merely using the smoke ball constituted good consideration because it was a distinct detriment incurred at the behest of the company and more people buying smoke balls by relying on the advertisement was a clear benefit to Carbolic. Lastly, the company's claim that £1000 was deposited at the Alliance Bank showed the serious intention to be legally bound.[16]

The company, in this case, had no chance of winning, nor did Mrs. Carlill have any chance of losing, hence it was held that it was not a wager.[17]

RATIONALE

As a result of a thorough review of the facts, Lindley gave the first judgment. Unlike on the Queen's Bench, he makes little mention of the insurance and wagering contract arguments. He follows on with essentially five points. The deposit of £1000 in the bank proved that the advertisement was not "mere puff," as the company had claimed. He starts that the offer is a continuing offer, never revoked and explained by Lord Blackburn in the case of *Brogden v Metropolitan Ry Co*[18]- if notice of acceptance is required, the person who makes the offer gets the notice of acceptance contemporaneously with his notice of the performance of the condition. If he gets notice of the acceptance before his offer is revoked, that in principle is all you want. The advertisement made an offer to anyone who met the conditions in it rather than stating "not made with anybody in particular." Third, a contract does not require communication of acceptance when people demonstrate an intention to contract through their

[15] *Partridge v crittenden: Abbl 3033 - business law - tar UC* (2024) *Thinkswap*. Available at: https://www.thinkswap.com/my/tar-uc/abbl-3033-business-law/partridge-v-crittenden (Accessed: 11 May 2024).
[16] 'Carlill V/S Carbolic Smoke Ball Company' (*Legal Service India - Law, Lawyers and Legal Resources*, 11 May 2024) <https://www.legalserviceindia.com/legal/article-6570-carlill-v-s-carbolic-smoke-ball-company.html> accessed 10 May 2024
[17] Ellesmere v. Wallace, (1929) 2 Ch 1 (CA).
[18] *Brogden v Metropolitan Railway* (1877) 2 AppCas 666, HL(E)

conduct. Fourth, that the vagueness of the advertisement's terms was no insurmountable obstacle. Furthermore, the nature of Carlill's consideration (what she gave in return for the offer) was good, because there is both an advantage in additional sales in reaction to the advertisement and a "distinct inconvenience" that people go to when using a smoke ball.

Bowen's opinion on a contract is structured and frequently cited. He argues that the contract is not too vague and can be interpreted by ordinary people. He differs slightly from Lindley on the period for contracting influenza, but this is not crucial. Bowen also believes that the advertisement was not merely a puff, as £1000 was deposited in the bank to pay rewards. He believes that the contract is not with the whole world, as only the people who use it would bind the company. Bowen also states that communication is not necessary to accept the terms of an offer, but conduct should suffice. Carlill gave good consideration, and the contract was settled when the highest bidder presented himself.[19]

Sir A. L. Smith's judgment, which was based on Lindley and Bowen's decisions, focused on whether the defendants' advertisement in the Pall Mall Gazette was an offer or a mere statement of confidence in their remedy. The case aimed to determine whether the advertisement was a promise to pay, assuming good consideration, or if it was merely a puff, similar to Lord Campbell's *Denton v Great Northern Ry. Co.*[20]

ANALYSIS

Bowen LJ disposed of the first argument by questioning, “Was it intended that the 100 should, if the conditions were fulfilled, be paid? The advertisement stated that 1000 had been lodged at the bank for the same purpose. Hence, it cannot be claimed that the statement that 100 would be paid is a mere puff” A fallacy has been exposed that the offer could not be made to the world at large. It is an offer to become liable to anyone who, before it is retracted, performs the conditions, and although the offer is made to the world, the contract is made with a limited portion of the public who come forward and perform the conditions on the faith of the advertisement.[21]

[19] Avtar Singh and Rajesh Kapoor *Contract & Specific Relief* (13th Edition, 2022)
[20] *Denton v. Great Northern Railway Company*, 1856 119 E.R. 701
[21] Avtar Singh and Rajesh Kapoor *Contract & Specific Relief* (13th Edition, 2022)

In cases like this communication of acceptance is not necessary. The notification of acceptance is required for the benefit of the person who makes the offer.[22] The offeror may dispense with notice to himself if he desires to do so and if he expressly or impliedly intimates in his offer that it will be sufficient to act on the proposal without communicating acceptance to himself, the performance of the condition is sufficient acceptance without notification. In the advertisement cases, it is an inference drawn from the transaction itself that a person is not to notify his acceptance of the offer before he performs the required condition.[23]

All cases of general offers, which are similar to unilateral contracts, demand some act in return for the promise to pay.[24] A Canadian court has gone as far as to hold that when an offer is made to sell a part of the land and lease the other part subject to the condition that the offeree obtained the permission to plan and the same permission has been received within nine months. A valid contract arises, though no communication of acceptance had been made during nine months.[25] The offeror had mentioned a specific mode of acceptance; hence, by doing the act, the offeree had accepted the offer and did not have to notify the offeror before it intended to accept. [26]

CONCLUSION

One of the cases in English common contract law that is most often mentioned is this one. It is the ideal illustration of a unilateral contract. It also highlights the issues with unilateral contracts. Although there is no requirement for acceptance of an offer and consideration, this case serves as an exception to the general principles of contracts, which aids in comprehending those fundamental concepts as well. The idea of contract privity is also impacted by the commercial difficulties brought forth by such a void in unilateral contracts. As a result, this case has established a precedent for contract law. Although the verdict was well-written overall, its underlying ramifications are now a perennial topic of discussion in business circles.[27]

[22] Carlill vs Carbolic Smoke Ball Company docsharetips.com <https://docshare.tips/carlill-vs-carbolic-smoke-ball-company_58a5a159b6d87f798d8b4912.html> Accessed: 9th May 2024
[23] Carlill vs Carbolic Smoke Ball Company docsharetips.com <https://docshare.tips/carlill-vs-carbolic-smoke-ball-company_58a5a159b6d87f798d8b4912.html> Accessed: 9th May 2024
[24] Avtar Singh and Rajesh Kapoor *Contract & Specific Relief* (13th Edition, 2022)
[25] Calgary Hardwood & Veneer Ltd. v. C.N.R. Co, (1977) 4 WLR 18 (Alta SC)
[26] Nicholas Rafferty. Recent Development in the Law of Contract, (1978) 24 McGill LJ 239
[27] 'Case analysis of Carlill v. Carbolic Smoke Ball Co - iPleaders' (*iPleaders*, 11 May 2024) <https://blog.ipleaders.in/case-analysis-carlill-v-carbolic-smoke-ball-co/> Accessed 8 May 2024