

**Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd [1953] 1 QB 401**

Chapter 3 (pages 114-111)

*Relevant facts*

Section 18 of the *Pharmacy and Poisons Act 1933* (UK) provided that it was unlawful to sell certain drugs unless the sale was affected under the supervision of a registered pharmacist. The Pharmaceutical Society of Great Britain ('PS') was responsible for enforcing the provisions of the Act.

Boots Cash Chemists (Southern) Ltd ('Boots') engaged in the retail sale of various goods, including drugs, in Edgware. The shop used a self service model whereby customers would select items from the shelves in the shop and take them to a cashier's desk at one of the exits where the items were paid for. A registered pharmacist was present in the shop at all times. When a customer was purchasing a drug, the registered pharmacist supervised the sale and was authorised, if necessary, to stop the sale. On 13 April 1951, two customers purchased from Boots drugs covered by section 18 of the Act. The PS brought legal proceedings against Boots alleging that the two sales had not been made under the supervision of a registered pharmacist and therefore were in breach of section 18 of the Act. The PS argued that the display of the drugs on the shelves was an offer by Boots and the customer accepted the offer by selecting the item and placing it in their basket. As such, the sale did not take place under the supervision of the registered pharmacist in the shop.

The claim failed at first instance and the PS appealed to the English Court of Appeal.

*Legal issue*

Was the display of drugs by Boots an offer to customers or an invitation to treat?

*Decision*

On 5 February 1953, the Court of Appeal unanimously upheld the decision at first instance and dismissed the PS's appeal. The Court expressed the view that the mere display of goods on shelves did not amount to an offer by Boots to sell but was merely an invitation to the customer to offer to buy. The customer made an offer to buy at the cashier's desk and Boots then decided whether to accept or reject that offer under the supervision of a registered pharmacist. Accordingly, there was no breach of section 18 of the Act.

According to Lord Justice Somervell:

[I]n the case of an ordinary shop, although goods are displayed and it is intended that customers should go and choose what they want, the contract is not completed until, the customer having indicated the articles which he needs, the shopkeeper, or someone on his behalf, accepts that offer. Then the contract is completed. I can see no reason at all, that being clearly the normal position, for drawing any different implication as a result of this layout.

... [I]f the plaintiffs are right, once an article has been placed in the receptacle the customer himself is bound and would have no right, without paying for the first article, to substitute an article which he saw later of a similar kind and which he perhaps preferred. I can see no reason for implying from this self-service arrangement any implication other than that which the Lord Chief Justice found in it, namely, that it is a convenient method of enabling customers to see what there is and choose, and possibly put back and substitute, articles which they wish to have, and then to go up to the cashier and offer to buy what they have so far chosen.

### *Significance*

This case demonstrates the difference between an offer and an invitation to treat. An invitation to treat is not an offer that can be accepted; it is an offer to consider offers or an initial approach to others inviting them to make an offer which may or may not be accepted.