

## The Passionate Shepherd

*Catching influenza was not requested by the defendants.*

### I. Read the case and answer the following questions:

1. When exactly did the plaintiff accept the offer?
2. How and up until when could the defendants have withdrawn their offer?
3. Did the plaintiff ever become bound by the contract?

### Carlill v Carbolic Smoke Ball Co (1893) CA



The defendants advertised that they would pay £100 to anyone who contracted influenza having used their smokeball three times a day for two weeks and they declared that £1,000 was on deposit with the Alliance Bank 'showing our sincerity in the matter'. The plaintiff used the smokeball as directed and caught influenza, whereupon the defendants declined to pay the £100.

*Held* the plaintiff had a good claim to £100 from the defendants for the following reasons. (I) The advertisement was not a 'mere puff', or an invitation to treat, and it could be an offer to all the world. *Per* Bowen LJ: 'why should not an offer be made to all the world which is to ripen into a contract with anybody who comes forward and performs the condition?' (II) (1.2.3) An offeror may dispense with notice of acceptance or specify its mode. *Per* Lindley LJ:

...in a case of this kind...the person who makes the offer shews by his language and from the nature of the transaction that he does not expect and does not require notice of the acceptance apart from notice of the performance.

(III) (3.2) The defendants requested that the plaintiff should use the ball and the plaintiff's using it was therefore sufficient as consideration for the defendants' promise. In general, the inconvenience of one party at the other's request is sufficient consideration.