Lefkowitz - Lecture Transcript
Inside the Classroom: Contracts With Professor George Geis

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UVA Law professor George Geis discusses issues surrounding offers and acceptance in contract law with his 1L Contracts class. Taking place early in students' first semester at law school, this session examined questions surrounding what exactly constitutes an offer of a contract, and what constitutes an acceptance of that offer. Geis illustrated these concepts using historical examples of advertising offers. (University of Virginia School of Law, March 2, 2020)

03:07
Now we're ready to continue by looking at the case of Lefkowitz versus Great Minneapolis Store. This is on page 219. Now, I don't know if you watch that HBO comedy series Curb Your Enthusiasm with Larry David. This case reminds me of something that the actor Larry David would do. I mean, in my mind, he is my model for Lefkowitz. We've got a situation where a store--Great Minneapolis Store-- runs an advertisement one day in the newspaper I think up in Minneapolis. And here's what it says--Saturday 9 AM sharp, 3 brand new fur coats. Worth to $100. First come first served $1 each. Lefkowitz sees the ad. He decides that he's interested in accepting the offer. So he gets up early Saturday morning, marches over to the Great Minneapolis Store, waives his dollar and says I'd like to accept. And the store says, no, we're not selling you anything. You should know, Lefkowitz, that this offer was directed for women only. You can't accept it. A little more time goes by. Lefkowitz presumably is upset.

04:24
Next week, he sees another ad. Same store-- Saturday 9 AM sharp. Two brand new pastel mink scarves. Selling for $89.50 out they go. Each $1. One black lapin stole. Beautiful. Worth $139.50. $51 $1, first come, first served. Same thing-- Lefkowitz gets up early Saturday morning, marches over to the store, waives his dollar and that store says, Lefkowitz, you know our rules, you can't accept this offer. We're not giving you the stole. Lefkowitz decides that he's going to sue. All right.

05:01
Joey, let's think this one through. Lefkowitz wants the value of both furs presumably or products from both of the advertisements. Let's start with the first ad. **Is this an offer that Lefkowitz can accept?**

05:24
STUDENT: I would say so, although the court did not award him damages for the first one.

05:30

GEORGE GEIS: So the court presumably said no, or they would have awarded him some damages. But you think this is an offer. **How do we know?**

05:38
STUDENT: Well, the price is clearly defined in the advertisement. And also, it's specifically directed at the first person to arrive in the store in the morning.

05:48
GEORGE GEIS: **Does this worth two $100 mean anything to you? I mean, does two change anything?**

05:56
STUDENT: Yeah, that's the issue that court found was that the actual price of the coat was speculative. It was uncertain, so they didn't know how much to award him in damages.

06:07
GEORGE GEIS: And it might be the case that the store hadn't even identified which specific coat it was-- is designating to sell. We don't know whether the advertisement was just saying we're going to pick a few out, but we haven't decided yet which ones, or if they've got a few specifically identified coats. In either event, it's a little bit indefinite whether they were offering a $100 coat or if they were offering something worth much, much less, perhaps a cheaper coat. And so I think for that reason, the first ad didn't count as an offer according to the court. And that, by the way, is I think consistent with what we had historically understood advertisements as being. Advertisements-- remember we talked about last time-- are not generally understood to be offers. They're invitations to make an offer. Hey, I'm selling this kind of stuff. Make me an offer. I'll probably go-- I'll probably accept it. I'm probably going to accept it. Now, you said you thought this was an advertisement--or this was an offer. **Why do you disagree with the court?**

07:05
STUDENT: So it has the appearance of an offer as the other advertisement did. I'm thinking now that maybe it wasn't specific enough with which coat, since they didn't have a clear price for how much it was worth. It's possible that they hadn't had the details worked out. So maybe it didn't constitute an offer actually.

07:24
GEORGE GEIS: So maybe not. I mean, it's close but maybe not. The court didn't think it was. But let's jump up to the second offer. You mentioned a minute ago that that might be treated differently. **Will Lefkowitz recover for this?**

07:39
STUDENT: Yes.

07:40

GEORGE GEIS: Yes, he will. He will. He wins on this. Notice he doesn't win the full $139.50. Notice he doesn't win the right to get this specific stole through specific performance. He gets the difference in the dollar he would have had to pay and the $139.50 that presumably this stole was worth. Or $138.50. But fundamentally, for our purposes, the court says this actually did count as an offer. **Now, how can this be? How can an advertisement be an offer when that is so counter to what we said before?**

08:10
STUDENT: Well, in this circumstance, an advertisement-- usually an advertisement is directed to the public--no one in particular. So it's more of an invitation for an offer as opposed to an offer itself, because the store has limited inventory. So if everyone was to come forward and try to accept the offer, they wouldn't want to hold the store bound by all those so-called contracts. But in this case, it was specifically directed at the first person to be at the store. So it was a lot more direct.

08:39
GEORGE GEIS: So first come, first served. We're telling you in advance everything you need to do to accept it. And only one person is going to be able to accept it, at least for each of the products. This said first come, first served. **Why wasn't-- what's the difference?**

08:55
STUDENT: So the second ad is a lot more specific with what was being sold. It's specifically the black lapin stole worth $139.50. So they knew exactly what the product was and how much it was worth.

09:08
GEORGE GEIS: So we've got an exception to our general rule that advertisements are not normally offers. We see this at the bottom of 220, over to the top of 221. Where an offer is clear, definite, and explicit, and leaves nothing open for negotiation, it constitutes an offer, acceptance of which will complete the contract. And I think they meant where the advertisement is clear and definite. So if you have a really clear advertisement, then it can count as an offer. And here, I think they say exactly what it is and exactly how it should be accepted. So Lefkowitz wins on the second ad, but the second ad only. **Now, Joey, does the store have the right to withdraw the offer?**

09:55
STUDENT: If it's a clear offer, they have a right to withdraw before it's accepted.

10:01
GEORGE GEIS: **So when does Lefkowitz accept?** Suppose I'm Lefkowitz and you see me walking towards you at the store, and I'm waving the newspaper, and I've got my dollar. [LAUGHTER] **Have I accepted yet?**

10:12

STUDENT: I think at the moment that he appears at the store at--I think 9 AM--with the dollar, that would constitute acceptance.

10:20
GEORGE GEIS: So if you're the store keeper, and you see me marching across the parking lot, and you know that last week I tried to accept this offer, you could get out your megaphone and say, we revoke Lefkowitz. [LAUGHTER] **Would I have a contractual right if you did that?**

10:42
STUDENT: I'm not sure. I think the--I think up to that moment they would be able to withdraw the offer.

10:48
GEORGE GEIS: If you've revoked it and you've revoked it before I've accepted it, then you've squashed that offer. I can't scrape it back up and somehow turn it into a contract. It's gone. So timing is going to be really important with a lot of these cases. If you don't want the offer to be available anymore, you've got to pull it back. The store could have pulled it back, but they didn't. And presumably Lefkowitz accepted it when he showed up first in line waving his dollar, claiming the stole.

11:14
STUDENT: Does the--I mean, you gave the example of the megaphone. **Does the publicity of the revocation matter? Whether he whispers I revoke, or whether he declares it, puts it in the newspaper, et cetera.**

11:26
GEORGE GEIS: Yeah, I mean, we'll talk a little bit about this-- In general, you've got to communicate it to the parties. And it might be easy if Lefkowitz is marching over and you see Lefkowitz trying to come and you want to revoke it for Lefkowitz. It might be harder-- suppose you're the store, and you make this offer out there, and then you realize that, oh, boy, we really messed up. We don't want to make this offer anymore. We want to try to revoke it for everyone. That can be a little tricky. Because you could try to run a newspaper ad again, but maybe everybody doesn't see that. And as we'll talk about shortly, usually if you're revoking an offer you've got to try to communicate that. **Any ideas on what you might try to do if you're revoking the offer?** Yeah, Gillian.

12:02
STUDENT: Put up a sign up in front of the store. Like right-- so the person would have to walk around the sign to get in.

12:07
GEORGE GEIS: All right. So I think that's not a bad idea. That newspaper advertisement that we posted, that might be construed as an offer, we revoke it right now for everybody, including you, Lefkowitz. And maybe something like that would allow you to argue that it revoked it. Now,

by the way, there are some special consumer protection problems that sometimes arise in situations like this. The notes after the case talks a little bit about some of the special rules that have been enacted on top of contract law to try to prevent against deceptive trade practices. And maybe even something like that wouldn't save you if you would engage in some sort of a deceptive trade practice by trying to get people in when you knew that you weren't ultimately going to sell the product. But as a matter of contract law, I think Gillian's idea probably would work. You communicated your revocation before the other side accepted it. **Andy?**

12:56
STUDENT: Could we argue--the court kind of glosses over this, but the first time when they told him that it was only an offer for women and that these offers were intended for women, in general-- **could that be a revocation of the offer from Lefkowitz specifically?**

13:09
GEORGE GEIS: **Joey, how do we think about that?** Lefkowitz knew that the initial offer was only made for women. **Shouldn't that preclude him from accepting the second ad even if it was an offer?**

13:25
STUDENT: Well, once again, the second advertisement didn't include any stipulation like that. So in isolation, I would instead say the second advertisement--it just said whoever is the first person at the store at 9:00 AM.

13:39
GEORGE GEIS: So the court says-- court thinks about that. It says they claim that this wasn't directed at Lefkowitz. But they didn't say that in the offer itself. **Now, here's an interesting question-- could they have said that in the advertisement?** This is directed for women only. Men, you're not able to accept it.

13:58
STUDENT: They could have put it in the advertisement. And if they had, Lefkowitz probably would not have been able to recover. But they did not.

14:08
GEORGE GEIS: **Can you make offers that are only available to one gender?**

14:13
STUDENT: I think so.

14:14
GEORGE GEIS: Yeah. I mean, you can in some cases. It's a tricky and developing area of the law. And there is some federal law that says in certain situations--housing, and employment, and in certain special areas--you actually can't discriminate on the basis of gender when you're contracting. I think California has a pretty broad prohibition on gender discrimination in

contracting. But in many states, I think it is all right if you want to direct your offer for only a certain audience. And if they had done it, then maybe this case would have come out differently. Here they didn't. They didn't say that. Maybe Lefkowitz knew or should have known. But then again, Lefkowitz could have thought that maybe that was only for the first one, not for the second one. They didn't put it in. They can't change it after the fact. He's already accepted the contract. Therefore, it's too late for them to try to modify who it applies to. Christoff, your hand's up.

15:00
STUDENT: I'm thinking about the first case--let's say a woman comes to the store and she wants to buy this coat. We can still say that it's not specific enough-- this offer is not specific enough.

15:15
GEORGE GEIS: I think that's right. I think if they didn't want to sell it, they didn't have to sell it. I don't think gender mattered one way or the other. I mean, I guess that was motivating them maybe to not give it to Lefkowitz initially. I really don't know why they didn't just sell it to Lefkowitz initially if that's what they wanted to do. But I think as a matter of offer, the problem here was that it wasn't specific, definite enough and left nothing open to negotiation. It was still not enough to count as a change to our normal rule that ads aren't offers.

15:42
STUDENT: **But we have a specific price there-- $1 like each, right?**

15:48
GEORGE GEIS: Well, we have a price, but we don't know exactly what it is we're selling. At least that's how the court saw it. **What exactly are we selling?** Three brand new coats worth I think up to $100. Maybe it's a cheap one. Maybe it's a nice one. I think the problem that's bothering the court is that here we don't really know exactly what's being put on offer. Here we've got apparently one specific thing in mind--this one black lapin stole worth $139.50. So that's what I think really is the distinguishing factor between the two cases.

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