

Sample case summary of *Carlill v Carbolic Smoke Ball Co* [1892] 2 QB 484

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Facts:

- Carbolic Smoke Ball Co (def) promises in ad to pay 100 pounds to any person who contracts flu after using smoke ball.
- Carlill (plaintiff) uses ball but contracts flu + relies on ad.

Issue: 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?

Def argument is: There was no binding contract – the words of the ad did not amount to a promise b/c:

- the ad 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: ad 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.

Held: (Application). There was a binding contract. Carlill successful.

Lindley LJ – The ad was an express promise – to pay 100 pounds to anyone who contracts flu after using the ball three times daily x 2 weeks.

- The ad was not a mere puff: b/c of this statement “1000 is deposited with the Alliance Bank, shewing our sincerity in the matter” – proof of sincerity to pay
- Promise is binding even though not made to anyone in particular – a unilateral offer – ie. “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 – notification of the acceptance *need not precede the performance* – “this offer is a continuing offer”
 - “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”.
 - ie. → when there is an offer to the world at large, acceptance is legally valid when the offeree communicates 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 ie. 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 x 2 weeks according to the directions at the request of Carbolic → in other words: performance of the specified conditions constitutes 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)
 - An inference should be drawn from the transaction itself that if he performs the condition, there is *no need for notification*.
- Consideration - there was consideration for the problem for same reasons as Lindley LJ → consideration was using the smoke ball + the reason that use of the smoke balls would promote their sale.

Smith LJ – decides on same basis as Bowen LJ

Ratio/Principle/Authority this case stands for:

In unilateral contracts, communication of acceptance is not expected or necessary.

- If there is an offer to the world at large, and that offer does not expressly or impliedly require notification of performance, performance of the specified condition in the offer will constitute acceptance of the offer and consideration for the promise.

(The three judges in this case agreed on this issue)

Statements made in an advertisement may be a mere “puff” and not intended to be legally binding. If the advertisement shows a clear promissory intention to be legally bound, it may constitute a unilateral offer.