

CHAPTER 11 (REVIEW, REPHRASE, RECORD):

In italics below, you will find some thoughts from the author about ways you might have responded to this chapter's practice exercises. If you responded differently, you may have had good reason for doing so. Take the author's ideas as food for further thought as you develop your legal reading skills.

Practice Exercises:

1. Read the following case [*Leonard v. Pepsico, Inc.* printed beginning on p. 177 of the main text] in its entirety, keeping notes in the margin of the book as you read. In your margin notes, try to include any spontaneous emotional reactions you have to the facts or the court's reasoning and any value judgments you make about the court's language or reasoning, or about the positions of the parties. Pay attention to whether you are clearly and accurately visualizing the "conflict facts" and the "legal facts" discussed in Chapter 9. Before you begin, assume that this case appears in a Contracts casebook in a section concerning "offer" and, more specifically, in a subsection concerning when an offer is sufficiently firm that it binds the person making the offer to a contract if the offer is accepted.

2. What year did this ad campaign hit the airwaves? *It was test marketed in the Pacific Northwest in the fall of 1995 and into the winter of 1996, and then went national.* How old were you at that time? *Answers will vary, but many current law students weren't even born then.* Do you remember seeing any of the "Pepsi Generation" ads? *Answers will vary, but if you don't personally remember the ad campaign, ask an older relative or friend if they remember.* Do you remember seeing *this* Pepsi Generation ad? *Answers will vary, but assuming you don't, it might be fun to ask an older friend or relative if they remember it.* Can you relate to what it means to be a member of the "Pepsi Generation"? *Answers will vary, but you can probably think of an analogous ad being put out by companies today.* How might these personal perceptions (or the lack of them) impact how you read the case? *Answers will vary. The point is that the more closely you identify with the material in a case, the more likely you are to bring the facts of the case to life as you imagine what transpired, but also the more likely it is that you may have a visceral reaction to the case that keeps you from reading the case objectively. For example, if you asked an older friend or relative about the case, did they tell you if they thought it was just craziness for someone to sue, or would it have made some sense at the time?*

3. Do you think there's any merit to the plaintiff's argument that his case should be heard by a jury of his "peers" (other members of the Pepsi Generation)? *Answers will vary depending on whether the student believes, as the plaintiff does, that the judges can't "get" this case and why this ad may have appeared to be a binding promise to this plaintiff.* Do you think there's any merit to the plaintiff's contention that a federal judge is not be a member of the audience targeted by this ad campaign and therefore could not evaluate whether it would be perceived of as an "offer" by the target audience? *Perhaps.* Did the judge directly address this contention or side-step it? *The judge side-stepped the issue, never saying whether federal judges were or were not members of the Pepsi Generation. Rather, the judge noted that having to understand*

facts that are different from one's personal experience is part of the everyday challenge of being a judge.

4. Do you think the plaintiff in this case really believed he had been given an offer to purchase a Harrier Jet? *It's hard to imagine that he really thought that. Do you think the court thought he believed it? Clearly the court did not believe he thought so.* Can you point to what parts of the text caused you to think that the court did or didn't believe that Mr. Leonard really thought the Pepsi Co. was making a contract offer? *The court explains that Mr. Leonard ultimately turned to acquaintances to raise \$700,000 to buy Pepsi points to purchase the jet. It's hard to imagine that, even if THIS plaintiff believed he could buy the jet, he could find rational acquaintances who would agree. It is more likely that he could find acquaintances who would agree that the company had exposure and were willing to risk a lawsuit to find out. The court also notes that "plaintiff appear[ed] to be represented by counsel at the time he mailed his check."*

5. Please "book brief" this case in this book or write out a more traditional brief in the space below, paying attention to the parts of a brief you read about in Chapter 2.

6. Assume you read this case for a contracts class that you know would be introducing the notion of what constitutes a firm offer which, if accepted, would form a binding contract, what do you think is the "main idea" presented by this case? *Students' answers will vary, but one possible "main idea" of the case is that an advertisement is not a firm offer.* Are there other secondary "main ideas" that are also important? *A secondary "main idea" might be that a joke cannot be taken seriously as an offer.* What "working hypothesis" about this case and about "offer" might you take to class after reading this opinion? *My "working hypothesis" might be that an objective reasonable person would have to believe that an advertisement was an offer [for example, where it was economically feasible for a company to meet the stipulations of the advertisement] in order for an advertisement to constitute a binding offer.*

7. How long did it take you to read this case, take notes while you read, and brief the case?

By now, you should have been paying attention to time and might be able to guess how much time was involved. If you did reach out to older friends and relatives about these "Pepsi Generation" ads, do you think that was worth your time? If you were super busy in law school, would it have been better not to involve other people?

8. When you are finished reading and briefing this case, turn the page over and you can see some of the thoughts I preserved in the margins as I read this case. **Any comments in parentheses are things I would have thought to myself but probably wouldn't have written down. I probably would have written everything else down in the margins as I read. You will also see the short brief I might have taken to class with me. Remember that no two readers ever think exactly the same thing even when they are reading exactly the same material. We all bring in our prior experience, our presuppositions, and our own energy to the reading task as we respond to the text and create new knowledge from what we've read.**

Note that it would be useful to see what other students, or experienced faculty members, might have thought as they read this case. Not everyone will have the same thoughts or reactions, but everyone should reach the same conclusions about the “main idea” of the case.

After you’ve looked over my notes and brief, use the space below to compare what I was thinking with your own thoughts. Could we have learned anything from each other? Would we have things we could discuss in class to help each of us understand what constitutes a sufficiently “firm” offer to support a claim that a contract is formed if the “offer” is accepted?

Case Brief

Leonard v. Pepsico

88 F. Supp. 2d 116 (S.D.N.Y 1999)

Π: Leonard (a young man?)

Δ: Pepsico (the Pepsi corporation)

PH: (1) Π filed suit for specific performance;
(2) Δ filed for summary judgment;
(3) This Federal District (trial) court granted Δ’s summary judgment motion.

F: Π saw Pepsi’s “Pepsi Points” commercial that ended (with a flourish) with a teen-ager flying a Harrier Jet to school, followed by the statement, “Harrier Jet – 7,000,000 Pepsi Points” (roughly \$700,000 worth). The ad also said “see the Pepsi Points catalog for details.” Π raised \$700,000 and tried to cash in. Pepsi said there was no offer. Π sued to get the jet.

Q: (1) Was this ad an enforceable offer” (which, if accepted, would bind the Δ to exchange the jet for the proffered Pepsi Points)?; and

(2) More generally, when is an ad an enforceable offer?

Holding: This ad was not an enforceable offer and Pepsi didn’t have to exchange its Pepsi Points for a Harrier Jet.

Rule: An advertisement is presumptively NOT an offer, but rather only an offer to enter into negotiations or further discussions. There is an exception to this rule when an ad is sufficiently specific (with limiting language to protect the offeror) that reasonable people would assume it was a concrete (and therefore enforceable) offer to contract.

Reasoning: If an offer is made, the offeror is bound to a contract if the offer is accepted. The court here adopts an “objective” standard to determine when an advertisement might constitute a binding offer, finding that it doesn’t matter what the parties themselves (or any one party) actually believed to be going on. The court will only find an offer if reasonable people would believe an offer was made. Hence, jokes don’t count – but something intended to be a joke that reasonable people would take seriously *would* constitute an offer. Also, I guess that’s why

advertisements don't usually count (because most people would realize that a store could quickly get in over its head if everyone they were reaching responded, thinking they were entitled to the product advertised).

* * * *

After you've looked over my notes and brief, use the space below to compare what I was thinking with your own thoughts. Could we have learned anything from each other? ***Students' answers will vary but should reflect thoughtful consideration of the differences between my thoughts about the case and their own.*** Would we have things to discuss in class to help each of us understand what constitutes a sufficiently "firm" offer to support a claim that a contract is formed if the "offer" is accepted. ***This is a rhetorical question. If you are using this chapter as the basis of individual or group work, this is a good discussion question to explore.***