TABLE OF CONTENTS

AGREEMENT

OFFER

GIBSON V MANCHESTER CITY COUNCIL [1979] 1 WLR 294

[*Language of commitment required for an offer – Acceptance only by unqualified assent – Invitation to treat is not an offer*]

MATERIAL FACTS:

- MCC (def.) adopted a scheme allowing tenants of council housing to purchase the title to their homes
- MCC sent Gibson (plaintiff) a letter that stated that it "may be prepared to sell the house" to Gibson and inviting him to fill out an application form if he was interested in buying the house
- Gibson had some preliminary correspondence with MCC about buying his home
- When Gibson applied to MCC, he left the purchase price blank on the application form as he hoped to negotiate a discount in lieu of MCC undertaking certain repair works
- MCC then sent a letter stating that they would not ↓ the price and Gibson replied with a letter advising the Council to carry on with the purchase as per his application
- There was a Δ in government and the scheme was abandoned; the new government decided to complete only those sales for which a binding contract had been concluded
- MCC (under the new government) denied that there was a binding contract with Gibson

OUTCOME:

1. MCC's appeal allowed; ruled that there was no contract between Gibson and MCC.

ISSUES:

1. Was there a binding contract between Gibson and MCC; if MCC provided an offer to be accepted by Gibson?

POINTS TO NOTE:

1. What, according to the Court of Appeal, was required for a contract to come into existence?
    - Lord Denning MR said to "look at the correspondence as a whole and at the conduct of the parties and see therefrom whether the parties have come to an agreement on everything that was material"
    - No need for the traditional approach (offer and acceptance)
2. Why did Lord Diplock consider this approach to be wrong?
    - Not 1 of the exceptional contracts that do not "fit easily into the normal analysis of offer and acceptance"
    - An alleged contract formed from the exchange of correspondences is not exceptional; correspondence can be examined for offer and acceptance
3. What led Lord Diplock to the conclusion that there was no contract between the parties? What was the decisive factor?
    - No offer:
        - At best a preliminary agreement because of the language: "may be prepared to sell", "If you would like to make a formal application to buy your council house"
    - Questionable acceptance:
        - Gibson left the purchase price blank in his application form in hope of negotiating a discount in lieu of MCC undertaking certain repair works
            - More counter-offer than acceptance
            - Qualified assent; attempt by Gibson to negotiate

        - No offer for Gibson's acceptance in the first place
    - No acceptance of Gibson's counter-offer
        - MCC only rejected Gibson's asking for a discount in their reply
4. How else could MCC have argued there was no contract?
    - That the letter was an invitation to treat
5. What legal rule or rules emerge out of this case?
    - Starting point should always be the traditional approach of offer and acceptance
    - Language should demonstrate the willingness to be bound in order to see if it is an offer
    - Assent has to be unqualified to be deemed as acceptance

CARLILL V CARBOLIC SMOKE BALL CO [1893] 1 WB 256

[*Unilateral contract – Performance in unilateral contract amounts to consideration – Notification of acceptance unnecessary in unilateral contracts*]

MATERIAL FACTS:

- CSB Co manufactured a device called 'Carbolic Smoke Ball' which was claimed to prevent colds and influenza
- CSB Co placed following advertisement in several newspapers:
    - "£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 3 times daily for 2 weeks according to the printed directions supplied with each ball. £1,000 is deposited with the Alliance Bank, Regent Street, shewing our sincerity in the matter"
- Carlill purchased a smoke ball from a chemist on the faith of the advertisement and used it in accordance with the manufacturer's directions from 20 Nov 1891 until 17 Jan 1892, when she contracted influenza
- When CSB Co refused to pay her £100, Carlill sued for breach of contract

OUTCOME:

1. CSB's appeal dismissed
2. There was an offer and acceptance, and a binding contract had come into existence.

ISSUE:

1. Was there a binding contract between Carlill and CSB?
    a. No notification of acceptance by Carlill to CSB (as required in traditional approaches)
    b. Whether consideration was provided by Carlill to CSB in return for the £100

ARGUMENTS:

Def argued that:

- The ad was not an offer, but 'mere puff'
- Not binding as contract was not made with anybody in particular
- Even if offer had been made, there was no valid acceptance by Carlill (no notification of acceptance)
- Not a contract as there was a problem with certainty
    - Ad was too vague – no limit as to time and no means of checking use of the ball by consumers
    - Terms were too vague – no limit as to time of protection by using the ball as instructed (for the next few weeks/days or rest of your life?)

POINTS TO NOTE:

1. Why was CSB Co.'s advertisement held to constitute a contractual offer rather than a mere puff?
    - Failed because CSB had £1,000 deposited in the bank to show their sincerity in making payments
    - There was certainty on how to get the £100

2. To whom was the offer made? Why did it not matter that the offer was not made to specific individuals?
    - Offer was unilateral; Lindley LJ: "offers to anybody who performs the conditions named in the advertisement, and anybody who does perform the condition accepts the offer"
3. How did CSB Co argue that the offer had not been accepted? Why was this argument rejected?
    - No notification of acceptance:
        - Lindley LJ: No requirement for notification of acceptance preceding the performance as it was a unilateral offer
            - In a unilateral offer, notification to the offeror by the offeree of performance of the conditions amounts to acceptance of the offer
        - Bowen LJ: No need for notification of acceptance; inference should be drawn from the transaction itself that if he performs the condition, there is no need for notification
    - No consideration by Carlill:
        - Consideration was shown in 2 ways
            - CSB received benefit from the sales of the smoke ball through the ad
            - Carlill's detriment was the inconvenience of having to use the smoke ball in the way specified by CSB in the ad (3 times a day for 2 weeks)
4. What consideration had Carlill given to CSB Co? Can you identify the ratio decidendi?
    - Consideration (see above)
    - Ratio decidendi: Notification of acceptance is not necessary in unilateral contracts. Clear language used in the ad show willingness to be bound, can be construed as a unilateral offer
5. Why was there doubt as to whether the offer made was sufficiently certain? Why did the court find that the offer was sufficiently certain?
    - No issue with certainty, the words of the ad were not vague and could be construed to be a promise
        - Use the smoke ball as instructed for 2 weeks and you will not contract the flu

MACROBERTSON MILLER AIRLINE SERVICES V COMMISSIONER OF STATE TAXATION (WA) (1975) 133 CLR 125

[*Difficulty in applying doctrines of offer and acceptance in everyday contractual situations*]

MATERIAL FACTS:

- Booking procedure:
    - Passenger would be advised, on inquiry, what seats were available to his or her destination and the relevant fare
    - Once the passenger selected a flight he or she would be handed a ticket in return for the fare
    - On the day of the flight, the passenger presents the ticket to secure his or her flight
- A condition printed on the ticket gave the airline the right to cancel any flights and to cancel any tickets
- It was necessary, for stamp duty purposes, to determine whether the ticket so issued was 'an agreement or any memorandum of agreement'

POINTS TO NOTE:

1. Why was it necessary to decide when a contract between the airline and a passenger was made?
    - Issue on whether stamp duty is applicable from the issue of the ticket as stamp duty applicable on agreement or a memorandum of agreement
2. Who made the offer, how was it accepted, and when was the contract made, according to Barwick CJ?
    - Offer made by passenger when presenting the ticket to the airline for travel
    - Acceptance by the airline would be when a seat is allocated to the passenger, contract is made here
    - Ticket is a receipt for prepayment and not an agreement or a memorandum for agreement
    - Illusory promise: Airline reserves right to cancel any flight or any ticket; they do offer some form of monetary compensation or getting them on the next flight
3. Who made the offer, how was it accepted, and when was the contract made, according to Stephen J?

- Offer made by the airline in the issuing of ticket
  - Ticket is an evidence of the contractual offer
- 2 forms of acceptance by the passenger:
  - When they present the ticket for travel
  - Not objecting to the terms within a reasonable time after receipt of his ticket

4. Is the identification of an offer and acceptance a useful way in which to determine when a contract is made between an airline and a passenger?
   - No, it is not

MOBIL OIL AUSTRALIA LTD V WELLCOME INTERNATIONAL PTY LTD (1998) 81 FCR 475

[*Unilateral contracts can be revoked unless for implied ancillary contract*]

MATERIAL FACTS:

- Mobil wanted to implement a "9-for-6" scheme (9 free years for franchise if franchisees obtain 6 years of 90% and above score in Circle of Excellence)
- Communicated this with franchisees via videotape and literature distributed to franchisees
- Interested franchisees were required to return a tear-off slip in a brochure to indicate that they accepted this 9-for-6 challenge
- 4 years in, Mobil announced it would not go ahead with the 9-for-6, but would discount renewal fees for franchisees that attained 90% or more in 1992 and 1993

OUTCOME:

1. Appeal by Mobil allowed, there was no offer by Mobil given the lack of certainty as the scheme was insufficiently defined.
2. No general principle preventing the revocation of offers in unilateral contracts once offeree has started performance.

ISSUES:

- 2 contractual issues were raised in this case:
  - Did Mobil make a contractual offer?
  - Are parties able to revoke an offer to enter a unilateral contract when the offeree has part-performed the obligation that constitutes acceptance?

POINTS TO NOTE:

1. What other causes of action do you think might have been relied upon by the franchisees?
   - Franchisees had their estoppel claims dismissed in trial court [see p. 53]
   - Trial judge found that there was no misleading conduct in breach of s 52 of the *Trade Practices Act 1974*
2. What was the nature of the offer which the trial judge found had been made?
   - Unilateral contract
   - Willingness to be bound by the scheme because of the language (guarantee, commitment)
3. Why was the offer held to be irrevocable (by the trial judge)?
   - General principle that the offeror cannot revoke their contract once performance of the conduct had started
4. Why did the Full Court find that no offer had been made?
   - Lack of certainty: No sufficiently clear promise was made, a scheme that was insufficiently defined
     - "to extend [for an unspecified period]"
     - "consistently [over some undefined period]"
5. If an offer had been made, would it have been revocable?

- What is the status of this part of the judgment?
  - HCA said this was wrong in law, no such principle that stops revocation
  - Revocation should deal with the facts of the case
  - Factual positions of the offeror and offeree would have different positions in the scheme

6. When is an offer to enter into a unilateral contract irrevocable, in the opinion of the Full Court?
   - Only when there is an implied ancillary contract where the offeror promises not to revoke the once the offeree commences performance
   - Does not mean that a revocation even with an implied ancillary contract would not be effective