James Polk, AISOL Contract Law Midterm, 2022

Rita has three situations with the same issue of whether she has an enforceable contract with three separate people based on the situations that arose from an advertisement of hers. Specifically, she placed hundreds of flyers in her local neighborhood grocery store that read, "Rita can paint your home for $2,000 --- Cal Rita now to accept this offer!". Three different people responded to Rita with three different situations and all three situations have a different answer to whether Rita has an enforceable contract with the people who responded.

First let me cover an issue with respect to the way Rita worded part of her Flyer advertisement. The wording of her advertisement says, "Rita CAN paint.....", and for all intents and purposes this can should be contextually interpreted to carry with it the intentional component that saying, "Rita WILL paint....." would carry because the very next part of the Flyer Advertisement says, "..... Call Rita now to accept this OFFER!" and this use of the word offer really modifies the meaning of the word "can" and causes it contextually to mean "will", and makes the issue about whether the Advertisement is really an Offer or an Invitation to Negotiate.

The standard rule about whether an advertisement is an offer is that it is not an offer and that it is simply an invitation to negotiate. This rule has one main exception that applies, and that exception is called the "Lefkowitz Exception" based on **Lefkowitz v. Great Minneapolis Surplus Store, 251 Minn. 188, 86 N.W.2d (1957).** The core of the Lefkowitz Exception is a set of issues surrounding context and intention of the party making the advertisement. Let me unpack Lefkowitz and then apply the exception to Rita's three separate situations.

In 1956, Great Minneapolis Surplus Store, Inc. published a newspaper advertisement stating that on an upcoming Saturday at 9:00 am, it was selling three fur coats, "Worth up to $100" for $1 each, on a "first come, first served" basis. A little over a week later, they published another advertisement offering to sell a black lapin stole worth $139.50 for $1. On both sale dates, Morris Lefkowitz was first in line at the store and offered to buy the advertised items. The store refused, stating that a "house rule" was that the offers were for women. Lefkowitz sued the store.

The trial court ruled that the value of the fur coats in the first advertisement was too speculative to determine with any certainty and denied damages to Lefkowitz for his claim with respect to the coats. The trial court held that the value of $139.50 for the stole was certain, and therefore awarded Lefkowitz the $139.50 value of the stole minus the $1 advertised purchase price, so $138.50. The store appealed. The issue on appeal was whether an advertisement is a binding offer if it is clear, definite, and explicit, and leaves nothing for negotiation?

On appeal, it was held that **an advertisement constitutes a binding offer if it is clear, definite, and explicit, and leaves nothing open for negotiation.** The holding and reasoning were presented by Judge Murphy J. and he opined that the store's advertisement is a clear, definite, and explicit offer, and that acceptance by Lefkowitz formed a valid and enforceable contract. An advertisement constitutes a binding offer if it is clear, definite, and explicit, and leaves nothing open for negotiation.

Whether an individual newspaper advertisement constitutes an offer, as opposed to merely an invitation to make an offer, depends on the parties' intentions and the surrounding circumstances. Additionally, once an offer is made, the offeror can unilaterally modify the terms of the offer before acceptance. However, after acceptance, the offeror may not impose additional or arbitrary conditions on the offer.

In Lefkowitz, the advertisement by the store for the lapin stole was clear, definite, and explicit, and it left no terms open to negotiation. It stated that the stole would be sold on a given date at a given time to the first person who arrived and agreed to pay the $1 purchase price. Lefkowitz fulfilled this condition, and he thus accepted the store's offer. This formed a valid and enforceable contract, and the store could not then impose additional and arbitrary conditions on the offer such as requiring the purchaser to be female. Accordingly, the trial court correctly awarded damages to Lefkowitz in the amount of the value of the stole minus the $1 purchase price. **The trial court's judgment was affirmed.**

This brings us to the fact patterns involved in the question at hand. Rita had three very different situations as follows: One situation was with Marvin, the owner of a very large home in a town next to the town where Rita placed the

flyers. Marvin called Rita, said he accepted, said "please start as soon as possible", and blurted out his address and hung up so quickly that Rita could not respond. Marvin knew that $2000 for a paintjob on his house was an exceptional deal. The second situation involved Sue calling Rita to inquire about the advertisement, Rita explaining that she would have to come over before providing a bid, and the two getting together later in the day. Rita looked at Sue's job and offered her a $700 bid, lower than the advertisement's number. Sue said it was a good price, but wanted to consider other options, and ended up calling Rita on the phone leaving a message the next morning accepting Rita's offer. The third situation involved Mary who called and said, "if you can paint my house for $2,000, the job is yours". Mary left her address, Rita drove by, decided to paint the house for $2,000 and began painting the very next day at which time Mry came running outside and told Rita to stop painting the house, as she had found a different painting contractor for the job. **Lefkowitz and several variants and related issues apply in different ways to all three of these situations.**

In the situation involving Marvin there is not an enforceable contract because of the fact that the intended area of painting was the area surrounding the market which had much smaller houses than Marvin's. The advertisement is arguably not an offer because of this immediately glaring occurrence of impracticality and lack of reasonability in forcing a painter to paint a house as large as Marvin's for such a small price. The question prompt seems to show that possibly the cost of the paint itself would be more than the $2,000 number stated in the advertisement. It is simply not possible to paint too large of a house for the price stated or else Rita would probably have simply started painting. It is not reasonable for a potential client to expect a painter to be able to paint their house for less than cost and therefore though there was a specific dollar amount stated in the advertisement, there was not specificity with respect to the size of the house, though a smaller house was envisioned. This case fits with **Mesaros v. United States, 845 F. 2d at 1581** in which the U.S. Mint was over inundated with applications to buy Statue of Liberty-Ellis Island commemorative gold coins but did not have the quantity available due to an act of congress. There is just not enough paint for $2000.

In Rita's situation with Sue, there is a clear and enforceable offer and acceptance by performance if nothing else. After she began performing and there was no

protestation, there is for certain a valid and enforceable offer. This is what the fact pattern indicates and therefore it is a contract. Until Sue called and left a message saying that she wanted Rita to come over to paint the house, there was no contract because of the face to face conversation between the two which came chronologically after Sue's response to Rita's advertisement. The conversation was the next step in Sue treating the advertisement as an offer to enter negotiations because it was her ratifying the implied reality of Rita treating the initial phone conversation as the next step after the advertisement and before the face to face conversation. If Sue had insisted on Rita painting the house for $2000 it would have been an odd situation since the job itself warranted a lower price than $2000, namely the ultimately agreed upon price of $700 which became the valid and enforceable contract. Sue simply did not attempt to accept the initial terms of the advertisement and there is no issue with respect to an enforceable contract for $2000.

This brings us to our third fact pattern with respect to the Advertisement which Rita ran in the form of placing flyers in the local grocery store. My analysis of this third fact pattern is going to rely on **Pareto's Theory of Efficient Breach** to determine damages, but I will double back around to that at the end of the discussion. It is a thoroughly interwoven principle of natural law that is implied throughout our constitutional system of law that **enforced relations are repugnant to the courts**. If a person no longer wants to interact with another person, they cannot really be forced to interact.

There are different applications of these legal principles, but situationally it simply means that the way Mary told Rita to "stop painting the house because she had found a different painter for the job" is acceptable, but according to the basic concept of Efficient Breach, the benefit that a person gains by breaching a contract should not come entirely from the loss of the party whose agreement is breached. We do not have an unenforceable contract, simply a person who does not want another specific individual to perform.

The breaching party should at least offer to pay half of the difference between what they had agreed to pay the aggrieved party and the new price they intend to pay the party whom they want to replace the initial party in the contractual activity. This is a way of calculating the situation that is oftentimes

readily acceptable because it sometimes exceeds the profit that the initial party who otherwise would have been aggrieved was hoping to make in the first place. This is the rose colored glasses outcome.

If the person is breaching because they simply want to pay the same amount to a friend rather than to a person they just met via responding to their advertisement, then the aggrieved party, i.e.. Rita should sue and will win the whole amount of the contract price of $2000 based on no valid reason for non-payment and for not allowing Rita to paint after there was a valid and enforceable contract. It does not make financial sense for Mary to pay a different person other than Rita the same $2000 for the paint job and then have to turn around and pay a judgement for $2000 to Rita. There was an accepted offer and a ratification by performance. There was a clear, definite and specific offer and acceptance by ratification in this situation arising from an advertisement.