

CONTRACTS

Class 5



THE "OBJECTIVE" THEORY OF CONTRACTS

- For a contract to be formed, there must be a "**meeting of the minds**" between the parties.
- However, this is an **objective** test.
- Thus:
 - If a reasonable third person watching the situation would assume intent on both parties to form a binding contract, the contract will be enforceable.
 - "I was just joking" = NO DEFENSE
 - "It was obvious that I was joking" = VALID DEFENSE



THE "OBJECTIVE" THEORY OF CONTRACTS (CONT.)

- **Implied Contracts**

- *Implied in fact*: Inferred from the conduct of the parties
- *Implied in law*: The law enforces it as if there were a contract, even without a meeting of the minds to form a contract between the parties.



THE OFFER

- **Definition:**
 - An expression of a willingness to be bound by a contractual agreement.
- **Contrast:**
 - "Invitation to negotiate" (not an offer): something that only expresses an interest in forming a contract eventually or negotiating for one; does not show an intent to be bound.



THE OFFER (CONT.)

- **Examples of things that are usually not offers:**
 - "I will not take less than \$5,000 for this car."
 - "Would you pay me \$5,000 for my car?"
 - "I would certainly consider selling you my car for \$5,000."
 - "I quote you a price of \$5,000" for my car."
 - Advertisements
- **Exception:** If the statement is targeted towards a specific person with a specific quantity, a court might infer an offer.



QUIZ TIME!



TERMINATION OF AN OFFER

1. Lapse of time

- If the offeror sets a time limit, the offer expires after that time period.
- If there is no set period, the offer expires after a "reasonable" time under the circumstances.
 - For an oral conversation, that is usually the end of the conversation.
 - In normal commercial settings, 30 days is sometimes applied.

2. Rejection

- In most jurisdictions, this applies even if the offer was to stay open for a longer period of time; rejection kills the original offer.
- **Counter offer** counts as a rejection.



TERMINATION OF AN OFFER (CONT.)

3. Revocation

- Offeror can always revoke the offer, even if she promised to keep it open for a set time period, **unless...**
 - There was **consideration for keeping the offer open** ("option contract")
- Conduct inconsistent with the existence of the offer that comes to the attention of the offeree automatically revoked the offer.
- In UCC cases, a merchant's firm offer is irrevocable for however long it says it will be open for or (if a time is not given), for a reasonable period of time.

4. Death or Incapacity of the offeror or the offeree

