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Instructions

Reading outcomes:

By the end of each session you should be able to :

- Have a global understanding of the text
- Sum it up briefly
- Explain the basic legal features involved

Essential work :

- Reading the text before the lecture
- Identifying the key notions
- Use a dictionary when needed
- Brief outline and glossary for each text

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I. UK - Individual rights

1. The Magna Carta (1215)

'The Great Charter of English liberty granted (under considerable duress) by King John at Runnymede on June 15, 1215' (Roger of Wendover: 'The Signing of Magna Carta at Runnymede, 1215')

John, by the grace of God King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Count of Anjou, to his archbishops, bishops, abbots, earls, barons, justices, foresters, sheriffs, stewards, servants, and to all his officials and loyal subjects, greeting.

Know that before God, for the health of our soul and those of our ancestors and heirs, to the honour of God, the exaltation of the holy Church, and the better ordering of our kingdom, at the advice of our reverend fathers Stephen, archbishop of Canterbury, primate of all England, and cardinal of the holy Roman Church, Henry archbishop of Dublin, William bishop of London, Peter bishop of Winchester, Jocelin bishop of Bath and Glastonbury, Hugh bishop of Lincoln, Walter Bishop of Worcester, William bishop of Coventry, Benedict bishop of Rochester, Master Pandulf subdeacon and member of the papal household, Brother Aymeric master of the [Knights of the Temple](#) in England, William Marshal, earl of Pembroke, William earl of Salisbury, William earl of Warren, William earl of Arundel, Alan de Galloway constable of Scotland, Warin Fitz Gerald, Peter Fitz Herbert, Hubert de Burgh seneschal of Poitou, Hugh de Neville, Matthew Fitz Herbert, Thomas Basset, Alan Basset, Philip Daubeny, Robert de Roppeley, John Marshal, John Fitz Hugh, and other loyal subjects:

1. First, that we have granted to God, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church's elections - a right reckoned to be of the greatest necessity and importance to it - and caused this to be confirmed by Pope Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity. We have also granted to all free men of our realm, for us and our heirs for ever, all the liberties written out below, to have and to keep for them and their heirs, of us and our heirs:

2. If any earl, baron, or other person that holds lands directly of the Crown, for military service, shall die, and at his death his heir shall be of full age and owe a `relief', the heir shall have his inheritance on payment of the ancient scale of `relief'. That is to say, the heir or heirs of an earl shall pay for the entire earl's barony, the heir or heirs of a knight 100s. at most for the entire knight's `fee', and any man that owes less shall pay less, in accordance with the ancient usage of `fees'

3. But if the heir of such a person is under age and a ward, when he comes of age he shall have his inheritance without `relief' or fine.

4. The guardian of the land of an heir who is under age shall take from it only reasonable revenues, customary dues, and feudal services. He shall do this without destruction or damage to men or property. If we have given the guardianship of the land to a sheriff, or to any person answerable to us for the revenues, and he commits destruction or damage, we will exact compensation from him, and the land shall be entrusted to two worthy and prudent men of the same `fee', who shall be answerable to us for the revenues, or to the person to whom we have assigned them. If we have given or sold to anyone the guardianship of such land, and he causes destruction or damage, he shall lose the guardianship of it, and it shall be handed over to two worthy and prudent men of the same `fee', who shall be similarly answerable to us.

5. For so long as a guardian has guardianship of such land, he shall maintain the houses, parks, fish preserves, ponds, mills, and everything else pertaining to it, from the revenues of the land itself. When the heir comes of age, he shall restore the whole land to him, stocked with plough teams and such implements of husbandry as the season demands and the revenues from the land can reasonably bear.

6. Heirs may be given in marriage, but not to someone of lower social standing. Before a marriage takes place, it shall be made known to the heir's next-of-kin.
7. At her husband's death, a widow may have her marriage portion and inheritance at once and without trouble. She shall pay nothing for her dower, marriage portion, or any inheritance that she and her husband held jointly on the day of his death. She may remain in her husband's house for forty days after his death, and within this period her dower shall be assigned to her.
8. No widow shall be compelled to marry, so long as she wishes to remain without a husband. But she must give security that she will not marry without royal consent, if she holds her lands of the Crown, or without the consent of whatever other lord she may hold them of.
9. Neither we nor our officials will seize any land or rent in payment of a debt, so long as the debtor has movable goods sufficient to discharge the debt. A debtor's sureties shall not be distrained upon so long as the debtor himself can discharge his debt. If, for lack of means, the debtor is unable to discharge his debt, his sureties shall be answerable for it. If they so desire, they may have the debtor's lands and rents until they have received satisfaction for the debt that they paid for him, unless the debtor can show that he has settled his obligations to them.
10. If anyone who has borrowed a sum of money from Jews dies before the debt has been repaid, his heir shall pay no interest on the debt for so long as he remains under age, irrespective of whom he holds his lands. If such a debt falls into the hands of the Crown, it will take nothing except the principal sum specified in the bond.
11. If a man dies owing money to Jews, his wife may have her dower and pay nothing towards the debt from it. If he leaves children that are under age, their needs may also be provided for on a scale appropriate to the size of his holding of lands. The debt is to be paid out of the residue, reserving the service due to his feudal lords. Debts owed to persons other than Jews are to be dealt with similarly.
12. No 'scutage' or 'aid' may be levied in our kingdom without its general consent, unless it is for the ransom of our person, to make our eldest son a knight, and (once) to marry our eldest daughter. For these purposes only a reasonable 'aid' may be levied. 'Aids' from the city of London are to be treated similarly.
13. The city of London shall enjoy all its ancient liberties and free customs, both by land and by water. We also will and grant that all other cities, boroughs, towns, and ports shall enjoy all their liberties and free customs.
14. To obtain the general consent of the realm for the assessment of an 'aid' - except in the three cases specified above - or a 'scutage', we will cause the archbishops, bishops, abbots, earls, and greater barons to be summoned individually by letter. To those who hold lands directly of us we will cause a general summons to be issued, through the sheriffs and other officials, to come together on a fixed day (of which at least forty days notice shall be given) and at a fixed place. In all letters of summons, the cause of the summons will be stated. When a summons has been issued, the business appointed for the day shall go forward in accordance with the resolution of those present, even if not all those who were summoned have appeared.
15. In future we will allow no one to levy an 'aid' from his free men, except to ransom his person, to make his eldest son a knight, and (once) to marry his eldest daughter. For these purposes only a reasonable 'aid' may be levied.
16. No man shall be forced to perform more service for a knight's 'fee', or other free holding of land, than is due from it.
17. Ordinary lawsuits shall not follow the royal court around, but shall be held in a fixed place.
18. Inquests of *novel disseisin*, *mort d'ancestor*, and *darrein presentment* shall be taken only in their proper county court. We ourselves, or in our absence abroad our chief justice, will send two justices to each county four times a year, and these justices, with four knights of the county elected by the county itself, shall hold the assizes in the county court, on the day and in the place where the court meets.
19. If any assizes cannot be taken on the day of the county court, as many knights and freeholders shall afterwards remain behind, of those who have attended the court, as will suffice for the administration of justice, having regard to the volume of business to be done.

20. For a trivial offence, a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly, but not so heavily as to deprive him of his livelihood. In the same way, a merchant shall be spared his merchandise, and a husbandman the implements of his husbandry, if they fall upon the mercy of a royal court. None of these fines shall be imposed except by the assessment on oath of reputable men of the neighbourhood.
21. Earls and barons shall not be amerced save through their peers, and only according to the measure of the offence.
22. No clerk shall be amerced for his lay tenement except according to the manner of the other persons aforesaid; and not according to the amount of his ecclesiastical benefice.
23. Neither a town nor a man shall be forced to make bridges over the rivers, with the exception of those who, from of old and of right ought to do it.
24. No sheriff, constable, coroners, or other bailiffs of ours shall hold the pleas of our crown.
25. All counties, hundreds, wapentakes, and trithings--our demesne manors being excepted--shall continue according to the old farms, without any increase at all.
26. If any one holding from us a lay fee shall die, and our sheriff or bailiff can show our letters patent containing our summons for the debt which the dead man owed to us,--our sheriff or bailiff may be allowed to attach and enroll the chattels of the dead man to the value of that debt, through view of lawful men; in such way, however, that nothing shall be removed thence until the debt is paid which was plainly owed to us. And the residue shall be left to the executors that they may carry out the will of the dead man. And if nothing is owed to us by him, all the chattels shall go to the use prescribed by the deceased, saving their reasonable portions to his wife and children.
27. If any freeman shall have died intestate his chattels shall be distributed through the hands of his near relatives and friends, by view of the church; saving to any one the debts which the dead man owed him.
28. No constable or other bailiff of ours shall take the corn or other chattels of any one except he straightway give money for them, or can be allowed a respite in that regard by the will of the seller.
29. No constable shall force any knight to pay money for castleward if he be willing to perform that ward in person, or--he for a reasonable cause not being able to perform it himself--through another proper man. And if we shall have led or sent him on a military expedition, he shall be quit of ward according to the amount of time during which, through us, he shall have been in military service.
30. No sheriff nor bailiff of ours, nor any one else, shall take the horses or carts of any freeman for transport, unless by the will of that freeman.
31. Neither we nor our bailiffs shall take another's wood for castles or for other private uses, unless by the will of him to whom the wood belongs.
32. We shall not hold the lands of those convicted of felony longer than a year and a day; and then the lands shall be restored to the lords of the fiefs.
33. Henceforth all the weirs in the Thames and Medway, and throughout all England, save on the sea-coast, shall be done away with entirely.
34. Henceforth the writ which is called Praeceptum shall not be served on any one for any holding so as to cause a free man to lose his court.
35. There shall be one measure of wine throughout our whole realm, and one measure of ale and one measure of corn--namely, the London quart;--and one width of dyed and russet and hauberk cloths--namely, two ells below the selvage. And with weights, moreover, it shall be as with measures.
36. Henceforth nothing shall be given or taken for a writ of inquest in a matter concerning life or limb; but it shall be conceded gratis, and shall not be denied.
37. If any one hold of us in fee-farm, or in socage, or in burkage, and hold land of another by military service, we shall not, by reason of that fee-farm, or socage, or burkage, have the wardship of his heir or of his land which is held in fee from another. Nor shall we have the wardship of that fee-farm, or socage, or

burkage unless that fee-farm owe military service. We shall not, by reason of some petit-serjeanty which some one holds of us through the service of giving us knives or arrows or the like, have the wardship of his heir or of the land which he holds of another by military service.

38. No bailiff, on his own simple assertion, shall henceforth any one to his law, without producing faithful witnesses in evidence.

39. No freeman shall be taken, or imprisoned, or disseized, or outlawed, or exiled, or in any way harmed--nor will we go upon or send upon him--save by the lawful judgment of his peers or by the law of the land.

40. To none will we sell, to none deny or delay, right or justice.

41. All merchants may safely and securely go out of England, and come into England, and delay and pass through England, as well by land as by water, for the purpose of buying and selling, free from all evil taxes, subject to the ancient and right customs--save in time of war, and if they are of the land at war against us. And if such be found in our land at the beginning of the war, they shall be held, without harm to their bodies and goods, until it shall be known to us or our chief justice how the merchants of our land are to be treated who shall, at that time, be found in the land at war against us. And if ours shall be safe there, the others shall be safe in our land.

42. Henceforth any person, saving fealty to us, may go out of our realm and return to it, safely and securely, by land and by water, except perhaps for a brief period in time of war, for the common good of the realm. But prisoners and outlaws are excepted according to the law of the realm; also people of a land at war against us, and the merchants, with regard to whom shall be done as we have said.

43. If any one hold from any escheat--as from the honour of Walingford, Nottingham, Boloin, Lancaster, or the other escheats which are in our hands and are baronies--and shall die, his heir shall not give another relief, nor shall he perform for us other service than he would perform for a baron if that barony were in the hand of a baron; and we shall hold it in the same way in which the baron has held it.

44. Persons dwelling without the forest shall not henceforth come before the forest justices, through common summonses, unless they are impleaded or are the sponsors of some person or persons attached for matters concerning the forest.

45. We will not make men justices, constables, sheriffs, or bailiffs unless they are such as know the law of the realm, and are minded to observe it rightly.

46. All barons who have founded abbeys for which they have charters of the king of England, or ancient right of tenure, shall have, as they ought to have, their custody when vacant.

47- All forests constituted as such in our time shall straightway be annulled; and the same shall be done for river banks made into places of defence by us in our time.

48. All evil customs concerning forests and warrens, and concerning foresters and warreners, sheriffs and their servants, river banks and their guardians, shall straightway be inquired into each county, through twelve sworn knights from that county, and shall be eradicated by them, entirely, so that they shall never be renewed, within forty days after the inquest has been made; in such manner that we shall first know about them, or our justice if we be not in England.

49. We shall straightway return all hostages and charters which were delivered to us by Englishmen as a surety for peace or faithful service.

50. We shall entirely remove from their bailwicks the relatives of Gerard de Athyes, so that they shall henceforth have no bailwick in England: Engelard de Cygnes, Andrew Peter and Gyon de Chanceles, Gyon de Cygnes, Geoffrey de Martin and his brothers, Philip Mark and his brothers, and Geoffrey his nephew, and the whole following of them.

51. And straightway after peace is restored we shall remove from the realm all the foreign soldiers, crossbowmen, servants, hirelings, who may have come with horses and arms to the harm of the realm.

52. If any one shall have been disseized by us, or removed, without a legal sentence of his peers, from his lands, castles, liberties or lawful right, we shall straightway restore them to him. And if a dispute shall arise

concerning this matter it shall be settled according to the judgment of the twenty-five barons who are mentioned below as sureties for the peace. But with regard to all those things of which any one was, by king Henry our father or king Richard our brother, disseized or dispossessed without legal judgment of his peers, which we have in our hand or which others hold, and for which we ought to give a guarantee: We shall have respite until the common term for crusaders. Except with regard to those concerning which a plea was moved, or an inquest made by our order, before we took the cross. But when we return from our pilgrimage, or if, by chance, we desist from our pilgrimage, we shall straightway then show full justice regarding them.

53. We shall have the same respite, moreover, and in the same manner, in the matter of showing justice with regard to forests to be annulled and forests to remain, which Henry our father or Richard our brother constituted; and in the matter of wardships of lands which belong to the fee of another--wardships of which kind we have hitherto enjoyed by reason of the fee which some one held from us in military service;--and in the matter of abbeys founded in the fee of another than ourselves--in which the lord of the fee may say that he has jurisdiction. And when we return, or if we desist from our pilgrimage, we shall straightway exhibit full justice to those complaining with regard to these matters.

54. No one shall be taken or imprisoned on account of the appeal of a woman concerning the death of another than her husband.

55. All fines imposed by us unjustly and contrary to the law of the land, and all amerciements made unjustly and contrary to the law of the land, shall be altogether remitted, or it shall be done with regard to them according to the judgment of the twenty five barons mentioned below as sureties for the peace, or according to the judgment of the majority of them together with the aforesaid Stephen archbishop of Canterbury, if he can be present, and with others whom he may wish to associate with himself for this purpose. And if he can not be present, the affair shall nevertheless proceed without him; in such way that, if one or more of the said twenty five barons shall be concerned in a similar complaint, they shall be removed as to this particular decision, and, in their place, for this purpose alone, others shall be substituted who shall be chosen and sworn by the remainder of those twenty five.

56. If we have disseized or dispossessed Welshmen of their lands or liberties or other things without legal judgment of their peers, in England or in Wales,--they shall straightway be restored to them. And if a dispute shall arise concerning this, then action shall be taken upon it in the March through judgment of their peers--concerning English holdings according to the law of England, concerning Welsh holdings according to the law of Wales, concerning holdings in the March according to the law of the March. The Welsh shall do likewise with regard to us and our subjects.

57. But with regard to all those things of which any one of the Welsh by king Henry our father or king Richard our brother, disseized or dispossessed without legal judgment of his peers, which we have in our hand or which others hold, and for which we ought to give a guarantee: we shall have respite until the common term for crusaders. Except with regard to those concerning which a plea was moved, or an inquest made by our order, before we took the cross. But when we return from our pilgrimage, or if, by chance, we desist from our pilgrimage, we shall straightway then show full justice regarding them, according to the laws of Wales and the aforesaid districts.

58. We shall straightway return the son of Llewelin and all the Welsh hostages, and the charters delivered to us as surety for the peace.

59. We shall act towards Alexander king of the Scots regarding the restoration of his sisters, and his hostages, and his liberties and his lawful right, as we shall act towards our other barons of England; unless it ought to be otherwise according to the charters which we hold from William, his father, the former king of the Scots. And this shall be done through judgment of his peers in our court.

60. Moreover all the subjects of our realm, clergy as well as laity, shall, as far as pertains to them, observe, with regard to their vassals, all these aforesaid customs and liberties which we have decreed shall, as far as pertains to us, be observed in our realm with regard to our own.

61. Inasmuch as, for the sake of God, and for the bettering of our realm, and for the more ready healing of the discord which has arisen between us and our barons, we have made all these aforesaid concessions,--wishing them to enjoy for ever entire and firm stability, we make and grant to them the following security: that the baron, namely, may elect at their pleasure twenty five barons from the realm, who ought, with all their

strength, to observe, maintain and cause to be observed, the peace and privileges which we have granted to them and confirmed by this our present charter. In such wise, namely, that if we, or our justice, or our bailiffs, or any one of our servants shall have transgressed against any one in any respect, or shall have broken one of the articles of peace or security, and our transgression shall have been shown to four barons of the aforesaid twenty five: those four barons shall come to us, or, if we are abroad, to our justice, showing to us our error; and they shall ask us to cause that error to be amended without delay. And if we do not amend that error, or, we being abroad, if our justice do not amend it within a term of forty days from the time when it was shown to us or, we being abroad, to our justice: the aforesaid four barons shall refer the matter to the remainder of the twenty five barons, and those twenty five barons, with the whole land in common, shall distrain and oppress us in every way in their power,--namely, by taking our castles, lands and possessions, and in every other way that they can, until amends shall have been made according to their judgment. Saving the persons of ourselves, our queen and our children. And when amends shall have been made they shall be in accord with us as they had been previously. And whoever of the land wishes to do so, shall swear that in carrying out all the aforesaid measures he will obey the mandates of the aforesaid twenty five barons, and that, with them, he will oppress us to the extent of his power. And, to any one who wishes to do so, we publicly and freely give permission to swear; and we will never prevent any one from swearing. Moreover, all those in the land who shall be unwilling, themselves and of their own accord, to swear to the twenty five barons as to distraining and oppressing us with them: such ones we shall make to wear by our mandate, as has been said. And if any one of the twenty five barons shall die, or leave the country, or in any other way be prevented from carrying out the aforesaid measures,--the remainder of the aforesaid twenty five barons shall choose another in his place, according to their judgment, who shall be sworn in the same way as the others. Moreover, in all things entrusted to those twenty five barons to be carried out, if those twenty five shall be present and chance to disagree among themselves with regard to some matter, or if some of them, having been summoned, shall be unwilling or unable to be present: that which the majority of those present shall decide or decree shall be considered binding and valid, just as if all the twenty five had consented to it. And the aforesaid twenty five shall swear that they will faithfully observe all the foregoing, and will cause them to be observed to the extent of their power. And we shall obtain nothing from any one, either through ourselves or through another, by which any of those concessions and liberties may be revoked or diminished. And if any such thing shall have been obtained, it shall be vain and invalid, and we shall never make use of it either through ourselves or through another.

62. And we have fully remitted to all, and pardoned, all the ill- will, anger and rancour which have arisen between us and our subjects, clergy and laity, from the time of the struggle. Moreover have fully remitted to all, clergy and laity, and--as far as pertains to us--have pardoned fully all the transgressions committed, on the occasion of that same struggle, from Easter of the sixteenth year of our reign until the re-establishment of peace. In witness of which, more-over, we have caused to be drawn up for them letters patent of lord Stephen, archbishop of Canterbury, lord Henry, archbishop of Dubland the aforesaid bishops and master Pandulf, regarding that surety and the aforesaid concessions.

63. Wherefore we will and firmly decree that the English church shall be free, and that the subjects of our realm shall have and hold all the aforesaid liberties, rights and concessions, duly and in peace, freely and quietly, fully and entirely, for themselves and their heirs from us and our heirs, in all matters and in all places, forever, as has been said. Moreover it has been sworn, on our part as well as on the part of the barons, that all these above mentioned provisions shall be observed with good faith and without evil intent. The witnesses being the above mentioned and many others. Given through our hand, in the plain called Runnymede between Windsor and Stanes, on the fifteenth day of June, in the seventeenth year of our reign.

Roger of Wendover: The Signing of Magna Carta at Runnymede, 1215

2. Prisoners rights

Prisoners serving fewer than four years to get vote. *(BBC, 17 December 2010 Last updated at 17:55 GMT)*

The sentencing judge will still be able to remove the right to vote for those serving less than four years

The government has announced that prisoners serving fewer than four years will be eligible to vote.

The Cabinet Office statement said all offenders sentenced to four years or more would automatically be barred from registering to vote.

The decision comes after a European court ruling which the government is obliged to implement.

Shadow justice secretary Sadiq Khan said law-abiding citizens would be "concerned" by the changes.

It comes on the same day that a man serving life for raping and murdering his seven-year-old niece lost an appeal over his right to vote.

Three judges unanimously dismissed the Court of Appeal hearing of 55-year-old Peter Chester - who is serving life for raping and strangling Donna Marie Gillbanks in Blackpool in 1977 - and refused him permission to go to the Supreme Court.

His legal team had argued denying him a vote was a "disproportionate" reaction and violated his human rights.

Five years ago, the European Court of Human Rights (ECHR) ruled the UK's long-standing voting ban was unlawful.

In a case brought by convicted killer John Hirst, of Hull, it ruled a "blanket ban" to be discriminatory.

'Right direction'

Mark Harper, minister for political and constitutional reform, said the changes were "not a choice, it is a legal obligation".

Analysis

Clive Coleman BBC legal affairs analyst

Why does the proposal fix on a four-year cut off period? We will find out when Parliament debates the legislation next year.

But on the face of it, it means that some people serving sentences for rape or knife point robbery, will be able to vote.

That will be hugely controversial.

Views will be split between those who believe that punishment for a crime begins and ends with incarceration, and those who think that removal from society should include removal from the privileges of society, amongst which is the right to vote.

Others believe only criminals who have subverted the democratic process itself should be deprived of the vote. This is as much a matter of social policy as it is of law.

He said: "We are ensuring the most serious offenders will continue to be barred from voting.

"If the government failed to implement this judgement, we would not only be in breach of our international obligations but could be risking taxpayers' money in paying out compensation claims."

The sentencing judge will be able to remove the right to vote from some prisoners sentenced to fewer than four years, he added.

Mr Khan said nearly 29,000 prisoners serving sentences of four years or less would be given the vote as a result of the government's decision - including those who had committed crimes such as domestic violence, burglary, wounding and assault.

"Law-abiding citizens will be concerned that serious and violent offenders will have a say in who runs this country," he said.

But the director of the Prison Reform Trust, Juliet Lyon, said: "Enfranchising prisoners serving sentences of under four years is an important step in the right direction.

"However, it does not appear to meet the requirements of European Court judgements which state that the vast majority of prisoners should be able to vote."

'Hot issue'

Under the ECHR ruling each country can decide which offences should carry restrictions to voting rights.

Prisoners on remand awaiting trial, fine defaulters and people jailed for contempt of court are already permitted to vote but more than 70,000 prisoners currently serving sentences in UK jails are prevented.

Inmates were originally denied the right to vote under the 1870 Forfeiture Act and the ban was retained in the Representation of the People Act of 1983.

The BBC's legal affairs analyst Clive Coleman said the proposed changes to the 140-year ban would be a "hot issue" when it was debated in Parliament next year.

"The government had to come up with a legislative regime that did away with the blanket ban but also was going to in some way satisfy public opinion.

"It is a very controversial issue - why four years, why that cut off point?

"Four years has always been an almost mythical period to distinguish between very serious and less serious offences, long-term and short-term offences.

"But for instance, rapists who are convicted of a rape where there are not a lot of aggravating features to the rape may be in prison for less than four years, so they may potentially have the vote," he said.

3. Face masks and proportionality

Minister rejects call to ban face masks at protests. *(BBC, 16 December 2010 Last updated at 17:18 GMT)*

- Some protesters covered their face during the demonstration

The government has rejected a call to ban masks and other face coverings at protests in the wake of violent student fee demonstrations in London.

Home Office Minister Lord Wallace said there was already legislation banning protesters from covering their face to conceal their identity.

But he told peers it should be up to police to decide when the law is used.

He said it would not be practical to have "snatch squads" of officers arresting masked demonstrators.

Police in some parts of the country have removed face masks from protesters at demonstrations by the English Defence League but the tactic has not so far been used at student tuition fee demonstrations.

'Large crowd'

The row comes as the Metropolitan Police released new images of people they want to trace in connection with last Thursday's violent protests in Parliament Square, some of whom had covered their faces making them harder to identify.

They have made 40 arrests so far, mostly on suspicion of violent disorder and criminal damage.

Conservative peer Baroness Miller called, in the House of Lords, on the government to ban masks at demonstrations.

She said: "It would be very helpful for the police if potential troublemakers were not wearing masks, which would allow them to move on potential troublemakers so that trouble was absolutely avoided."

But Lib Dem minister Lord Wallace said policing in Great Britain was by "consent" and the trust of the public had to be maintained.

He told peers: "It is a matter of judgement for the police whether someone who puts on a mask at a demonstration, in the middle of a very large crowd, should immediately be arrested."

He said he had been assured that some of the people arrested at the end of recent protests or days later had worn masks "during part of the demonstration", including those accused of vandalising a police van.

'Snatch squads'

Former Metropolitan Police commissioner Lord Condon said it was an issue that required a "proportionate and balanced response and not an over-reaction".

Lord Wallace said the legal definition of a mask worn for the purposes of concealing identity and with the intention of committing violence was "tightly drawn" so that people trying to keep their face warm in cold weather or covering their face for religious reasons, such as wearing a burkha, could not be arrested.

He also assured peers that the police took seriously concerns about officers removing their identity badges to avoid potential prosecution.

Lord Trimble, former first minister of Northern Ireland, urged the minister to "think again" as the current law was so tightly drawn it made police officers "very cautious in their approach to things".

Wearing a mask in public had been illegal "for decades" in Northern Ireland and had not caused any problems, he claimed.

But Lord Wallace said it would not help "when police are trying to control a very large demonstration to ask for police snatch squads to try to go into the middle of the demonstration to try to seize particular protesters".

II. Diversity

1. Gay marriage

European court urged to end UK marriage 'apartheid'. (Adam Gabbatt, guardian.co.uk, Sunday 19 December 2010 20.54 GMT)

Campaigners launch legal challenge in attempt to change legislation that prevents gay couples from getting married

Over the last two months eight couples - four heterosexual, four homosexual - have filed applications for civil partnerships and marriage respectively. All have been rejected. Photograph: Linda Nyland

Campaigners will launch a legal challenge at the European court of human rights on Tuesday in an attempt to change "unjust and discriminatory" legislation that prevents straight couples from entering civil partnerships and gay couples from getting married.

Over the last two months eight couples - four heterosexual, four homosexual - have filed applications for civil partnerships and marriage respectively. All have been rejected.

Now activists from the Equal Love campaign are challenging the UK law, arguing that the prevention of "equal treatment" is contrary to the Human Rights Act.

"The bans on same-sex civil marriages and on opposite-sex civil partnerships are a form of sexual apartheid," said human rights campaigner Peter Tatchell, who is co-ordinating the Equal Love effort along with lesbian, gay, bisexual and transgender rights group Outrage. "They enshrine one law for straight couples and another law for gay partners. Two wrongs don't make a right."

Couples have been applying for marriage licences and civil partnerships since 2 November, when Rev Sharon Ferguson, 52, and her partner Franka Strietzel, 49, were refused a civil marriage licence at Greenwich register office, south-east London. A couple has applied for either a civil partnership or marriage every week since then, culminating with Lucy Hilken and Tim Garrett, both 31, being unsuccessful in their application for a civil partnership at Aldershot register office last Tuesday.

"Tim and I don't want to get married," said Hilken. "Our commitment to each other is strong and we plan on spending the rest of our lives together. We have no desire to enter into a marriage contract. However, we do want legal recognition of our relationship and would prefer a civil partnership because it is free from the negative, orthodox traditions of marriage."

She added: "If civil partnerships didn't exist we would opt to not marry. But since they do exist, we'd like to have one. By prohibiting male-female couples from having a civil partnership, we are being discriminated against for no good reason. We want this ban overturned," she said.

The Matrimonial Causes Act 1973 states that the parties to a marriage must be male and female. The Civil Partnership Act 2004 stipulates that the parties to a civil partnership must be of the same sex.

"By excluding same-sex couples from civil marriage, and different-sex couples from civil partnership, the UK government is discriminating on the grounds of sexual orientation, contrary to the human rights act," said Prof Robert Wintemute, professor of human rights law at Kings College London and legal adviser to the couples.

"The twin bans violate article 14 (protection against discrimination), article 12 (the right to marry) and article 8 (the right to respect for family life). The rights attached to civil marriage and civil partnership are identical, especially with regard to adoption of children, donor insemination, and surrogacy. There is no longer any justification for excluding same-sex couples from civil marriage and different-sex couples from civil partnership. It's like having separate drinking fountains or beaches for different racial groups, even though the water is the same."

In a similar case in June this year the European court of human rights ruled that the European convention on human rights was not violated in Austria, which would not allow two men, Horst Schalk and Johan Kopf, to marry. In that case the court found that the convention did not impose an obligation on European governments to allow same-sex marriage. However Wintemute said that because civil partnerships in the UK give couples the same rights as married couples – unlike in Austria – there is no justification for the UK to withhold access to both arrangements for all.

2. Discrimination and employment

Firms reject candidates on the basis of their accents, research suggests.

(www.lawgazette.co.uk/Tuesday 21 December 2010 by James Dean)

Top London law firms are hiring graduates with ‘smart’ accents and public school backgrounds because they think they are better for their image than working-class candidates, new research has suggested.

Suitable white working-class applicants are being passed over for jobs in favour of middle-class graduates of all ethnicities from elite universities, according to a study of 130 staff at five prominent London firms by City University’s Centre for Professional Service Firms at Cass Business School.

The five firms all had diversity policies, and had successfully recruited ethnic minority candidates, but rejected able working-class students because their appearance or accent was not thought ‘smart’ enough, the research found.

Dr Louise Ashley, leading the study, said that the firms want to preserve their ‘upmarket brand’.

She said: ‘Focusing on ethnicity enables law firms to boast excellence, or at the very least improve diversity outcomes, despite the fact that they have continued to recruit using precisely the same types of class privilege that have always been in operation.’

Ashley said that one partner told her: ‘There was one guy who came to interviews who was a real Essex barrow boy, and he had a very good CV, he was a clever chap, but we just felt that there’s no way we could employ him. I just thought: putting him in front of a client – you just couldn’t do it. I do know though that if you’re really pursuing a diversity policy you shouldn’t see him as rough round the edges, I should just see him as different.’

Ashley reported that another firm changed its strategy to hire almost exclusively from Oxbridge. A partner in the firm told her: ‘We’re just a much smarter firm now.’

A senior associate in another firm told Ashley: ‘Image is everything in the law – it’s all we’ve got, our product. What’s the point of bringing these people along... to bring your diversity figures up? You’re only going to end up firing them.’

Ashley said that although the firms are publicly committed to diversity in the workplace, almost all of their lawyers came from more privileged backgrounds. At two of the firms, more than 70% of lawyers were privately educated, while more than 90% of lawyers surveyed had fathers who had been managers or senior officials.

Ashley said: ‘Until relatively recently, law firms have tended to focus on ethnicity rather than social inclusion in their recruitment, and they have made some progress in this respect. The strong consensus in this and other research was that middle-class ethnic minority candidates with the right education – and the right accent – would not necessarily experience discrimination, at entry level at least.

‘As it is, on either a personal or collective basis, individuals within the profession have little incentive to introduce a more progressive approach which would genuinely recognise and reward difference on the basis of social class, since the inclusion of lawyers who are visibly working class, or have regional accents, is perceived to threaten both their brand and their bottom line.

‘By not taking well-qualified people with working-class accents and by overlooking candidates with good degrees from new universities, law firms are arguably missing out on the skills and experience different people can bring.

‘They are contributing to the situation outlined in the Milburn Report to government last year which

said that the professions have exemplified the old notion that a limited pool of talent was enough to get by on. This is recognised as a problem by some progressive firms, particularly those outside the legal sector, with some acknowledging that their most successful leaders include individuals who would not have gained access to the profession today on the basis of their academic qualifications.

‘A genuine commitment to diversity and inclusion as both a commercial and ethical imperative would mean that many more law firms go much further in opening their doors to a wider pool of talent.’

Ashley’s findings are published tomorrow in the *Work, Employment and Society* journal.

The UK's top law firms are rejecting well-qualified candidates because their accents are too 'working class', according to a new study.

(<http://www.thelawyer.com/top-firms-reject-candidates-with-working-class-accents/1006459.article>)

Research carried out by the Cass Business School shows that while elite firms have made strides on increasing recruitment of ethnic minorities into their ranks, working class applicants miss out because they do not fit with the brand.

A partner at one of five case study firms, all of which are in the UK top 20, told Cass Business School: "There was one guy who came to interviews who was a real Essex barrow boy, and he had a very good CV, he was a clever chap, but we just felt that there's no way we could employ him. I just thought, putting him in front of a client - you just couldn't do it.

"I do know though that if you're really pursuing a diversity policy you shouldn't see him as rough round the edges, I should just see him as different."

Dr Louise Ashley at Cass Business School interviewed 130 staff at five prominent London law firms. More than 90 per cent of lawyers who took part in the research had fathers who had been managers or senior officials, and at two of the firms more than 70 per cent of lawyers were privately educated.

However, Ashley cautioned against simple solutions.

"It's a very complex problem, blaming firms for social exclusion is like blaming the goalie for letting the ball through, responsibility doesn't lie solely with them," she said. "There's a fear among some firms that if they recruit from the new universities, for example, then it will seem like they're unable to recruit from traditional institutions. Law firms tend to move as a pack and it'll take quite a brave firm to stand apart and do something different."

She pointed to the experience of the big accountancy firms that have rolled out non-graduate entry routes into the profession in a more systematic way as a possible model to emulate.

The issue of social background has come increasingly onto the agenda following the publication of the Milburn Report, which found that the law was a "closed shop".

Some firms such as Bird & Bird and Herbert Smith now provide mentoring and financial support to small groups of law students from deprived areas, while others, including Addleshaw Goddard, Baker & McKenzie, Herbert Smith and Linklaters, are starting to monitor the social background of their intake ([8 November 2010](#)).

However, Ashley argued that such initiatives were not purely a question of firms paying lip service to diversity.

"Firms often do this with good intentions, but there's a gap between what the public rhetoric is and what the private rhetoric is," she said. "You have things happening at a corporate level but they're not necessarily carried through to the people doing recruitment."

This comes after separate research found that the legal profession has become increasingly elitist in recent years, with the proportion of magic circle partners aged under 39 who were educated at public schools having risen from 59 per cent to 71 per cent between 1988 and 2004 ([15 November 2010](#)).

III. Insolvency and historical features on debtors treatments

Ears and Bankruptcy: some early debtor treatment

(bankruptcyandinsolvency.blogspot.com)

There are some interesting debtor treatments in the history of English law. From 1604 a debtor could be placed in the pillory for non-disclosure of his assets to the Commissioners in Bankruptcy.^[1] He would then have his ear nailed to the pillory and cut-off.^[2] Some early debtor ears have been kept for posterity (pictured) at KLS.

^[1] See: *An Act for the Better Relief of the Creditors against such as shall become Bankrupts 1604*, 1 Jac. c. 15, and; *An Act for the Further description of a Bankrupt and relief of creditors against such as shall become bankrupts and for inflicting corporal punishment upon the bankrupts in some special cases 1623*, 21 Jac 1, c.19.

^[2] *Ibid.*

Posted by John Tribe, KPMG Lecturer in Restructuring, Kingston Law School, Kingston University, Surrey, UK at [07:34](#)

Debtor treatment and Shakespeare's Roman influences

(bankruptcyandinsolvency.blogspot.com)

The systems that Roman law^[1] formulated to deal with credit breakdown were to some extent typified by a harshness that is perhaps best enunciated by Portia's vivid depiction of the fate of a non-paying merchant in Shakespeare's *The Merchant of Venice*, arguably the most famous literary illustration of what might happen to a fictional Venetian debtor, Antonio, who did not pay his creditor, Shylock, "the red-haired Jew who sought the bankrupt merchant's pound of flesh."^[2] In relation to the consequences of the failed guarantee arrangement Portia darkly observes:

*"this bond is forfeit,
And lawfully by this the Jew may claim
A pound of flesh, to be by him cut off"*^[3]

The pound of flesh had to be extracted from as close to the heart (pictured) of the debtor as possible. The, "terrible law of the Twelve Tables"^[4] advocated a cruel choice for debtors. They faced banishment beyond the Tiber, *trans Tiberim*, or having their body divided amongst their creditors in proportionate pieces to their respective claims,^[5] which has a curious echo in later English insolvency jurisprudence.^[6] Whether or not the division of a debtor's body did actually occur is a moot point. A number of commentators have stated that the law of the Twelve Tables, and in particular Table 3, did not in fact countenance this form of treatment.^[7] The fact that the practice was abolished in 313 BC (along with the sale of the debtor's body)^[8] does perhaps, however, suggest that this form of treatment may have occurred. Why else would the Romans have needed specific legislative intervention to abolish the practice?

^[1] For one nineteenth century critique of Roman law's approach to debt see: Bell, GJ. *Commentaries on the Laws of Scotland, and on the Principles of Merchantile Jurisprudence, considered in relation to bankruptcy; competitions of creditors; and imprisonment for debt.* 5th Edition. William Blackwood, Edinburgh & J. Butterworth Ltd, London, 1826, at book one, chapter one, page 3. See also: Bell, JB. *Commentaries on the Recent Statutes relative to Diligence or execution Against the moveable Estate; Imprisonment; Cessio Bonorum; and Sequestration in Mercantile Bankruptcy.* Edinburgh, 1840.

^[2] Denning, AT. *Landmarks in the Law.* Butterworths, London, 1984, page 321.

^[3] Shakespeare, W. *The Merchant of Venice.* 22nd July 1598, at Act IV, Scene 1, line 228. See further: Keeton, GW. *Shakespeare and His Legal Problems.* A&C Black Ltd, London, 1930, at Chapter VI, 'The Law of Debt in Shakespeare', where it is noted at page 79 that, "many of the courtiers who attended the performance of his [Shakespeare's] plays themselves hovered dangerously near the precincts of the Fleet."

^[4] Blackstone, W. *Commentaries on the Laws of England, Book the Second.* Clarendon Press, Oxford. 1829, at volume II, page 472.

^[5] Blackstone (*ibid*) notes that this interpretation of "*de debitore in partes secundo*" is potentially problematic.

^[6] i.e. the removal of the ear pursuant to the Act of 1604.

^[7] See for example: Gaius, 3, 199 and Aulus Gellius, 20, 1.

^[8] The *lex Poetelia*, 313 BC.

IV. Competition in legal systems : Doing-business and credit

Getting Credit Easy, Doing Business and Personal Over-indebtedness

(bankruptcyandinsolvency.blogspot.com)

“Credit is the lifeblood of the modern industrialised economy. The most significant extenders of credit are banks and other lending institutions such as finance houses or building societies. Manufacturers extend credit to customers and customers to manufacturers; the trade supplier extends credit to his customer; credit is the cornerstone of the trading community. The employee who is paid at the end of the working week gives credit to his employer. Even the Government itself extends a form of credit by obliging employers and others involuntarily to act as tax collectors, for example, for PAYE and VAT.” (Cork Report, para. 10)

“Since the mid 1960s, we have experienced the rapid growth of the credit card business in its various forms which has greatly expanded the range of credit available. The individual is faced today with easy access to credit, which, if unwisely used, may lead to his insolvency, with little overall control apart from his own innate sense of honesty and prudence and the protection afforded by such measures as the Consumer Credit Act 1974.” (Cork Report, para. 15)

“The problem of distressed personal debts stem from a rapid increase in unsecured bank and credit card lending, which was already attracting warnings from the FSA during the late 1990s.” (Insolvency Practices Council: Tenth Annual Report, 2000-2009, pg 5).

“The increased opportunities for contracting debt have led to the emergence of the consumer debtor, a commonplace today, but virtually unknown in the Nineteenth Century. A wage-earner, with little or no capital assets of any value, can today incur credit to an extent undreamed of a hundred years ago.” (Cork Report, para. 16)

Where getting credit is easiest

- 1 - Malaysia
- 2 - South Africa
- 3 - United Kingdom
- 4 - Australia
- 5 - Bulgaria
- 6 - Hong Kong, China
- 7- Israel
- 8- New Zealand

Ranking on the ease of doing business:

- 1- Singapore
- 2 - New Zealand
- 3 - Hong Kong, China
- 4 - United States

5 - United Kingdom

6 - Denmark

7 - Northern Ireland

8 - Canada

Source: "Doing Business 2010: Reforming Through Difficult Times: Comparing Regulation in 183 Economies" IBRD/World Bank

"Economies that rank high on the ease of getting credit typically have.....a legal framework that encourages lending by financial institutions to the private sector." (Doing Business 2010, pg 34)

"The relative ease by which credit can now be obtained must, however, be balanced by a strict control of personal and business budgeting, if those who avail themselves of such facilities are to avoid over-reaching themselves financially. Inflation and improved standards of living have induced lenders to increase credit facilities of all types, despite the knowledge that such expansion generates greater lending risks, particularly in an atmosphere of fierce competition, and that these risks are increased when the economy goes into recession." (Cork Report, Para. 12)

"Historically, many reforms have been prompted by recession or financial crisis. The East Asian crisis motivated many economies to reengineer their bankruptcy systems. Some, such as Singapore and Thailand, reformed laws to strengthen investor protections. Postcrisis bankruptcy reforms were also carried out in Turkey in 2003/04." (Doing Business 2010, Report Overview, pg 6)

"[T]he regulatory environment for businesses can influence how well firms cope with the crisis and are able to seize opportunities when recovery begins. Where business regulation is transparent and efficient, it is easier for firms to reorient themselves and for new firms to start up. Efficient court and bankruptcy procedures help ensure that assets can be reallocated quickly. And strong property rights and investor protections can help establish the basis for trust when investors start investing again." (Doing Business 2010, Report Overview, pg 1).

Monday, 21 June 2010

V. Contract law

1. European Contract law

City claims EC proposal would 'dilute English law' (www.lawgazette.co.uk/)

■ Thursday 16 December 2010 by **James Dean**

A European Commission proposal to consolidate contract law across the EU would hamper international trade by diluting the strength of English law, City lawyers have warned.

Responding to a Ministry of Justice call for evidence on a European Commission green paper proposing a new European contract law, the City of London Law Society (CLLS) said that there is a 'paucity of statistical evidence and analysis identifying any problems or any need for action' in the commission's proposals.

The CLLS called into question the competence of the commission to act in this area.

The commission argues that differences between member states' contract and private international laws hinder cross-border trade and increase transaction costs. It says that action is needed to reduce the divergence of laws, and has suggested creating a 'common frame of reference' for contract law, bringing together legal concepts, definitions and principles based on the laws of all EU member states.

The CLLS, which represents 14,000 City lawyers, said in its submission to the MoJ: 'Even an optional law would be seen as a slippery slope towards enforced abandonment of member states' own systems of contract law.'

'Evidence also indicates that many companies prefer their international dealings to be governed by English law rather than the law of any other legal system. A new instrument would dilute the effect of English law as a gateway for attracting trade into the EU and the UK, and may be more likely to benefit the economies of New York or Switzerland, whose law might increase in popularity.'

'The loss of trade and revenue for the government and businesses providing legal and related services may in fact exceed any supposed benefits from the creation of a competing legal system, while limited resources would be exhausted by the unnecessary costs and uncertainties of developing and applying new laws.'

The submission continued: 'Even if divergent national laws could be shown to deter trade, it would be difficult to show that any of the options in the green paper would actually reduce such effect. There could be particular difficulties for Europe's financial centres and for legal certainty.'

The CLLS said that the move could 'add to the anti-EU feeling engendered by the current financial crisis'.

2. Contract law

Carlill v Carbolic Smoke Ball Co (1863)

APPEAL from a decision of Hawkins, J.(2)

The defendants, who were the proprietors and vendors of a medical preparation called "The Carbolic Smoke Ball," inserted in the Pall Mall Gazette of November 13, 1891, and in other newspapers, the following advertisement: "100 reward will be paid by the Carbolic Smoke Ball Company to any person who contracts the increasing epidemic influenza, colds, or any disease caused by taking cold, after having used the ball three times daily for two weeks according to the printed directions supplied with each ball. 1000 is deposited with the Alliance Bank, Regent Street, shewing our sincerity in the matter.

"During the last epidemic of influenza many thousand carbolic smoke balls were sold as preventives against this disease, and in no ascertained case was the disease contracted by those using the carbolic smoke ball.

"One carbolic smoke ball will last a family several months, making it the cheapest remedy in the world at the price, 10, post free. The ball can be refilled at a cost of 5 Address, Carbolic Smoke Ball Company, 27, Princes Street, Hanover Square, London."

The plaintiff, a lady, on the faith of this advertisement, bought one of the balls at a chemist's, and used it as directed, three times a day, from November 20, 1891, to January 17, 1892, when she was attacked by influenza. Hawkins, J., held that she was entitled to recover the 100 The defendants appealed.

Finlay, Q.C., and T. Terrell, for the defendants. The facts shew that there was no binding contract between the parties. The case is not like *Williams v. Carwardine* (4 B. Ad. 621), where the money was to become payable on the performance of certain acts by the plaintiff; here the plaintiff could not by any act of her own establish a claim, for, to establish her right to the money, it was necessary that she should be attacked by influenza - an event over which she had no control. The words express an intention, but do not amount to a promise: *Week v. Tibold*. 1 Roll. Abr. 6 (M.). The present case is similar to *Harris v. Nickerson*. Law Rep. 8 Q. B. 286. The advertisement is too vague to be the basis of a contract; there is no limit as to time, and no means of checking the use of the ball. Anyone who had influenza might come forward and depose that he had used the ball for a fortnight, and it would be impossible to disprove it. *Guthing v. Lynn* 2 B. Ad. 232 supports the view that the terms are too vague to make a contract, there being no limit as to time, a person might claim who took the influenza ten years after using the remedy. There is no consideration moving from the plaintiff: *Gerhard v. Bates* 2 E. B. 476. The present case differs from *Denton v. Great Northern Ry. Co.* 5 E. B. 860, for there an overt act was done by the plaintiff on the faith of a statement by the defendants. In order to make a contract by fulfilment of a condition, there must either be a communication of intention to accept the offer, or there must be the performance of some overt act. The mere doing an act in private will not be enough. This principle was laid down by Lord Blackburn in *Brogden v. Metropolitan Ry. Co.* 2 App. Cas. 666. The terms of the advertisement would enable a person who stole the balls to claim the reward, though his using them was no possible benefit to the defendants. At all events, the advertisement should be held to apply only to persons who bought directly from the defendants. But, if there be a contract at all, it is a wagering contract, as being one where the liability depends on an event beyond the control of the parties, and which is therefore void under 8 9 Vict. c. 109. Or, if not, it is bad under 14 Geo. 3, c. 48, s. 2, as being a policy of insurance on the happening of an uncertain event, and not conforming with the

provisions of that section.

Dickens, Q.C., and W. B. Allen, for the plaintiff. [THE COURT intimated that they required no argument as to the question whether the contract was a wager or a policy of insurance.] The advertisement clearly was an offer by the defendants; it was published that it might be read and acted on, and they cannot be heard to say that it was an empty boast, which they were under no obligation to fulfil. The offer was duly accepted. An advertisement was addressed to all the public - as soon as a person does the act mentioned, there is a contract with him. It is said that there must be a communication of the acceptance; but the language of Lord Blackburn, in *Brogden v. Metropolitan Ry. Co.* 2 App. Cas. 666, shews that merely doing the acts indicated is an acceptance of the proposal. It never was intended that a person proposing to use the smoke ball should go to the office and obtain a repetition of the statements in the advertisement. The defendants are endeavouring to introduce words into the advertisement to the effect that the use of the preparation must be with their privity or under their superintendence. Where an offer is made to all the world, nothing can be imported beyond the fulfilment of the conditions. Notice before the event cannot be required; the advertisement is an offer made to any person who fulfils the condition, as is explained in *Spencer v. Harding* Law Rep. 5 C. P. 561. *Williams v. Carwardine* 4 B. Ad. 621 shews strongly that notice to the person making the offer is not necessary. The promise is to the person who does an act, not to the person who says he is going to do it and then does it. As to notice after the event, it could have no effect, and the present case is within the language of Lord Blackburn in *Brogden v. Metropolitan Ry. Co.* 2 App. Cas. 666. It is urged that the terms are too vague and uncertain to make a contract; but, as regards parties, there is no more uncertainty than in all other cases of this description. It is said, too, that the promise might apply to a person who stole any one of the balls. But it is clear that only a person who lawfully acquired the preparation could claim the benefit of the advertisement. It is also urged that the terms should be held to apply only to persons who bought directly from the defendants; but that is not the import of the words, and there is no reason for implying such a limitation, an increased sale being a benefit to the defendants, though effected through a middleman, and the use of the balls must be presumed to serve as an advertisement and increase the sale. As to the want of restriction as to time, there are several possible constructions of the terms; they may mean that, after you have used it for a fortnight, you will be safe so long as you go on using it, or that you will be safe during the prevalence of the epidemic. Or the true view may be that a fortnight's use will make a person safe for a reasonable time.

Then as to the consideration. In *Gerhard v. Bates* 2 E. B. 476, Lord Campbell never meant to say that if there was a direct invitation to take shares, and shares were taken on the faith of it, there was no consideration. The decision went on the form of the declaration, which did not state that the contract extended to future holders. The decision that there was no consideration was qualified by the words "as between these parties," the plaintiff not having alleged himself to be a member of the class to whom the promise was made.

Finlay, Q.C., in reply. There is no binding contract. The money is payable on a person's taking influenza after having used the ball for a fortnight, and the language would apply just as well to a person who had used it for a fortnight before the advertisement as to a person who used it on the faith of the advertisement. The advertisement is merely an expression of intention to pay 100 to a person who fulfils two conditions; but it is not a request to do anything, and there is no more consideration in using the ball than in contracting the influenza. That a contract should be completed by a private act is against the language of Lord Blackburn in *Brogden v. Metropolitan Ry. Co.* 2 App. Cas. 692. The use of the ball at home stands on the same level as the writing a letter which is kept in the writer's drawer. In *Denton v. Great Northern Ry. Co.* 5 E. B. 860 the fact was ascertained by a public, not a secret act. The respondent relies on *Williams v. Carwardine* 4 B. Ad. 621, and the other cases of that class; but there a service was done to the advertiser. Here no service to the defendants was requested, for it was no benefit to them that the balls should be used: their

interest was only that they should be sold. Those cases also differ from the present in this important particular, that in them the service was one which could only be performed by a limited number of persons, so there was no difficulty in ascertaining with whom the contract was made. It is said the advertisement was not a legal contract, but a promise in honour, which, if the defendants had been approached in a proper way, they would have fulfilled. A request is as necessary in the case of an executed consideration as of an executory one:

Lampleigh v. Braithwait 1 Sm. L. C. 9th ed. pp. 153, 157, 159; and here there was no request. Then as to the want of limitation as to time, it is conceded that the defendants cannot have meant to contract without some limit, and three limitations have been suggested. The limitation "during the prevalence of the epidemic" is inadmissible, for the advertisement applies to colds as well as influenza. The limitation "during use" is excluded by the language "after having used." The third is, "within a reasonable time," and that is probably what was intended; but it cannot be deduced from the words; so the fair result is that there was no legal contract at all.

per LINDLEY, L.J.

[The Lord Justice stated the facts, and proceeded:-] I will begin by referring to two points which were raised in the Court below. I refer to them simply for the purpose of dismissing them. First, it is said no action will lie upon this contract because it is a policy. You have only to look at the advertisement to dismiss that suggestion. Then it was said that it is a bet. Hawkins, J., came to the conclusion that nobody ever dreamt of a bet, and that the transaction had nothing whatever in common with a bet. I so entirely agree with him that I pass over this contention also as not worth serious attention.

Then, what is left? The first observation I will make is that we are not dealing with any inference of fact. We are dealing with an express promise to pay 100 in certain events. Read the advertisement how you will, and twist it about as you will, here is a distinct promise expressed in language which is perfectly unmistakable - "100 reward will be paid by the Carbolic Smoke Ball Company to any person who contracts the influenza after having used the ball three times daily for two weeks according to the printed directions supplied with each ball."

We must first consider whether this was intended to be a promise at all, or whether it was a mere puff which meant nothing. Was it a mere puff? My answer to that question is No, and I base my answer upon this passage: "1000 is deposited with the Alliance Bank, shewing our sincerity in the matter." Now, for what was that money deposited or that statement made except to negative the suggestion that this was a mere puff and meant nothing at all? The deposit is called in aid by the advertiser as proof of his sincerity in the matter - that is, the sincerity of his promise to pay this 100 in the event which he has specified. I say this for the purpose of giving point to the observation that we are not inferring a promise; there is the promise, as plain as words can make it.

Then it is contended that it is not binding. In the first place, it is said that it is not made with anybody in particular. Now that point is common to the words of this advertisement and to the words of all other advertisements offering rewards. They are offers to anybody who performs the conditions named in the advertisement, and anybody who does perform the condition accepts the offer. In point of law this advertisement is an offer to pay 100 to anybody who will perform these conditions, and the performance of the conditions is the acceptance of the offer. That rests upon a string of authorities, the earliest of which is Williams v. Carwardine 4 B. Ad. 621, which has been followed by many other decisions upon advertisements offering rewards.

But then it is said, "Supposing that the performance of the conditions is an acceptance of the offer, that acceptance ought to have been notified." Unquestionably, as a general proposition, when an offer is made, it is necessary in order to make a binding contract, not only that it should be accepted,

but that the acceptance should be notified. But is that so in cases of this kind? I apprehend that they are an exception to that rule, or, if not an exception, they are open to the observation that the notification of the acceptance need not precede the performance. This offer is a continuing offer. It was never revoked, and if notice of acceptance is required - which I doubt very much, for I rather think the true view is that which was expressed and explained by Lord Blackburn in the case of *Brogden v. Metropolitan Ry. Co.* 2 App. Cas. 666, 691 - if notice of acceptance is required, the person who makes the offer gets the notice of acceptance contemporaneously with his notice of the performance of the condition. If he gets notice of the acceptance before his offer is revoked, that in principle is all you want. I, however, think that the true view, in a case of this kind, is that 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.

We, therefore, find here all the elements which are necessary to form a binding contract enforceable in point of law, subject to two observations. First of all it is said that this advertisement is so vague that you cannot really construe it as a promise - that the vagueness of the language shews that a legal promise was never intended or contemplated. The language is vague and uncertain in some respects, and particularly in this, that the 100 is to be paid to any person who contracts the increasing epidemic after having used the balls three times daily for two weeks. It is said, When are they to be used? According to the language of the advertisement no time is fixed, and, construing the offer most strongly against the person who has made it, one might infer that any time was meant. I do not think that was meant, and to hold the contrary would be pushing too far the doctrine of taking language most strongly against the person using it. I do not think that business people or reasonable people would understand the words as meaning that if you took a smoke ball and used it three times daily for two weeks you were to be guaranteed against influenza for the rest of your life, and I think it would be pushing the language of the advertisement too far to construe it as meaning that. But if it does not mean that, what does it mean? It is for the defendants to shew what it does mean; and it strikes me that there are two, and possibly three, reasonable constructions to be put on this advertisement, any one of which will answer the purpose of the plaintiff.

Possibly it may be limited to persons catching the "increasing epidemic" (that is, the then prevailing epidemic), or any colds or diseases caused by taking cold, during the prevalence of the increasing epidemic. That is one suggestion; but it does not commend itself to me. Another suggested meaning is that you are warranted free from catching this epidemic, or colds or other diseases caused by taking cold, whilst you are using this remedy after using it for two weeks. If that is the meaning, the plaintiff is right, for she used the remedy for two weeks and went on using it till she got the epidemic. Another meaning, and the one which I rather prefer, is that the reward is offered to any person who contracts the epidemic or other disease within a reasonable time after having used the smoke ball. Then it is asked, What is a reasonable time? It has been suggested that there is no standard of reasonableness; that it depends upon the reasonable time for a germ to develop! I do not feel pressed by that. It strikes me that a reasonable time may be ascertained in a business sense and in a sense satisfactory to a lawyer, in this way; find out from a chemist what the ingredients are; find out from a skilled physician how long the effect of such ingredients on the system could be reasonably expected to endure so as to protect a person from an epidemic or cold, and in that way you will get a standard to be laid before a jury, or a judge without a jury, by which they might exercise their judgment as to what a reasonable time would be. It strikes me, I confess, that the true construction of this advertisement is that 100 will be paid to anybody who uses this smoke ball three times daily for two weeks according to the printed directions, and who gets the influenza or cold or other diseases caused by taking cold within a reasonable time after so using it; and if that is the true construction, it is enough for the plaintiff.

I come now to the last point which I think requires attention - that is, the consideration. It has been argued that this is *nudum pactum* - that there is no consideration. We must apply to that argument

the usual legal tests. Let us see whether there is no advantage to the defendants. It is said that the use of the ball is no advantage to them, and that what benefits them is the sale; and the case is put that a lot of these balls might be stolen, and that it would be no advantage to the defendants if the thief or other people used them. The answer to that, I think, is as follows. It is quite obvious that in the view of the advertisers a use by the public of their remedy, if they can only get the public to have confidence enough to use it, will react and produce a sale which is directly beneficial to them. Therefore, the advertisers get out of the use an advantage which is enough to constitute a consideration.

But there is another view. Does not the person who acts upon this advertisement and accepts the offer put himself to some inconvenience at the request of the defendants? Is it nothing to use this ball three times daily for two weeks according to the directions at the request of the advertiser? Is that to go for nothing? It appears to me that there is a distinct inconvenience, not to say a detriment, to any person who so uses the smoke ball. I am of opinion, therefore, that there is ample consideration for the promise.

We were pressed upon this point with the case of *Gerhard v. Bates* 2 E. B. 476, which was the case of a promoter of companies who had promised the bearers of share warrants that they should have dividends for so many years, and the promise as alleged was held not to shew any consideration. Lord Campbell's judgment when you come to examine it is open to the explanation, that the real point in that case was that the promise, if any, was to the original bearer and not to the plaintiff, and that as the plaintiff was not suing in the name of the original bearer there was no contract with him. Then Lord Campbell goes on to enforce that view by shewing that there was no consideration shewn for the promise to him. I cannot help thinking that Lord Campbell's observations would have been very different if the plaintiff in that action had been an original bearer, or if the declaration had gone on to shew what a social anonyme was, and had alleged the promise to have been, not only to the first bearer, but to anybody who should become the bearer. There was no such allegation, and the Court said, in the absence of such allegation, they did not know (judicially, of course) what a social anonyme was, and, therefore, there was no consideration. But in the present case, for the reasons I have given, I cannot see the slightest difficulty in coming to the conclusion that there is consideration.

It appears to me, therefore, that the defendants must perform their promise, and, if they have been so unwary as to expose themselves to a great many actions, so much the worse for them.

per BOWEN, L.J.

I am of the same opinion. We were asked to say that this document was a contract too vague to be enforced.

The first observation which arises is that the document itself is not a contract at all, it is only an offer made to the public.

The defendants contend next, that it is an offer the terms of which are too vague to be treated as a definite offer, inasmuch as there is no limit of time fixed for the catching of the influenza, and it cannot be supposed that the advertisers seriously meant to promise to pay money to every person who catches the influenza at any time after the inhaling of the smoke ball. It was urged also, that if you look at this document you will find much vagueness as to the persons with whom the contract was intended to be made - that, in the first place, its terms are wide enough to include persons who may have used the smoke ball before the advertisement was issued; at all events, that it is an offer to the world in general, and, also, that it is unreasonable to suppose it to be a definite offer, because nobody in their senses would contract themselves out of the opportunity of checking the experiment which was going to be made at their own expense. It is also contended that the advertisement is

rather in the nature of a puff or a proclamation than a promise or offer intended to mature into a contract when accepted. But the main point seems to be that the vagueness of the document shews that no contract whatever was intended. It seems to me that in order to arrive at a right conclusion we must read this advertisement in its plain meaning, as the public would understand it. It was intended to be issued to the public and to be read by the public. How would an ordinary person reading this document construe it?

It was intended unquestionably to have some effect, and I think the effect which it was intended to have, was to make people use the smoke ball, because the suggestions and allegations which it contains are directed immediately to the use of the smoke ball as distinct from the purchase of it. It did not follow that the smoke ball was to be purchased from the defendants directly, or even from agents of theirs directly. The intention was that the circulation of the smoke ball should be promoted, and that the use of it should be increased. The advertisement begins by saying that a reward will be paid by the Carboloc Smoke Ball Company to any person who contracts the increasing epidemic after using the ball. It has been said that the words do not apply only to persons who contract the epidemic after the publication of the advertisement, but include persons who had previously contracted the influenza. I cannot so read the advertisement. It is written in colloquial and popular language, and I think that it is equivalent to this: "100 will be paid to any person who shall contract the increasing epidemic after having used the carboloc smoke ball three times daily for two weeks." And it seems to me that the way in which the public would read it would be this, that if anybody, after the advertisement was published, used three times daily for two weeks the carboloc smoke ball, and then caught cold, he would be entitled to the reward. Then again it was said: "How long is this protection to endure? Is it to go on for ever, or for what limit of time?" I think that there are two constructions of this document, each of which is good sense, and each of which seems to me to satisfy the exigencies of the present action. It may mean that the protection is warranted to last during the epidemic, and it was during the epidemic that the plaintiff contracted the disease. I think, more probably, it means that the smoke ball will be a protection while it is in use. That seems to me the way in which an ordinary person would understand an advertisement about medicine, and about a specific against influenza. It could not be supposed that after you have left off using it you are still to be protected for ever, as if there was to be a stamp set upon your forehead that you were never to catch influenza because you had once used the carboloc smoke ball. I think the immunity is to last during the use of the ball. That is the way in which I should naturally read it, and it seems to me that the subsequent language of the advertisement supports that construction. It says: "During the last epidemic of influenza many thousand carboloc smoke balls were sold, and in no ascertained case was the disease contracted by those using" (not "who had used") "the carboloc smoke ball," and it concludes with saying that one smoke ball will last a family several months (which imports that it is to be efficacious while it is being used), and that the ball can be refilled at a cost of 5 I, therefore, have myself no hesitation in saying that I think, on the construction of this advertisement, the protection was to enure during the time that the carboloc smoke ball was being used. My brother, the Lord Justice who preceded me, thinks that the contract would be sufficiently definite if you were to read it in the sense that the protection was to be warranted during a reasonable period after use. I have some difficulty myself on that point; but it is not necessary for me to consider it further, because the disease here was contracted during the use of the carboloc smoke ball.

Was it intended that the 100 should, if the conditions were fulfilled, be paid? The advertisement says that 1000 is lodged at the bank for the purpose. Therefore, it cannot be said that the statement that 100 would be paid was intended to be a mere puff. I think it was intended to be understood by the public as an offer which was to be acted upon.

But it was said there was no check on the part of the persons who issued the advertisement, and that it would be an insensate thing to promise 100 to a person who used the smoke ball unless you could check or superintend his manner of using it. The answer to that argument seems to me to be that if a

person chooses to make extravagant promises of this kind he probably does so because it pays him to make them, and, if he has made them, the extravagance of the promises is no reason in law why he should not be bound by them.

It was also said that the contract is made with all the world - that is, with everybody; and that you cannot contract with everybody. It is not a contract made with all the world. There is the fallacy of the argument. It is an offer made to all the world; and 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? It is an offer to become liable to any one who, before it is retracted, performs the condition, and, although the offer is made to the world, the contract is made with that limited portion of the public who come forward and perform the condition on the faith of the advertisement. It is not like cases in which you offer to negotiate, or you issue advertisements that you have got a stock of books to sell, or houses to let, in which case there is no offer to be bound by any contract. Such advertisements are offers to negotiate - offers to receive offers - offers to chaffer, as, I think, some learned judge in one of the cases has said. If this is an offer to be bound, then it is a contract the moment the person fulfils the condition.

That seems to me to be sense, and it is also the ground on which all these advertisement cases have been decided during the century; and it cannot be put better than in Willes, J.'s, judgment in *Spencer v. Harding* Law Rep. 5 C. P. 561, 563. "In the advertisement cases," he says, "there never was any doubt that the advertisement amounted to a promise to pay the money to the person who first gave information. The difficulty suggested was that it was a contract with all the world. But that, of course, was soon overruled. It was an offer to become liable to any person who before the offer should be retracted should happen to be the person to fulfil the contract, of which the advertisement was an offer or tender. That is not the sort of difficulty which presents itself here. If the circular had gone on, 'and we undertake to sell to the highest bidder,' the reward cases would have applied, and there would have been a good contract in respect of the persons." As soon as the highest bidder presented himself, says Willes, J., the person who was to hold the *vinculum juris* on the other side of the contract was ascertained, and it became settled.

Then it was said that there was no notification of the acceptance of the contract. One cannot doubt that, as an ordinary rule of law, an acceptance of an offer made ought to be notified to the person who makes the offer, in order that the two minds may come together. Unless this is done the two minds may be apart, and there is not that consensus which is necessary according to the English law - I say nothing about the laws of other countries - to make a contract. But there is this clear gloss to be made upon that doctrine, that as notification of acceptance is required for the benefit of the person who makes the offer, the person who makes the offer may dispense with notice to himself if he thinks it desirable to do so, and I suppose there can be no doubt that where a person in an offer made by him to another person, expressly or impliedly intimates a particular mode of acceptance as sufficient to make the bargain binding, it is only necessary for the other person to whom such offer is made to follow the indicated method of acceptance; and if the person making the offer, expressly or impliedly intimates in his offer that it will be sufficient to act on the proposal without communicating acceptance of it to himself, performance of the condition is a sufficient acceptance without notification.

That seems to me to be the principle which lies at the bottom of the acceptance cases, of which two instances are the well-known judgment of Mellish, L.J., in *Harris's Case* Law Rep. 7 Ch. 587, and the very instructive judgment of Lord Blackburn in *Brogden v. Metropolitan Ry. Co.* 2 App. Cas. 666, 691, in which he appears to me to take exactly the line I have indicated.

Now, if that is the law, how are we to find out whether the person who makes the offer does intimate that notification of acceptance will not be necessary in order to constitute a binding bargain? In many cases you look to the offer itself. In many cases you extract from the character of

the transaction that notification is not required, and in the advertisement cases it seems to me to follow as an inference to be drawn from the transaction itself that a person is not to notify his acceptance of the offer before he performs the condition, but that if he performs the condition notification is dispensed with. It seems to me that from the point of view of common sense no other idea could be entertained. If I advertise to the world that my dog is lost, and that anybody who brings the dog to a particular place will be paid some money, are all the police or other persons whose business it is to find lost dogs to be expected to sit down and write me a note saying that they have accepted my proposal? Why, of course, they at once look after the dog, and as soon as they find the dog they have performed the condition. The essence of the transaction is that the dog should be found, and it is not necessary under such circumstances, as it seems to me, that in order to make the contract binding there should be any notification of acceptance. It follows from the nature of the thing that the performance of the condition is sufficient acceptance without the notification of it, and a person who makes an offer in an advertisement of that kind makes an offer which must be read by the light of that common sense reflection. He does, therefore, in his offer impliedly indicate that he does not require notification of the acceptance of the offer.

A further argument for the defendants was that this was a nudum pactum - that there was no consideration for the promise - that taking the influenza was only a condition, and that the using the smoke ball was only a condition, and that there was no consideration at all; in fact, that there was no request, express or implied, to use the smoke ball. Now, I will not enter into an elaborate discussion upon the law as to requests in this kind of contracts. I will simply refer to *Victors v. Davies* 12 M. W. 758 and Serjeant Manning's note to *Fisher v. Pyne* 1 M. G. 265, which everybody ought to read who wishes to embark in this controversy. The short answer, to abstain from academical discussion, is, it seems to me, that there is here a request to use involved in the offer. Then as to the alleged want of consideration. The definition of "consideration" given in Selwyn's *Nisi Prius*, 8th ed. p. 47, which is cited and adopted by Tindal, C.J., in the case of *Laythoarp v. Bryant* 3 Scott, 238, 250, is this: "Any act of the plaintiff from which the defendant derives a benefit or advantage, or any labour, detriment, or inconvenience sustained by the plaintiff, provided such act is performed or such inconvenience suffered by the plaintiff, with the consent, either express or implied, of the defendant." Can it be said here that if the person who reads this advertisement applies thrice daily, for such time as may seem to him tolerable, the carbolic smoke ball to his nostrils for a whole fortnight, he is doing nothing at all - that it is a mere act which is not to count towards consideration to support a promise (for the law does not require us to measure the adequacy of the consideration). Inconvenience sustained by one party at the request of the other is enough to create a consideration. I think, therefore, that it is consideration enough that the plaintiff took the trouble of using the smoke ball. But I think also that the defendants received a benefit from this user, for the use of the smoke ball was contemplated by the defendants as being indirectly a benefit to them, because the use of the smoke balls would promote their sale.

Then we were pressed with *Gerhard v. Bates* 2 E. B. 476. In *Gerhard v. Bates* 2 E. B. 476, which arose upon demurrer, the point upon which the action failed was that the plaintiff did not allege that the promise was made to the class of which alone the plaintiff was a member, and that therefore there was no privity between the plaintiffs and the defendant. Then Lord Campbell went on to give a second reason. If his first reason was not enough, and the plaintiff and the defendant there had come together as contracting parties and the only question was consideration, it seems to me Lord Campbell's reasoning would not have been sound. It is only to be supported by reading it as an additional reason for thinking that they had not come into the relation of contracting parties; but, if so, the language was superfluous. The truth is, that if in that case you had found a contract between the parties there would have been no difficulty about consideration; but you could not find such a contract. Here, in the same way, if you once make up your mind that there was a promise made to this lady who is the plaintiff, as one of the public - a promise made to her that if she used the smoke

ball three times daily for a fortnight and got the influenza, she should have 100, it seems to me that her using the smoke ball was sufficient consideration. I cannot picture to myself the view of the law on which the contrary could be held when you have once found who are the contracting parties. If I say to a person, "If you use such and such a medicine for a week I will give you 5," and he uses it, there is ample consideration for the promise.

per A. L. SMITH, L.J.

The first point in this case is, whether the defendants' advertisement which appeared in the Pall Mall Gazette was an offer which, when accepted and its conditions performed, constituted a promise to pay, assuming there was good consideration to uphold that promise, or whether it was only a puff from which no promise could be implied, or, as put by Mr. Finlay, a mere statement by the defendants of the confidence they entertained in the efficacy of their remedy. Or as I might put it in the words of Lord Campbell in *Denton v. Great Northern Ry. Co.* 5 E. B. 860, whether this advertisement was mere waste paper. That is the first matter to be determined. It seems to me that this advertisement reads as follows: "100 reward will be paid by the Carbolic Smoke Ball Company to any person who after having used the ball three times daily for two weeks according to the printed directions supplied with such ball contracts the increasing epidemic influenza, colds, or any diseases caused by taking cold. The ball will last a family several months, and can be refilled at a cost of 5" If I may paraphrase it, it means this: "If you" - that is one of the public as yet not ascertained, but who, as Lindley and Bowen, L.JJ., have pointed out, will be ascertained by the performing the condition - "will hereafter use my smoke ball three times daily for two weeks according to my printed directions, I will pay you 100 if you contract the influenza within the period mentioned in the advertisement." Now, is there not a request there? It comes to this: "In consideration of your buying my smoke ball, and then using it as I prescribe, I promise that if you catch the influenza within a certain time I will pay you 100" It must not be forgotten that this advertisement states that as security for what is being offered, and as proof of the sincerity of the offer, 1000 is actually lodged at the bank wherewith to satisfy any possible demands which might be made in the event of the conditions contained therein being fulfilled and a person catching the epidemic so as to entitle him to the 100 How can it be said that such a statement as that embodied only a mere expression of confidence in the wares which the defendants had to sell? I cannot read the advertisement in any such way. In my judgment, the advertisement was an offer intended to be acted upon, and when accepted and the conditions performed constituted a binding promise on which an action would lie, assuming there was consideration for that promise. The defendants have contended that it was a promise in honour or an agreement or a contract in honour - whatever that may mean. I understand that if there is no consideration for a promise, it may be a promise in honour, or, as we should call it, a promise without consideration and nudum pactum; but if anything else is meant, I do not understand it. I do not understand what a bargain or a promise or an agreement in honour is unless it is one on which an action cannot be brought because it is nudum pactum, and about nudum pactum I will say a word in a moment.

In my judgment, therefore, this first point fails, and this was an offer intended to be acted upon, and, when acted upon and the conditions performed, constituted a promise to pay.

In the next place, it was said that the promise was too wide, because there is no limit of time within which the person has to catch the epidemic. There are three possible limits of time to this contract. The first is, catching the epidemic during its continuance; the second is, catching the influenza during the time you are using the ball; the third is, catching the influenza within a reasonable time after the expiration of the two weeks during which you have used the ball three times daily. It is not necessary to say which is the correct construction of this contract, for no question arises thereon. Whichever is the true construction, there is sufficient limit of time so as not to make the contract too vague on that account.

Then it was argued, that if the advertisement constituted an offer which might culminate in a contract if it was accepted, and its conditions performed, yet it was not accepted by the plaintiff in the manner contemplated, and that the offer contemplated was such that notice of the acceptance had to be given by the party using the carbolic ball to the defendants before user, so that the defendants might be at liberty to superintend the experiment. All I can say is, that there is no such clause in the advertisement, and that, in my judgment, no such clause can be read into it; and I entirely agree with what has fallen from my Brothers, that this is one of those cases in which a performance of the condition by using these smoke balls for two weeks three times a day is an acceptance of the offer.

It was then said there was no person named in the advertisement with whom any contract was made. That, I suppose, has taken place in every case in which actions on advertisements have been maintained, from the time of *Williams v. Carwardine* 4 B. Ad. 621, and before that, down to the present day. I have nothing to add to what has been said on that subject, except that a person becomes a *persona designata* and able to sue, when he performs the conditions mentioned in the advertisement.

Lastly, it was said that there was no consideration, and that it was *nudum pactum*. There are two considerations here. One is the consideration of the inconvenience of having to use this carbolic smoke ball for two weeks three times a day; and the other more important consideration is the money gain likely to accrue to the defendants by the enhanced sale of the smoke balls, by reason of the plaintiff's user of them. There is ample consideration to support this promise. I have only to add that as regards the policy and the wagering points, in my judgment, there is nothing in either of them.

Appeal dismissed.

Solicitors: J. Banks Pittman; Field Roscoe.

H. C. J.

VI. Social networks and the bench

Lord chief justice allows Twitter in court (www.lawgazette.co.uk/)

Monday 20 December 2010 by **Jonathan Rayner**

The lord chief justice has issued guidance indicating that journalists and others may tweet from the courtroom, provided this does not interfere with the administration of justice.

The decision, contained in interim guidance issued today, comes after journalists were allowed to use Twitter to give live updates at the bail hearing of WikiLeaks founder Julian Assange. Previously, mobile phones had to be switched off in court and individuals were only permitted to make live test-based communications of the proceeding with the consent of the judge.

Lord Judge said: ‘The use of an unobtrusive, handheld, virtually silent piece of modern equipment for the purposes of simultaneous reporting of proceedings to the outside world as they unfold in court is generally unlikely to interfere with the proper administration of justice.’

He said that the danger to the administration of justice was ‘likely to be at its most acute’ during criminal trials, where witnesses can be coached before they give evidence about what has been happening inside the courtroom.

‘However, the danger is not confined to criminal proceedings – in civil and sometimes family proceedings, simultaneous reporting from the courtroom may create pressure on witnesses, distracting or worrying them,’ Judge added.

The interim guidance covers the use of mobile, email and social media such as Twitter, and internet-enabled laptops. It has immediate effect, but a consultation is to follow.

Meanwhile, a law firm has claimed to be the first in the UK to give free legal advice via Twitter.

Bristol personal injury firm Loyalty Law has set up Twitter-based firm @thelegaloracle to answer queries ‘tweeted’ by prospective clients.

Loyalty Law managing director Nicholas Jervis said: ‘People are wary of contacting a firm of solicitors in case it costs them £200 just for saying hello. We believe our Twitter service will show them that we are approachable real people, and not standoffish at all.’

The new service has already received a number of queries regarding claims for personal injury and disputes between landlords and tenants. Jervis said: ‘Perhaps 80% of enquirers take things no further, but if the remaining 20% become clients, then the effort is very worthwhile.’

VII. Practice : Virtual lawyers

Virtual law firms: are they the place for you? (*The Sunday Times*)

by Poly Botsford

Imagine a solicitors' firm where the lawyers are freelance: they choose the work they do, as well as when and where they do it; there is no hierarchy because the lawyers are all independent consultants. This firm is a virtual or alternative law firm and it is something to factor into your future as a lawyer.

Since 1996 virtual law firms have been appearing gradually year on year so that now there are about ten in Britain.

Among them are Keystone Law, Halebury, Scomo, Axiom and, the most recent, Cubism. Even existing law firms are getting in on the act: Berwin Leighton Paisner has set up a virtual practice within its own practice, called Lawyers on Demand, or LoD.

These firms are not partnerships in the traditional sense. Instead, their lawyers tend to be self-employed, working at home or in a serviced office hub.

Although there is no restriction on the practice areas they cover, they are often specialists in niche areas such as intellectual property or employment, or are specialist litigators such as at Cubism. They are generally smaller outfits, ranging from teams of under ten, such as at Halebury, to Keystone Law that has almost 100 consultants.

They operate on a virtual level, brought together by an internet-based secure server that houses all their files online.

The freelance chooses the work rather than the other way round.

If you are self-employed, no one controls the work that you do. A virtual lawyer also chooses where to work.

Most choose home, others have found serviced hubs where they meet other floaters and freelancers.

Axiom works slightly differently because its lawyers work in-house for a client they have chosen to work for, so they are based wherever the client is based. Of course, it is still the lawyer who chooses, not the firm who decides.

This virtual life can be lucrative, too. Though income levels of consultants at these firms vary widely (and firms are keen to tell candidates how much they can make), at Woolley & Co, the average is £60,000 a year, at Cubism, the average is more like £210,000.

More important, however, is not what they earn, but how they earn it: at a virtual firm, instead of having a high billing target yet earning a fixed salary, virtual lawyers earn directly according to the fees they generate.

The firm itself takes a percentage from the fees. The exact amount depends on the firm and who brought in the work, but is somewhere between 15 and 50 per cent.

It is estimated that a freelance lawyer takes home on average three-quarters of his or her fees compared with an employed fee-earner at a traditional firm taking home only 30 per cent. Freelancers' earnings are directly related to effort, which is refreshing and rewarding.

Of course, this has a flipside. If you don't do enough work or don't generate enough work, you don't earn anything.

Being self-employed means constant marketing and self-motivation (particularly if you work at home without the encouragement and camaraderie of colleagues) and this does not suit everybody. And unlike a traditional firm where employees are protected from peaks and troughs in the market, a freelance will be directly affected.

It is also worth noting that alternative firms are relatively new and fragile businesses and two have already disappeared.

At the moment, virtual law firms do not on the whole offer training contracts (though Scomo does and Cubism has a fantastic five-year solicitor training programme encompassing paralegal work, traineeship and a newly qualified scheme).

If the first steps to being a lawyer are about soaking up as much as you can (as Lucy Scott-Moncrieff, the managing partner of Scomo, advises: “In the early years take every opportunity to become a really good lawyer, gain loads of experience over a wide range of areas.”), later on, when you have developed an expertise, there is now a viable alternative to the traditional partnership model.

Some firms, such as Axiom and LoD, offer project-based work, say for six or twelve months, which gives lawyers the flexibility to do other things between projects, such as travel. Or they can pursue a passion in tandem with a legal career: Denise Nurse, a director of Halebury, is a successful TV presenter as well as a lawyer.

Though one should be wary about having too patchy a legal career, working freelance is one way to have your cake and eat it.

The future of the legal market is at a critical stage and finding a firm with different structures, imaginative lawyers and more autonomy will become imperative. As Al Giles, general manager for Axiom’s London office, advises: “Take charge of your own career.”