

Student's Name

Contract Formation

Date

The Case of the Red Owl, and Why You Should Give a Hoot  
Hoffman v. Red Owl Stores, Inc. 1965

**I.** The 1965 case of *Hoffman v. Red Owl Stores, Inc.* was a dispute over the extent to which a promisor is liable before the formal completion of a contract. The plaintiff, Joseph Hoffman, sued to recover the detrimental costs he was persuaded by Red Owl Stores to accrue, in addition to a sum of \$18,000, in anticipation of their offer to allow him to open a new Red Owl store. These costs included selling the plaintiff's businesses, purchasing a new site in a different city, and moving himself and his family to that city. Thereafter, Red Owl increased the money requested, which Hoffman could not afford, and the contract dissolved. The legal issues in play are twofold: first, whether a contract is binding upon indication of acceptance or upon completion of the requested action(s), and second, whether promissory estoppel is applicable to such an agreement. The Wisconsin Supreme Court decided in favor of the plaintiff, expanding promissory estoppel (which safeguards against unjust revocation) beyond gratuitous promises to enforceable contracts.<sup>i</sup> The case is of interest because it is a key development in contract law that marked the decline of classical contract theory, or a shift in consideration from intentions and motivations to economic and consumer factors in ruling on contract disputes.<sup>ii</sup>

**II.** In analyzing this case, it is most appropriate to draw from the body of linguistic theories that define the components of a contract, and when and how one is binding. Specifically, speech-act perspective and Searle's felicity conditions serve well to establish the validity of a contract. In turn, *Restatement of the Law Second, Contracts*<sup>iii</sup> and the works of Steven Emanuel and Peter Tiersma comprehensively assess when to consider an offer as accepted, and thus the degree to which the promisor is responsible and when. It is a particularly relevant approach, for there is a significant overlap between the linguistic rules established and the principles of contract law. It allows the examiner to establish whether this was a valid contract in the first place, and whether or not the court was justified in its decision to apply promissory estoppel.

**III.** A valid contract is comprised of an offer, consideration, and acceptance.<sup>iv</sup> Was the agreement between Hoffman and Red Owl a valid contract? We begin with the offer component. Using linguistic structure, or logical formulae, Red Owl's promise—that if the plaintiff were to invest a certain sum of money, they would build and stock a store for him to operate—can be identified as a conditional promise (“I hereby promise you [Y will occur > I will do X]”).<sup>v</sup> As a conditional promise, specifically one which proposes an exchange, is “formally equivalent” to an offer,<sup>vi</sup> linguistic analysis thus far upholds the agreement as a valid contract. Speech act theory further supports this, for a cooperative speech act is one that requires a response from the hearer (or promisee), as Red Owl's promise did, and a cooperative speech act is an offer.<sup>vii</sup>

A valid contract not only requires at least one promise (offer), but that these promises be backed by consideration as well. Because the agreement in question was unilateral (had only one promise), we look to Searle's felicity conditions in determining consideration for the promisor (the defendant), and the criteria for a valid exchange in determining consideration for the promisee (the plaintiff). Indeed, Red Owl's promise fulfilled each of the six felicity conditions. It promised to perform a future act (futuraity condition), the promisee desired the proposed outcome (benefit condition), it was highly unlikely that Red Owl would perform this act without external incentive (non-expectancy condition), it was within their power to do so (ability condition), they expressed intent to do so (state-of-mind condition), and finally, the agreement was entered with credible commitment from both the promisor and the promisee (essential condition). Similarly, what was requested of Hoffman fulfilled the criteria for valid exchange, which comprises of four of the felicity conditions: futurity, benefit (namely, Red Owl desired the act in question – the investment), non-expectancy, and ability (indeed, Hoffman possessed the financial sum originally indicated). Therefore, linguistic theory demonstrates that the promise was backed by

consideration. This coincides with and provides insight into Chief Justice Currie's finding, which drew upon the corresponding legal principles – past consideration, benefit and bargain, detriment, and ability, respectively,<sup>viii</sup> in concluding that the contract was legitimate.

Thus far in our linguistic analysis, the contract has proven valid and binding. However, acceptance proves to be the crux of the issue, and the key intersection between linguistics and the law. The plaintiff could not financially afford to abide by a modified version of the agreement, thus violating the ability criteria and dissolving the agreement. Was the offer accepted? Classical contract theory would deny this, positing that an offeree can only accept a unilateral agreement by completing the action requested.<sup>ix</sup> Prior to this case, contract law held a similar stance. As such, the decision to hold Red Owl accountable for the costs incurred (via the principle of estoppel) is far better explained and analyzed via more contemporary linguistic sources: the *Restatement*, Tiersma's theories, and Emanuel's writing. The *Restatement* argues that "partial performance," or any progress in the completion of the act in question, terminates the promisor's right to revoke an offer.<sup>x</sup> Tiersma further explains this, turning to speech act theory – Hoffman's verbal acceptance of the offer was an act tantamount to completing the action, and the agreement was thereby binding. Furthermore, considering Emanuel's test for distinguishing bargains from pre-conditions,<sup>xi</sup> it is clear that because the actions for which Hoffman was suing to recover were a benefit to Red Owl, they qualify as bargains, and not pre-conditions (which are seen instead in cases like *Kirksey v. Kirksey*).<sup>xii</sup> Largely due to the precedent set by this case, this modified outlook has generally replaced the classical theory of contracts.<sup>xiii</sup> Furthermore, this particular case demonstrates the benefit of incorporating the two disciplines, its example as a synthesis thereof bearing great potential significance as a contribution both to the depth of the law and the breadth of linguistics.

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<sup>i</sup> *Hoffman v. Red Owl Stores, Inc.*, 26 Wis.2d 683, 133 N.W.2d 267 (1965)

<sup>ii</sup> Duhl, Gregory M. "Red Owl's Legacy." *Marquette Law Review* 87, no. 2 (Winter 2003): 297-321.  
<http://scholarship.law.marquette.edu/mlr/vol87/iss2/3>.

<sup>iii</sup> *Restatement of the Law Second Contracts 2d*. St Paul, MN: American Law Institute, 1981.

<sup>iv</sup> Schane, Sanford A. *Language and the Law*. London: Continuum, 2006.

<sup>v</sup> *Ibid.*, p. 157.

<sup>vi</sup> *Ibid.*, p. 173.

<sup>vii</sup> Schane, Sanford A. "Contract Formation." Lecture, LIGN 105: Law and Language, University of California, San Diego, La Jolla, May 2014.

<sup>viii</sup> Schane, *Language and the Law*, p. 153.

<sup>ix</sup> Schane, *Language and the Law*, p. 170.

<sup>x</sup> *Restatement 2<sup>nd</sup>*, pg. 45.

<sup>xi</sup> Emanuel, Steven. *Contracts*. New York: Wolters Kluwer Law & Business, 2012.

<sup>xii</sup> *Kirksey v. Kirksey*, 8 Ala. 131 (1845).

<sup>xiii</sup> Schane, *Language and the Law*, p. 171.