

Louisa Carlill v. Carbolic Smoke Ball Company

[1892] EWCA Civ 1

Equivalent citation- [1892] 2 QB 484 (QBD)

Bench- Lindley LJ, Bowen LJ and AL Smith LJ

Carlill v Carbolic Smoke Ball Company [1892] EWCA Civ 1 is an English contract law decision by the Court of Appeal, which held an advertisement containing certain terms to get a reward constituted a binding unilateral offer that could be accepted by anyone who performed its terms. It is notable for its curious subject matter and how the influential judges (particularly Lindley LJ and Bowen LJ) developed the law in inventive ways. *Carlill* is frequently discussed as an introductory contract case, and may often be the first legal case a law student studies in the law of contract.

The case concerned a flu remedy called the "carbolic smoke ball". The manufacturer advertised that buyers who found it did not work would be awarded £100, a considerable amount of money at the time. The company was found to have been bound by its advertisement, which was construed as an offer which the buyer, by using the smoke ball, accepted, creating a contract. The Court of Appeal held the essential elements of a contract were all present, including offer and acceptance, consideration and an intention to create legal relations.

FACTS:

The Carbolic Smoke Ball Co. made a product called the "smoke ball". It claimed to be a cure for influenza and a number of other diseases, in the context of the 1889–1890 flu pandemic (estimated to have killed 1 million people). The smoke ball was a rubber ball with a tube attached. It was filled with carbolic acid (or phenol). The tube would be inserted into a user's nose and squeezed at the bottom to release the vapours. The nose would run, ostensibly flushing out viral infections.

The Company published advertisements in the *Pall Mall Gazette* and other newspapers on November 13, 1891, claiming that it would pay £100 to anyone who got sick with influenza after using its product according to the instructions provided with it.

“£100 reward will be paid by the Carbolic Smoke Ball Company to any person who contracts the increasing epidemic influenza colds, or any disease caused by taking cold, after having used the ball three times daily for two weeks, according to the printed directions supplied with each ball.

£1000 is deposited with the Alliance Bank, Regent Street, 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.”

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.

Mrs Louisa Elizabeth Carlill saw the advertisement, bought one of the balls and used it three times daily for nearly two months until she contracted the flu on 17 January 1892. She claimed £100 from the Carbolic Smoke Ball Company. They ignored two letters from her husband, a solicitor. On a third request for her reward, they replied with an anonymous letter that if it is used properly the company had complete confidence in the smoke ball's efficacy, but "to protect themselves against all fraudulent claims", they would need her to come to their office to use the ball each day and be checked by the secretary. Mrs Carlill brought a claim to court. The barristers representing her argued that the advertisement and her reliance on it was a contract between the company and her, so they ought to pay. The company argued it was not a serious contract.

ISSUES:

: Was there a binding contract between the parties?

- A contract requires notification of acceptance

Did Mrs Carlill notify Carbolic of the acceptance of the offer?

Did Mrs Carlill provide consideration in exchange for the 100 pounds reward?

Defendant's argument is: There was no binding contract – the words of the ad did not amount to a promise because:

- The advertisement was too vague to make a contract.

There was no limit as to time & no means of checking use of the ball by consumers;

- The terms are too vague to make a contract- no limit as to time.

A person might claim they contracted flu 10 yrs after using the remedy

- No contract b/c a contract requires communication of intention to accept the offer or performance of some overt act.

Plaintiff's argument is: advertisement was an offer they were under an obligation to fulfill because it was published so it would be read and acted upon & it was not an empty boast.

- The promise was not vague - & there was consideration.

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. Among the reasons given by the three judges were (1) 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 (2) that satisfying conditions for using the smoke ball constituted acceptance of the offer (3) that purchasing or merely using the smoke ball constituted good consideration, because it was a distinct detriment incurred at the behest of the company and, furthermore, more people buying smoke balls by relying on the advertisement was a clear benefit to Carbolic (4) that the company's claim that £1000 was deposited at the Alliance Bank showed the serious intention to be legally bound. The judgments of the court were as follows.

Lindley LJ – The advertisement was an express promise to pay 100 pounds to anyone who contracts flu after using the ball three times daily for 2 weeks. The ad was not a mere puff because of this statement “1000 is deposited with the Alliance Bank, showing our sincerity in the matter” proof of sincerity to pay. Promise is binding even though not made to anyone in particular a unilateral offer – i.e. “offers to anybody who performs the conditions named in the advertisement, and anybody who does perform the condition accepts the offer”. The ad is not so vague that it cannot be construed as a promise – the words can be reasonably construed. For example, that if you use the remedy for two weeks, you will not contract the flu within a reasonable time after that. Notification of acceptance

need no precedent the performance “this offer is a continuing offer” or “If notice of acceptance is required, the person who makes the offer gets the notice of acceptance contemporaneously with the notice of the performance of the condition”. When there is an offer to the world at large, acceptance is legally valid when the offeree communicates i.e. to the offeror notice of performance of the specified conditions. This means acceptance is not legally valid when notification of the performance of the specified conditions does not occur. • Consideration: There was consideration in this case for two reasons:

1. Carbolic received a benefit i.e. in the sales directly beneficial to them by advertising the Carbolic Smoke Ball
2. The direct inconvenience (and detriment) to the person who uses the smoke ball 3 times a day for 2 weeks according in other words; performance of the specified conditions constitutes to the directions at the request of Carbolic consideration for the promise.

Bowen LJ- Contract not too vague to be enforced. Promise was not a mere puff b/c statement that 1000 pounds in bank. An offer can be made to the whole world – and will ripen into a contract with anybody who comes forward and performs the condition. Notification of acceptance - There is no need for notification of acceptance of the offer. (Bowen LJ differs from Lindley LJ on this point) o An inference should be drawn from the transaction itself that if he performs the condition, there is no need for notification. Consideration was using the Consideration there was consideration for the problem for same reasons as Lindley LJ smoke ball the reason that use of the smoke balls would promote their sale.

Smith LJ – Decides on same basis as Bowen LJ

CONCLUSION:

In the concurrences of Bowen L.J. and A.L. Smith, L.J., the notion of contractual consideration also becomes an issue of relevance. Both of these Judges note that while the Defendant could argue lack of consideration, Plaintiff, in buying the Carbolic Smoke Ball and using it as directed, provided adequate consideration through the inconvenience she experienced by using the product.

This case stands for the proposition that while sales puffery in advertisements is generally not intended to create a contract with potential product buyers, in this case it did because the Defendant elevated their language to the level of a promise, by relying on their own sincerity.