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 just joking" = VALID DEFENSE

Implied Contracts:

- Implied in fact: Inferred from the conduct of the parties.
- Implied in law: The law enforces 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.

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 toward 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's no set period, the offer expires after a "reasonable" time under the circumstances.
  - For an oral conversation, that's 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 period of time; 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 revokes 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**