

Offer

Gibson v Manchester City Council [1979] House of Lords

Facts	<ul style="list-style-type: none"> • Manchester City Council adopted a scheme allowing tenants of council housing to purchase the freehold title of their home • Gibson received a standard form letter that asked him to complete an application form to buy the house – he did so and returned the letter • Before the formal contract was prepared the council abandoned the scheme and Gibson could not buy the house • Council denied there was a binding contract with Gibson
Procedural History	<ul style="list-style-type: none"> • Trial judge held that there had been offer and acceptance and there was a binding contract • Court of Appeal agreed with trial judge – appeal dismissed
Legal Issue	Whether the exchange of correspondence between Council and Gibson (which included the standard form letter) constituted a contract, in which there was both an offer provided by the council and acceptance of that offer by Gibson.
Judgment (Lord Diplock)	<ul style="list-style-type: none"> • Impossible to construe the letter as a contract – no intention or certainty based on the words used <ul style="list-style-type: none"> ○ The use of the words “may be prepared to sell” were fatal to Gibson’s claim – demonstrates that the council was not selling at that instance ○ There is an invitation “to make a formal application to buy” – not an invitation to accept the offer • Cannot be construed as a contractual offer <ul style="list-style-type: none"> ○ Even if the application form amounts to a contract, there is no evidence suggesting that the corporation accepted the offer • Although one can be sympathetic to Gibson’s plight, it is important that judges remain vigilant to making policy decisions
Outcome	Appeal allowed

Unilateral vs. Bilateral Contract

- A unilateral contract is a contract in which the offeree accepts the offer by performing their side of the bargain
- A bilateral contract is formed by the exchange of promises in which the promise of one party is consideration supporting the promise of the other party

In determining whether an offer has been made, the crucial issue is whether it would appear to a reasonable person in the position of the offeree that an offer was intended, and that a binding agreement would be made upon acceptance. It does not matter whether the offeror in fact intended to make an offer; the court determines the offeror’s intention objectively, according to outward manifestations.

Carlill v Carbolic Smoke Ball Company

Facts	<ul style="list-style-type: none"> • Defendants manufactured a device called a “carbolic smoke ball”, which claimed to prevent colds and influenza – advertised in a number of newspapers • Plaintiff purchased one on the faith of the advertisement and used it in accordance with the manufacturer’s directions when she contracted influenza – advertisement said 100 pound reward to those who contracts influenza after using the ball • Trial judge held the plaintiff was entitled to recover 100 pounds and the defendant appealed
Procedural History	<ul style="list-style-type: none"> • Trial judge – plaintiff entitled to recover the 100 pound reward since she contracted influenza • Present case in Court of Appeal – defendant (Carbolic Smoke Ball) appealing

Legal Issue	<ul style="list-style-type: none"> Whether the advertisement constituted a contract between the plaintiff and the defendant, since the defendant had relied on the advertisement to purchase and use the smoke ball
Judgment	<ul style="list-style-type: none"> Court construed advertisement objectively, according to what an ordinary person reading the document would think was intended, rather than by reference to what an ordinary person actually intended Advertisement was not mere “puffery” i.e. not an offer <ul style="list-style-type: none"> Deposited 1000 pounds in Alliance Bank to show sincerity of the reward As plain as words make it, the advertisement was a promise The advertisement was an offer to the whole world and could be accepted by any person who performed the condition on the faith of the advertisement Although acceptance of an offer must normally be notified to the offeror, the offeror may dispense with that notification <ul style="list-style-type: none"> An offer that calls for performance of particular conditions may be accepted by performance of those conditions The offeror shows by his language and nature of the transaction that he does not accept or require notice of the acceptance apart from notice of the performance – performance of the condition can act as acceptance An offer of a reward is typically this type of offer Reasonable construction must be placed on the advertisement which made it sufficiently certain <ul style="list-style-type: none"> Lindley: preferred meaning is that the reward is offered to a person who contracts the flu within a reasonable time after having used the ball Bowen: while using the smoke ball The use of the smoke ball by the plaintiff constituted both a benefit to the defendant and a detriment to the plaintiff, either of which would have been enough to constitute good consideration for the promise
Outcome	Appeal dismissed

Offers and Invitations to Treat

Offer should be distinguished from invitation to treat, which is an invitation to others to make offers or enter into negotiations.

Ticket Cases

Courts regard the issue of a ticket by a person as an offer that can be accepted or rejected after a reasonable period.

- Necessary to determine when a contract is formed between two parties in order to determine whether a document is chargeable with stamp duty (tax)
- Ticket is just an offer capable of acceptance, but not an agreement or memorandum of the agreement itself

The view held after *MacRobertson* is that the ticket only represents an offer made to the passenger, which the passenger accepts by presenting for travel. No contract is formed by the purchase of the ticket alone.

<i>MacRobertson Miller Airline Services v Commissioner of State Taxation</i>	
Facts	<ul style="list-style-type: none"> Person using airline would be advised, on inquiry, what flight seats available to his or her destination and the affair Then prospective passenger gets a ticket, enter appropriate details in return for the fare Condition printed on ticket that airline can abandon flight or cancel ticket, and then passenger would get a refund
Procedural history	<ul style="list-style-type: none"> Supreme Court of WA found that the airline ticket was chargeable with stamp duty Present case in High Court, airline appealing that the ticket should not be subject to the provisions of the stamp act

Legal issue	<ul style="list-style-type: none"> Whether an airline ticket was chargeable with stamp duty as an “agreement” or “memorandum of agreement”
Judgment	<p>Barwick CJ:</p> <ul style="list-style-type: none"> Airline operator did not, by the terms of the ticket, “assume or offer to assume any obligation to carry the intending passenger” In ticket cases, the arrangement is similar to a unilateral contract – passenger makes offer by buying a ticket, airline can choose to accept the offer by conduct, or decline the offer by not carrying the passenger If airline operator is ready to carry passenger but passenger does not present himself in due time, operator may claim to have earned the fare Entitlement of airline company to retain the prepaid fare is dependent on the actual performance of carriage Issue of a ticket neither constitutes an agreement nor memorandum of an agreement The airline operator was not in contractual relations with the intending passenger until it had provided him with a seat on the aeroplane
	<p>Stephens J</p> <ul style="list-style-type: none"> The formation of the contract does not occur upon the issuing of the ticket It occurs when the passenger has through his conduct accepted the offer (e.g. by boarding the vehicle) OR When a reasonable time has passed during which the passenger has an opportunity of reading the conditions and has not then rejected the offer and demanded refund

Shop Sales

The display of goods for sale, whether in a shop window or on the shelves of a self-service store, is ordinarily treated as an invitation to treat, and not an offer. Customers must be regarded as making an offer when they present the items to the cashier and are not bound until the cashier has accepted that offer.

<i>Pharmaceutical Society of Great Britain v Boots Cash Chemists</i>	
Facts	<ul style="list-style-type: none"> Self-service shop where certain drugs were displayed in one part, registered pharmacist controlled this section Customer took the goods, including drugs and went to buy them – pharmacist supervises this part of the transaction and was authorised to prevent customer removing drugs Two customers following this procedure purchased drugs – Pharmacy and Poisons Act 1933 made it unlawful for a person to sell drugs unless supervised by registered pharmacist
Procedural history	<ul style="list-style-type: none"> Trial judge held that the sale of the drugs in the manner above did not contravene the Act Present case is Court of Appeal, appeal by Pharmaceutical Society
Legal issue	<ul style="list-style-type: none"> Whether the sale took place under the supervision of a registered Pharmacist due to the Act which made it unlawful to sell certain drug unless sale is conducted under this conduct Plaintiff argued that: <ul style="list-style-type: none"> Offer was the display of goods by the shop Acceptance was the taking of the goods from the shelf and putting them into a basket – registered pharmacist then has no power to decline the sale