

PHARMACEUTICAL SOCIETY OF GREAT BRITAIN VS.
BOOTS

COURT: Court of Appeal England

DELIVERED ON: 5 February 1953 and

BENCH: Somervell LJ, Birkett LJ and Romer LJ

CITATION: EWCA Civ 6, [1953] 1 QB 401, [1953] 1 All ER 482, [1953] 2 WLR 427

FACT:

There is a Boots cash Chemist Ltd. It renovates its branch pharmacy in to a new style of pharmacy. The pharmacy had two department and adopted the self service system. On April 13, 1951 a customer enter the pharmacy to purchase medicine which displayed on the selves. On the same time one person from Pharmaceutical Society of Great Britain was doing surveillance. Customers who have come will provided with one basket and freely to select the items on the shelves. The customer intended to buy medicine which contains substances included in part 1 of the poison list under 17 of the Pharmacy and Poison Act, 1933. Then the customer bring the item to the counter to do payment. Transaction involving the sale of drug was supervised by pharmacist. The person from Pharmaceutical Society saw the transaction and brought the case to the court under the Pharmacy and Poison Act, 1933. The defendant was charged for selling a listed poison without the supervision of registered pharmacist.

ISSUE:

whether the contract of sale was concluded when customer selected the product from the selves or at the time where the goods were on the table for payment?

RULE:

Sales of Goods Act

Contract law

Pharmacy and Poison Act, 1933

APPLICATION:

Both the high court and court of appeal held in favor of Boots. They told that by placing the goods in the shelves does not mean offer but by putting the goods in the basket the customer him/her self made the offer to buy goods that are present. This offer could be accepted and rejected at the desk of transaction by the pharmacist. And the customer also has the right and free to return any of the goods to the shelves before the payment had been made. The moment when the customer complete the transaction at the cash desk in presence of the supervising pharmacist the contract is over. In this case also the transaction was made in the presence of supervising pharmacist therefore there was no violation of the act. While putting goods in the basket the customer still browsing and there is no acceptance until and unless the payment has done or all the process of check out. So displaying good does not means it is an offer but it act as an invitation to treat.

In pharmaceutical shops generally there could be some medicine which contains a small amount of poison, so you have to take that with the permission of the pharmacist present over there at that time. And many drugs are there which has a warning as to what doses are to be taken and there are some drugs which can be taken with out the prescription given by any doctors. In normal pharmaceutical shop where such self service is not there then we can normally go to the shop and ask to give medicine to the person who may not herself be a registered pharmacist, for one of the goods which is there on the list and transaction may be completed by paying the amount for the goods. Although the registered pharmacist who will no doubt be on the premises, will not know anything himself of the transaction unless the assistant serving the customer to put a question to him, then this is no offence. Here the plaintiff argued that the purchase is complete when the customer going around the shelves and takes goods in the basket and then come to the desk for payment then there is power to say this drug ought not to be sold to this customer.. so here one can see that there is a difference if the supervision can only be exercised at a time when contract is completed. As per the chief justice said it is consider to be an offer when the article is put into the basket and payment made. In many shops this kind of self service system is there. For example in shops

customer free access to look what is there in the shops, to look different goods then pick up the one which they wish to buy. Then after that they go for transaction. The justice said that this is the case of ordinary shop, although the goods are displayed and it is intended that the customer should go and choose what they want. The contract is not completed until and unless the goods comes for transaction or there should be someone for accept the offer. There may be chances that in this case a customer may come to the shop and by mistake the customer take another drug replacing the real one. Here no liability come on the shop.

Also stated in the case that to take reasonable steps to enforce the provision of part1 of this act that really deals with the status of the registered pharmacist and to secure compliance by registered pharmacist and authorized sellers of poison with the provision of part 2 of the act which is headed poisons in section 18 that “it shall not be lawful for a person to sell any poison included in part 1 of the poison list, unless he is an authorized seller of poisons and the sale is affected by or under the supervision of a registered pharmacist”. so this is quite impossible for the shop to sell the drugs which contains poison if it do not have the authority to sell. So according to the provision the Boots ltd has the authority to sell this.

By concluding all the points that has been made are: by picking drugs from the shelves does not mean this is acceptance to buy rather the customer himself making an offer to buy and the contract will complete when the shop keeper accept the offer by the customer by completing the transaction. Secondly from the above argument it has seen that the registered pharmacist was present when the transaction been made.

CONCLUSION:

I agreed with the judgement that has been given. A person making invitation to treat does not intent to be bound as soon as it is accepted by the person to whom the statement is addressed. A contract is legally binding voluntary agreement formed when one person makes an offer and the other accepts it. This includes an advertisement, display of goods, tenders and auctions etc., which is rightly pointed out by the court of justice. And according to the provision of pharmaceutical and poison act there should be a registered pharmacist in the shop. In the present case there is no liability of the drug seller because it maintain all the precautionary majors that is needed in case of drug selling.



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