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| Business and Corporate Law |

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# Part A

## Issue

The issues presented in this scenario is related to contract law, i.e., if the published advertisement had the capacity to form a contractual relationship, if the forty customers, who came to the shop, could claim their haircut for $10, if the other ten customers, who have not brought the advertisement with them, could enforce Ming for the haircut, if the advertisement could create a legal relationship, and if such a relationship could be eliminated by putting a sign on the shop to terminate the offer.

## Rule

The common law principles provide provisions regarding contract law and governance of a contractual relationship between contracting parties. As per these provisions, parties have to make sure that they make a differentiation between an offer and an invitation to treat (Fitzpatrick *et al.,* 2011). A contract cannot be constructed between parties through an invitation to treat as given in *Harvey v Facey* since it does not fulfil the basic element of a valid offer; the parties must have the intention to create a legal relationship once acceptance is received on the offer. In the real-world scenario, it often happens that the contracting party does not have the intention to create a legal relationship but it invites the other party to make an offer through an invitation to treat via advertisements, as provided in the case of *Partridge v Crittenden*. Although parties cannot form contractual relationships through an invitation to treat but it is not an absolute rule. Thus, exceptions exist, such as in the case of *Carlill v Carbolic Smoke Ball Co*.

The case of *Carlill v Carbolic Smoke Ball Co* provide several provisions based on which an advertisement can be considered an offer. The court provided the concept of the unilateral offer, which can be made by a party, and it remains open to the entire world (Fitzpatrick *et al.,* 2011 p.85). In this particular case, an advertisement was published by a company in the newspaper while promoting their medication. They made a promise in the advertisement that people contracting influenza after using their medication will receive a reward of 100 pounds by the company (Poole, 2016 p.4). Mrs Carlill purchased and used the medication as per the instructions provided in the advertisement. However, she contacted influenza and thus made a claim for her reward. The company rejected the claim based on the ground that it was an advert and not an offer. The court decided otherwise. It was held that the advertisment was a unilateral offer since the wordings and the actions of the company to put money in the bank show the sincerity of the company to form a contract (Poole, 2016 p.14). In response to the claim brough forward by the company that an offer could not be open to the entire world, the court provided that a unilateral offer can be accepted by anyone (Fitzpatrick *et al.*, 2011 p.91). The court further elaborated that communication of acceptance is made when the parties comply with the instructions provided in the advertisement.

In the case of consideration, the court provided that consideration can be of any value, as in the case of *Thomas v Thomas.* In the particular case under discussion, the amount of consideration consisted of the payment made by Mrs Carlill for puschasing the product. Since all prerequisites of a binding contract were met in this scenario, the court established that a legally enforceable relationship had been established between the two parties in the case of *Carlill v Carbolic Smoke Ball Co*. Further elaboration on the amount and form of consideration has been provided in the case of *Chappell Â Co Ltd v Nestle Co Ltd* where the court held that a consideration needs to be adequate but it needs not to be sufficient, and it can be of any value. The court further provided that a unilateral offer cannot be terminated like a regular offer but only in two conditions. Firstly when the performance of the contract has not been started by the parties after the advertisement is posted and secondly when performance is not completed by the parties within a reasonable period.

## Application

In the given scenario, the first issue relates to the validity of the advertisement posted by Ming to be constituted as a valid offer. The principles discussed in the case of *Carlill v Carbolic Smoke Ball Co* are necessary to be analysed in order to determine if a valid unilateral offer has made or not (Fitzpatrick *et al.,* 2011 p.90). The intention of Ming was to post the advertisement in order to increase the number of customers of his business. He did not post it with the intention of an invitation to treat since he provided specific instructions for its customers, which they can follow in order to get a $10 haircut from him. The first forty customers complied with the instructions given in the advertisement since they brought a copy of the advertisement with them. The acceptance in a unilateral offer is given by the parties by complying with the instructions which are present in this case.

As discussed in *Chappell Â Co Ltd v Nestle Co Ltd* (Fitzpatrick *et al.,* 2011 p.157), the consideration in this case is present despite the fact that the usual cost of a haircut is $60 rather than $10 because consideration can be any value and it need not to be sufficient to form a valid contract. Thus, since the elements of a contract are present, the forty customers can legally enforce their contractual terms on Ming to claim their $10 haircut. However, the case is not the same with the other ten customers because a contract has not been formed with them. The element of acceptance is missing in their case because the customers did not follow the instructions mentioned in Ming’s advertisement. The sign put by Ming on the shop in order to terminate the offer through the advertisement is not valid since a unilateral offer can only be terminated by two mediums: performance has not started, or it is not finished within a reasonable period. As long as customers brought the copy with them, they can claim the $10 haircut. Thus, Ming should specify a time period for this offer after which the offer will be terminated.

## Conclusion

To conclude, the advertisement is considered a valid offer which is open for the entire world, and it was accepted by forty customers who can claimed their $10 haircut. The other ten customers have not given their acceptance; thus, a contract is not formed with them. Also, the sign put up by Ming does not terminate the offer.

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