Annual Novice Moot Round 1

***Fisher v Spencer***

In the Court of Appeal

***For the avoidance of any doubt:***

***Maria Fisher is the Appellant | Mark Spencer is the Respondent***

Mark Spencer is a dealer of high-quality, fresh seafood. He has, over the years, built a moderately sized, but wealthy clientele who regularly buy seafood from him. Mark’s business model is built on a subscription service. Clients are billed monthly and are sent a customizable ‘seafood variety box’, every Monday. In addition to the subscription service, Mark also offers limited time ‘catch of the day’ deals, via text message, to his most loyal customers.

Maria Fisher is one of Mark’s regular customers who has been purchasing seafood, primarily sushi grade tuna, from him for 2 years. On Friday, April 8th, 2023, Maria received a text message from Mark as follows:

---

*Dear Loyal Customer, LIMITED TIME OFFER. 1 lb. of SUSHI GRADE tuna for £10 pounds ONLY. This offer has only been sent to my most loyal customers who have bought a large amount of sushi grade tuna from me. Please do not share this message with others because I have limited stock. Furthermore, since I have no reason to doubt that you will not be interested in this offer, I will be sending 5 lb. of this sushi grade tuna in your Seafood Variety Box next week and will be charging you £50 pounds extra at the end of the month. Please reply by Sunday, April 10th if you do not want this offer, otherwise do not reply.*

*---*

Maria was thrilled when she received this message. She had a dinner party planned for Monday the April 11th, 2023, and the 5 lb. of tuna would be the perfect main-course for her dinner. Paying close attention to Mark’s instructions, Maria did not reply to Mark’s message and went about her preparations for the party. She was shocked on Monday afternoon when her ‘seafood variety box’ did not have the 5 lb. of tuna. Mark had overestimated the number of customers requesting more than 5 lb. of tuna and had run out of stock before he could send Maria her 5 lb. With her dinner party now ruined, Maria sued Mark for breach of contract.

At first instance, Pike J, in the High Court held that:

*a.* Adverts are typically invitations to treat and thus there was no offer; *Partridge v Crittenden applied.*

Annual Novice Moot Round 1

b. Even if there was an offer, silence cannot amount to acceptance, and hence there was no valid contract; *Felthouse v Bindley applied.*

The Court of Appeal has granted Maria leave to appeal the decision on two grounds:

a) The wording of the text message indicates that it was an offer.

b) By acting in reliance of the text message, Maria accepted the offer.

The Senior Counsels will make submissions on Ground 1, and the Junior Counsels will make submissions on Ground 2.