



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Case Comment: *Carlill v Carbolic Smoke Ball Co.*

Bhawana Agarwal^a

^aD.H.S.K. Law College Dibrugarh, India

Received 01 November 2022; *Accepted* 20 November 2022; *Published* 01 December 2022

INTRODUCTION

The full name of the case was *Louisa Carlill v Carbolic Smoke Ball Company* which is an English case that is regarded as one of the most important cases in contract law. As it clears out how a contract should be treated and how puffed advertisements can sometimes become real contracts and also the notable judgment of the Justices of the Court of Appeals namely Lord Justice Lindley, Bowen, and Al Smith. It is an introductory case in Contracts basically which a law student needs to study, in the Law of Contracts. The case is about how an advertisement that was puffery in the eyes of the manufacturer turned out to be a contract, it fulfilled all the essential ingredients required in a contract including the acceptance of the offer, paying consideration for the same, intention to create a legal relationship, etc., rejecting the defences produced by the appellant.

FACTS

A company named Carbolic Smoke Ball Co. manufactured a flu remedy namely “Smoke Ball” which claimed that it will act as a cure for influenza and other diseases as well which had almost killed 1 million people in 1889-1890. The product was made with rubber attached to a tube which

was filled with Carbolic Acid. The user had to insert the tube inside the nose and squeeze the ball to release the vapours present in it. The company advertised the product in various newspapers including the Pall Mall Gazette on November 13, 1891. It expressly mentioned assuring the quality that if after using the product as per the instructions of the Company if anyone gets infected with influenza then they could claim 100 pounds from the company. And to prove their seriousness regarding the matter they claimed to have deposited 1000 pounds in the Alliance Bank.

The plaintiff Mrs. Louisa Elizabeth Carlill believing the advertisement to be true purchased the Smoke Ball and used it three times a day from November 20, 1891, to January 17, 1892, after which she was caught with influenza proving the advertisement to be vague and untrue. After this, her husband, a solicitor, brought the attention of the Company and wrote letters twice to them stating her ill health despite using the Smoke Ball and claiming back the amount promised in the advertisement. They replied by saying that the product will not fail if properly utilised. The defendant's company refused to agree to the plaintiff and denied to pay them 100 pounds. 'The plaintiff brought an action against them in the court before Hawkins J. and a special jury of which the decision was in favour of the plaintiff and they won the case in the High Court stating that there was a contract between them and the Company, which could not be denied.'¹

The defendants then appealed for the same.

ISSUES

1. Was the advertisement a mere puff?
2. Was the promise binding and whether the communication of acceptance of the offer was necessary?
3. Whether the advertisement was too vague?
4. Was there a valid consideration?²

¹ Clive Coleman, 'Carbolic smoke ball: fake or cure?' (BBC RADIO, 5 November 2009) <<http://news.bbc.co.uk/2/hi/business/8340276.stm>> accessed 01 November 2022

² 'Carlill v Carbolic Smoke Ball' (Australian Contract Law) <<http://www.australiancontractlaw.info/cases/carlill>> accessed 28 November 2022

ARGUMENTS BY THE DEFENDANTS

The company appealed along with its proprietor Mr. Frederick.³ They tried to raise every contention possible to prove the plaintiff wrong. The arguments of the appellant are as follows

- Their first contention was that the advertisement was a mere puff and not a serious one like those of the toothpaste advertisements which claim to clean the teeth fully but are vague in nature and therefore no legal implications could be imposed on such advertisements. They just had expressed their intention which could not amount to a promise.
- Secondly, as Mrs. Carlill performed the act in private, therefore it could not be traced whether she correctly used the product or not. Neither there was any communication of the acceptance of the offer by the plaintiff which is essential to constitute a contract merely performing the required action cannot bind the company into a contract with the plaintiff.
- Thirdly, the advertisement was purely vague as it was not limited by the time the plaintiff did not pay any consideration or anything of value for making a binding contract between the two.
- Also if there was any contract then it will be like the Wagering Contract.

ARGUMENTS BY THE PLAINTIFF

The plaintiff argued that the advertisement was not a mere puff rather it was a fully binding contract which was in the form of a unilateral contract. As the company had not only stated about the product but also assured the users that if in case the product fails then they assure to pay 100 pounds. Also to prove their seriousness they stated that they had deposited 1000 pounds in Alliance Bank. Therefore it could not be held that the advertisement was vague. The

³ *Ibid*

advertisement was so appealing that a normal individual will believe the terms as stated in the advertisement and may purchase the same even if he would not have been sure of the product.⁴

JUDGMENT

The Court of Appeals set aside the appeal and upheld that the contract was a valid one and ordered the company to pay 100 pounds to the plaintiff. The reasons stated by the learned justices were as follows-

LORD JUSTICE LINDLEY

1. According to his Lordship, the Company promised in the advertisement to pay 100 pounds to the person who gets infected with influenza after using the smoke ball. 'Read the advertisement how you will, and twist it about as you will, here is a distinct promise expressed in perfectly unmistakable language- 100 pounds will be paid by the Carbolic Smoke Ball Company to any person who contracts influenza after having used the ball three times daily for two weeks according to the printed directions supplied with each ball.'⁵ It was not a mere puff because it was guaranteed by depositing 1000 pounds in the Alliance Bank.

2. In the advertisement, it had been stated whoever performs the required conditions and still gets infected will be entitled to the offer of 100 pounds. Here the act of performing the required task amounted to notification of acceptance of the offer or notice of performance. Lord Justice Lindley did not reject that for an act to amount contract communication of acceptance of the offer is necessary. But in cases of this type, it becomes an exception.

3. He further observed that to some extent the language was vague but when the question arises as to the time when the person would use the smoke ball and be protected then it should be preferred that it should be a reasonable time after using the smoke ball. In this case, the user contracts the flu within a reasonable time.

⁴ Sankalpita Pal, 'Case analysis of Carlill v Carbolic Smoke Ball Co' (*iPleaders*, 25 July 2020) <<http://blog.iplayers.in/case-analysis-carlill-v-carbolic-smoke-ball-co/>> accessed 01 November 2022

⁵ Carlill v Carbolic Smoke Ball (n 2)

4. Lord Justice Lindley rejected the argument of the defendant that the offer was a 'nudum pactum'. He stated that given the advertisers if they advertised the product in such a manner they had increased their sales by gaining the customer's confidence, which constituted the consideration for the same.

Also, the user who suffered the inconvenience by using the product at the request of the defendants would amount to enough consideration for the same. He finally said that the defendants must fulfill the promise and if they are unwary then it might reveal too many unwanted situations which would be worst.

LORD JUSTICE BOWEN

Agreeing with Lord Justice Lindley he stated the following reasoning-

1. He stated that the offer was not vague as it was extended to the public at large who used the product as per the terms and conditions only. Also, the time of utilisation of the product could be interpreted as the time during the epidemic in which the plaintiff used the product, and therefore the reward should be extended to the one who used it during the epidemic.

2. According to Lord Justice Bowen, if the advertisers choose to make extravagant promises, then definitely they are paid to make them, therefore it cannot amount to puff and should be bound by it.

3. To the defendant's contention that it was an offer to the world and an offer could not be made to the world, Lord Justice Bowen replied by saying that it was an offer to the world but it got ripped into a contract only with the one who performed the act and is only limited to those who performed it.

4. According to his Lordship on the question of communication of acceptance if the person making such offer expressly or impliedly conveys that only the performance of the act will be enough to claim the offer then in such situations it could not be claimed that the communication of acceptance is necessary. He stated an example of a lost dog whose master may advertise to

pay a handsome amount who finds it, cannot deny payment if the dog is found by someone and here it could not be claimed that the acceptance of the offer is to be communicated.

5. Regarding the argument of consideration, his Lordship observed that the defendants had requested the public to use the product and the person who used the product as per the advertisement and suffered the inconvenience (i.e., contractual influenza subsequent use of the smoke ball) then it was sufficient to create consideration.

LORD JUSTICE SMITH

Also, Justice Smith agreed with the statements of Lord Justice Lindley and Bowen and further dismissed the appeal of the defendants. The plaintiff thus becomes entitled to the payment.

EFFECTS OF THIS CASE ON THE LAW OF CONTRACTS

After this case, it was clarified how unilateral contracts can take shape if not taken due care of by the advertisers and also by anyone who sets out an offer to the world at large. The case of Carlill v Carbolic Smoke Ball Company helped ordinary people to fight big companies. The judgment had a great impact on the Law of Contracts and especially on Unilateral Contracts, therefore after this case, the big companies and various other agencies became very careful as to what to advertise to the public at large.

CONCLUSION

This case is regarded as the most important case in the Law of Contracts as it clarifies the concept of unilateral contracts. Communication of the acceptance of an offer is always regarded as important but this case marked out these situations as an exception to it. Therefore this case helps in understanding the essential elements of a contract as this case was an exception to it. The commercial uncertainties created due to such a vacuum in unilateral contracts also affect the concept of the privity of contracts. Also, it could be stated that to know the intention of parties the test should be objective and not subjective, just because the promisor says that there was no intention to get into a contract would not exempt him from his duty or liability. If a person's son is lost and he puts up posters of him stating that the person who finds him will get

a reward of ten thousand then if his son is found by someone, then he will be entitled to get the payment.