

IN THE COURT OF APPEAL (CIVIL DEVISION)

BETWEEN: **ERIC POLLARD** **(APPELLANT)**
 -AND-
 VIV WINDSOR **(RESPONDENT)**

WRITTEN ARGUMENT – SENIOR RESPONDENT; ISI

BACKGROUND

Viv Windsor bought a local shop and a computer,
Anxious to please the locals, put an advert in the local news paper on a Saturday, stating that she would sell luxury chocolate shortbread for £2.50 instead of the recommended retail price of £5.
She also stated that anyone wanting the shortbread should email her or come to the shop.
Eric pollard, the appellant saw the email at 4.30pm on Saturday and sent her email on the same day.
She realised that evening that she was making lose so she decid ed to revoke the advert.
She contacted the newspaper who published her revocation 9.am the next morning.
The paper got delivered to Eric at 10.30am
Viv checked her email at 10.35am,
She replied stating that the discount was no longer available.
Eric sued her for breach of contract.

A GROUND OF APPEAL

There was no contract between Viv and Eric since the notice in the paper was not an offer but an invitation to treat.

ARGUMENT

A contract by definition is an agreement between two parties by which both parties are bound by the law and which can therefore be enforced in a court or other equivalent forum. The law of contract has been known to bring equality and fairness especially to consumers whom are said to be more disadvantaged than suppliers/ sellers. Statutes have also been developed for example, sales of goods act (1979) and the unfair terms in consumer contract regulations (1994) but does this mean that consumers are the only ones with rights when it comes to contract? Should sellers be bound to sell their goods forcefully due to the law of contract? The answer to these questions is somewhat obvious as the law of contract didn't come into existence to bring injustice or limitations to just one party. The ruling of the case of, *Felthouse V Bindley (1862)* makes it clear what the law of contract is there for. Which amongst many more reasons is the fact that, obligation cannot be imposed on another party. Eric saw Viv's advert on the newspaper and automatically assumed that even without communication or consensus ad idem (meeting of the mind) Viv was under an obligation to sell her goods.

The main problem in this case is the inability of Eric to understand the law of contract. In this case, the offeror and the offeree need to be established in order to know who acceptance really lies upon. When the offeree and the offeror plus who should accept have been established, we also need to know whether there was an intention to be legally bound. Knowing the general shopping principles which states that, the display or advertisement in a small section of a newspaper, internet E.T.C is an invitation to treat and that customer offers to buy the goods at a particular price the offer can then be accepted by the seller in some actions for example by entering the price in a cash register. Only after this is the offer a binding contract. When Viv put the advert in the local newspaper and attaching a price, she was inviting potential buyers to come make an offer, which makes whoever is interested in her shortbread the offeror, and in this case Eric who had replied to her advert. Therefore, Viv is the offeree, so acceptance lies upon her. although the case of *Eric V Viv Windsor* can be easily mistaken to be similar to the famous controversial case of *Carlill V Carbolic smoke ball 1893* which the judge ruled that there had been a breach of contract because the sellers of the smoke ball deposited a certain amount in the bank therefore having intentions to be legally bound. It is essential to note the differences between these two cases. *Carlill V carbolic smoke ball* was a unilateral offer being that there was consideration between the owners of the carbolic smoke ball company and whoever chooses to use the smoke ball in a certain way unlike the present case at hand where there was no consideration of any sort. Although Viv did put a statement of price on the shortbread it is important to establish the fact that a statement of price does not amount to an offer. The case of *Gibson V Manchester City Council 1979* has set precedent in the sense that the council presented a statement of price to Gibson and asked him to complete a certain form which should be submitted. The court still ruled that this was not an offer but an invitation to treat even though there had been some sort of negotiation between the parties.

The issue of differentiating an offer from an invitation to treat exists in case law and was established in the case of *timothy V Simpson* in order to create equity

and following the idea that there is freedom to contract. If not for this, sellers would be bound to trade with their worst enemies or rivals. *Winfield* in 1939 expressed this in the following way. 'A shop is a place for bargaining and not compulsory sales.... If the display of such goods were an offer, the shop-keeper might be forced to contract with his worst enemy, his greatest rival or a reeling drunkard'. Other cases which express Viv's action as an invitation to treat are; *Fisher V Bell*. Even the case of *Partridge V Crittenden* 1968 which was supposed to be a criminal case because the buyer was convicted of going contrary to the provisions of the *protection of wild birds act 1954*, offering for sale a wild life bird for 25s each. The court quashed this conviction, stating that it was an invitation to treat and not an offer. And as Lord Denning, master of the rolls said, "The court cannot match the experience and knowledge of the legislator" in other words, judges cannot make their own law so if this ruling was wrong and opposes the statute, parliament would have resented it. Lord Parker said in his judgement, 'I think that when one is dealing with an advertisement and circulars unless indeed they come from manufacturers, there is business sense in their being construed as invitations to treat and not offers for sale'. Lord Parker also went on to explain that if the advertisement was an offer, the seller may find himself in contract with a large number of people when he only had a limited supply of birds for sale. This is a practical reason which should be applied to Eric and Viv being that Viv had only 50 boxes of chocolate shortbread, if the advertisement on the newspaper was an offer, she would find herself in contract with the thousands of locals that would read the newspaper.

Applying business sense to the case, it is known that the aim of every privately owned business is to make profit in order to cover the cost of opening the business. And according to the facts of the case, Viv bought a computer and a shop along with other items other than the shortbread. First of all, in good faith she wanted to sell an item for a discount price hoping that this would be an invitation to consumers to come purchase the other items in her shop, but when she noticed that people were not interested in other items in the shop but the shortbread and she was thereby making a loss, she quickly revoked the advert.

Furthermore, in *Shuey V US...*, (1875) a case which concerned the apprehension of a criminal but was later revoked without the plaintiff's awareness. An authority was set for the fact that it is sufficient if the revocation is communicated using the same channel used to communicate the original offer and if this is done it is irrelevant if particular offerees did not see or know about the revocation although this is not an English case, the English case of *Routledge V Grant* (1828) which set an authority that an offer can be revoked provided it is communicated to the offeree. This would be applied if Eric had really believed that there was a contract in the first place.

Since there was no consensus ad idem, the advert made by Viv falls under the shopping rules which states that an advertisement on a newspaper is not an offer but an invitation to treat, there was no offer nor acceptance of any sort, it would be simply fraudulent for Eric to try and force Viv into an un-existing contract and try to make her liable to prosecution.

