FISHER V BELL [1961] 1 QB 394

FACTS OF THE CASE:

The respondent was a shopkeeper of a retail shop in Bristol whereas the appellant was a chief inspector of police. A police constable walked past the shop and saw the display of flick knife with price attached to it. The police constable examined the knife and took it away for examination by a superintendent of police. The police constable later returned to inform the respondent that the knife was a "flick knife" and that the respondent would be reported for offering for sale a flick knife. The appellant contended that the display of flick knife was in violation of Section 1(1) of the Restriction of Offensive Weapons Act 1959 (the Act) because by displaying the flick knife in the shop window, the respondent was offering the flick knife for sale, which was prohibited under the Act. However, the respondent claimed that he did not offer the knife for sale within the meaning of the Act of 1959.

ISSUES RAISED:

The issue was whether the display of the knife constituted an offer for sale (in which case the defendant was guilty) or an invitation to treat (in which case he was not).

RULE OF LAW WHICH APPLIES:

The case was first tried in the magistrates' court in the City and County of Bristol in 1960. The justices held that the words "offer for sale" ought to be construed in the meaning in the law of contract, and that the defendant's action merely constituted an invitation to treat, not an offer. Hence, the case was dismissed. The plaintiff then appealed to the Queen's Bench Division of the High Court of England and Wales.

Lord Parker also distinguished the present case from Wiles v Maddison. The justice in that case referred to the putting of an article in the shop window as exposing the article, instead of making an offer. From the cases that he cited, Lord Parker was unable to find argument in favor of the appellant, since the order in Section 1(1) of the Restriction of Offensive Weapons Act 1959 only contained the words "offer for sale", of which there was not any in the present

case. The lack of thewords “exposing for sale” in the Act means that only a true offer would be an offence under the Act. Hence, the respondent was not guilty of the offence with which he was charged.

STATING THE APPLICATION OF RULE OF LAW WHICH APPLIES:

In this case, the judges applied the literal rule of statutory interpretation in interpreting Section 1(1) of the Restriction of Offensive Weapons Act 1959. However,the application of literal rule of statutory interpretation does not always result in a fair outcome and can sometimes lead to absurd decision.

According to Section 1(1) of the Restriction of Offensive Weapons Act 1959, a flick knife cannot be manufactured, sold, hired, offered for sale or hire, lent or given to another person. However, there is no prohibition against the exposing for sale of a flick knife in the section. Had the section contained the words “expose for sale”, the respondent in the present case would have been guilty of the offence under the Act.

JUDGEMENT:

The court held that in accordance with the general principles of contract law, the display of the knife was not an offer of sale but merely an invitation to treat, and as such the defendant had not offered the knife for sale within the meaning of Section 1(1) of the Act. Although it was acknowledged that in ordinary language a layman might consider the knife to be offered for sale, in legal terms its position in the window was inviting customers to offer to buy it. The statute must be construed in accordance with the legal meaning, as

“…any statute must be looked at in light of the general law of the country, for Parliament must be taken to know the general law”[1].

[1] as per Lord Parker C.J. at para. 4.

It is well established in contract law that the display of an item in a shop window is an invitation to potential customers to treat. The defendant was therefore not guilty of the offence with which he had been charged.

CONCLUSION:

From this case, it can be seen that the judges were aware of the loophole in the statute as the judges had come to the decision reluctantly. However, being under the judiciary branch of the government, the judges had no power to supply for the gap in law, because that is under the power of the legislature, not judiciary. If the judges in this case had chosen to use the purposive rule in interpreting the Act, the decision might have been different for this case.

Nevertheless, this loophole in the Act has been closed in the Restriction of Offensive Weapons Act 1961 which inserts the words "exposes or has in possession for the purpose of sale or hire."[2]The addition of the word "exposes(for sale)" would include the display of flick-knife in a shop window and make it an offence under this Act.

[2] Restriction of Offensive Weapons Act 1961. (n.d.). Retrieved November 24, 2016, from http://www.legislation.gov.uk/ukpga/Eliz2/9-10/22/section/1