

Contract Notes

FORMATION OF CONTRACT

Is there a validly formed contract?

Carlill v Carbolic Smoke Ball Company [1893]

- Not necessary for an offer to be made to a specific person or a class of group of people
- An offer can be made to “all the world”, in which case the offerree is regarded as a member of the general public
- Performance can count as acceptance
- Inconvenience can be consideration
- Sincerity/intention
- Generally, an advertisement is an invitation to do business, not an offer, as it invites a bargaining response rather than acceptance. Such propositions are considered an invitation to treat.
- However, in Carbolic, the advertisement guaranteed that the company would be liable to anyone who performed certain conditions involving buying and using a smoke ball product alleged to cure certain ailments if a certain result did not eventuate. Namely the curing of those ailments. This was held to constitute a unilateral offer to the world, and thus acceptance fell immediately on those who performed the stipulated conditions.
- The pl. accepted the company’s offer to pay the reward by using the smoke ball in accordance with the instructions and then contracting influenza.
- No negotiations here, advertisement itself was enough to execute contract on their behalf

Gibson v Manchester City Council [1979]

- Any proposition is an offer if it shows a party's intention to be legally bound immediately upon acceptance of the proposal
- Such an intention is met where an offer has been made in clear and unequivocal terms
- There was no binding contract because no offer capable of acceptance had been made by the Council
- The statements in the letter that the Council 'may be prepared to sell' and inviting Gibson 'to make a formal application to buy' were not an offer to sell but an invitation to treat
- The words used in the letter – did not constitute a contract as the letter stated council MAY be prepared to sell the house (as opposed to WILL for example) – words very uncertain
- An intention is met only when an offer has been made in clear and unequivocal terms