



# Etude de cas : L'arrêt Carlill v Carbolic Smoke Ball Company

publié le 06/12/2011, vu 9718 fois, Auteur : [Droit comparé](#)

**Le droit des contrats est l'un des terrains de jeu préféré des comparatistes. Inévitable, l'arrêt Carlill v. Carbolic Smoke ball Company rendu en 1893 par la Cour d'appel d'Angleterre et du Pays de Galles est encore aujourd'hui l'un des arrêts majeurs du droit des contrats de Common Law. L'essentiel des questions relatives à la formation du contrat y est étudié et cette décision constitue une première ébauche du droit de la consommation. Les lignes qui vont suivre ne revendiquent aucune originalité mais trouvent néanmoins leur place sur ce blog de droit comparé. Afin d'éviter les confusions dans lesquelles les comparatistes peuvent tomber aisément, la version originale sera de rigueur...Enjoy !**

An advertisement was issued in the newspaper by the defendants, the Carbolic Smoke Ball Co, to promote its smoke ball. It offered to pay £1000 to any person who contracted influenza after using it as prescribed. Mrs Carlill caught influenza even if she used the smoke ball in the correct manner and decided to sue the defendants for the £1000.

The success of the plaintiff, Mrs Carlill is the result of a reasoning raising a number of fundamental points about formation of contract. These points were dealt in logical order by judges in order to answer to all the legal obstacles met.

The first obstacle was to determine whether there was an offer or not. More precisely, it was mandatory to show that the offer was clear and unambiguous and be capable of being construed as an offer. The argument used by the company was that what was said in the advertisement was mere sales talk and should not be taken seriously. To dismiss the argument and give reason to Mrs Carlill, judges shown that the words used in the advertisement was in a very definite language which does not mean different things. In other words, The company was guaranteeing to pay the money and it had deposited some money at the Alliance bank to show that it was being serious. We can see here the application of the objective test.

The second issue concerns the possibility to make an offer to the world or not. Indeed, it was argued that you cannot make an offer to the world. Alternatively, the alleged contract was not made with anyone in particular. In Carlill V Carbolic Smoke Ball CO, the judges' reasoning was that this type of offer could be made to the world but then only a limited number of people would accept such an offer by doing what was required in the advertisement, in this case use the ball following the conditions given. In other words, reward type offers ripen into contract when someone responds and does what is requested in the reward advertisement.

After the issue of the offer came the one of the acceptance and more precisely the application of the principle according to which the acceptance must be communicated. This is the general rule but the judges were able to overcome this difficulty by saying that the person who makes the offer may expressly or impliedly dispense with the need for notification of acceptance. It is obvious that in the case of a reward-type offer it is not necessary for all those people who intend to respond to

notify that they are responding. In other words, the requirement for communication may be waived by the offeror and moreover, judges added that acceptance may result of acts.

The certainty of terms was then used by the company to obtain success in this case. It was argued that the advertisement was too vague; clearly, there were so many possible interpretations of the advertisement that it was too uncertain to constitute a contract. The approach of courts to this problem is to apply the objective test: how would a reasonable person have construed the advertisement? Although there were a number of different meanings which could be placed on the advertisement and although the judges did not entirely agree as to what was the correct meaning but Mrs Carlill had made out her case whichever meaning was chosen. She had contracted influenza whilst using the smoke ball. That was sufficient.

Another fundamental element of contract law was involved, consideration. Indeed, the question was whether or not Mrs Carlill had provided consideration for the company's promise. It implied to look for the benefit received by the company but it was not obvious considering the fact that Mrs Carlill just used the ball. Finally, judges found two way to justify the consideration of Mrs Carlill, the first one is that the use of the ball can invite other people to buy the ball and at the end create a benefit for the company and on the other hand it was argued that as long as the use was detrimental for Mrs Carlill, that was sufficient to characterize a consideration.

The case Carbolic Smoke ball is a landmark case in respect of common law on contracts. The renowned of this case is first founded on the fact that in admitting that an offer can be made to the world, this case extends the scope of the contract law to day to day situation. Indeed, by this holding was admitted that some advertisement as the one in Carlill V Carbolic Smoke Ball could lead to contractual relationship. The extension of the contract law was then extended by the holding that the communication of acceptance requirement can be waived by the offeror and deducted by the act of the offeree. One more time, contractual law was no longer useful for the business world or sales of important items; contract could apply to day to day situation as do shopping in a supermarket or take a bus.... The other part of the success of this case is that all the contractual requirements for the formation of a valid contract was raised and it gives a good example of legal reasoning when issues about formation of contract are raised.