



PROFESSIONAL PRACTICE 544

CONTRACT LAW AND CONTRACT FORMATION – INTERPRETATION OF CONTRACTS

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Contract Law and Formation Interpretation of Contracts

Theory of Contracts



An agreement between two or more parties that is enforceable under the law



Purpose: To tie down the future (predictability)



Involves a bargain or trade, a “meeting of the minds”

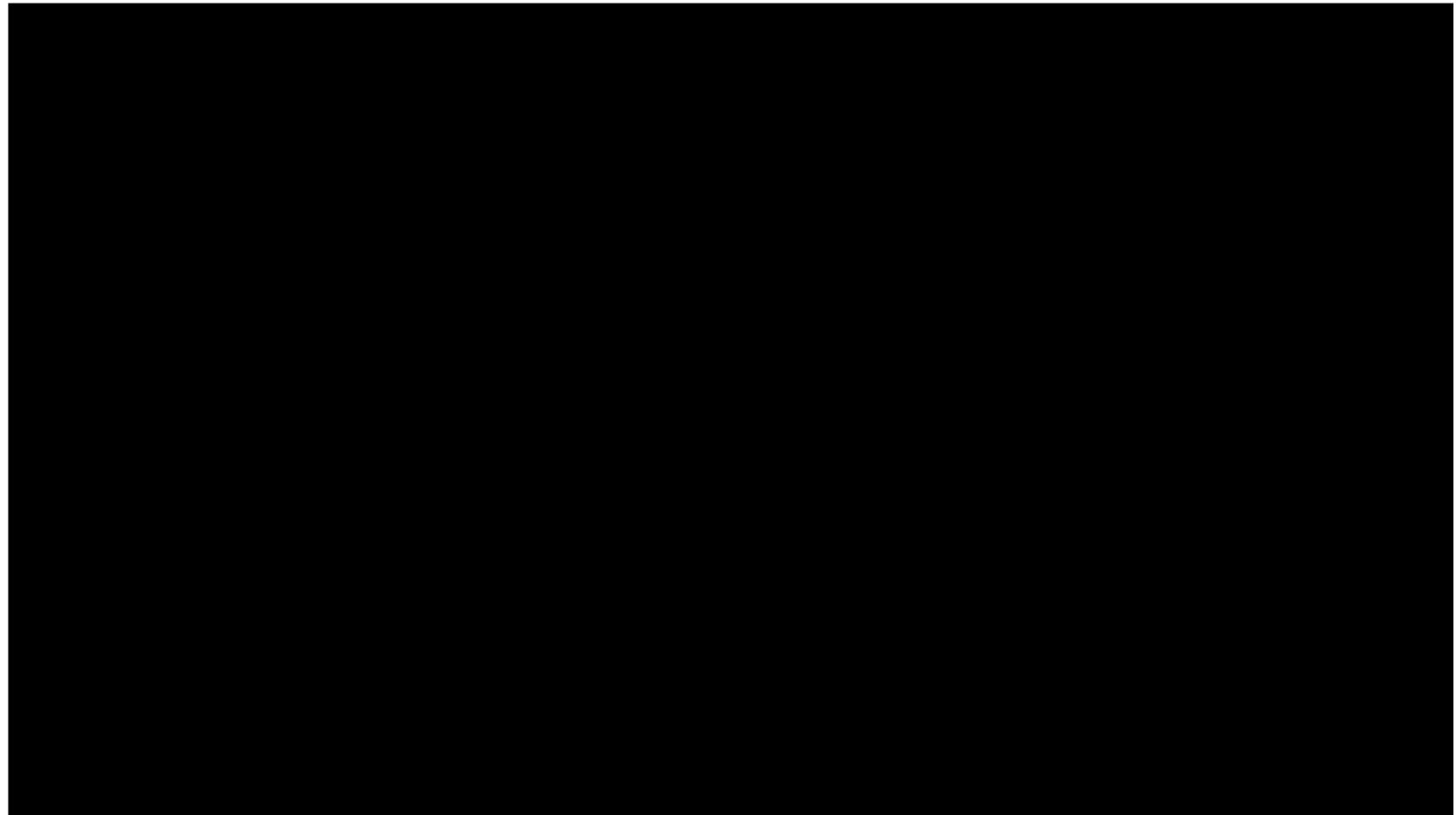
Parties and Purposes of Contract



Sometimes it helps to identify the parties to the agreement and the purpose of the contract between those parties.



Let's see whether this clip helps to better explain a contract...



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TYPES OF CONTRACTS

Types of Contracts – Express, Implied, Quasi

Express contracts

- Written contracts
- Oral contracts

Implied contracts – Implied-in-fact

- Not written or oral
- By the actions of the parties – e.g., visiting a vet

Quasi-contracts – Implied-in-law

- Agreement between two or more parties with no prior obligation to each other
- Imposed even if neither party originally intended there to be a contract
- Were you unjustly enriched – restitution
- e.g., fixing a leak in a roof discovered later

Bilateral and Unilateral Contracts



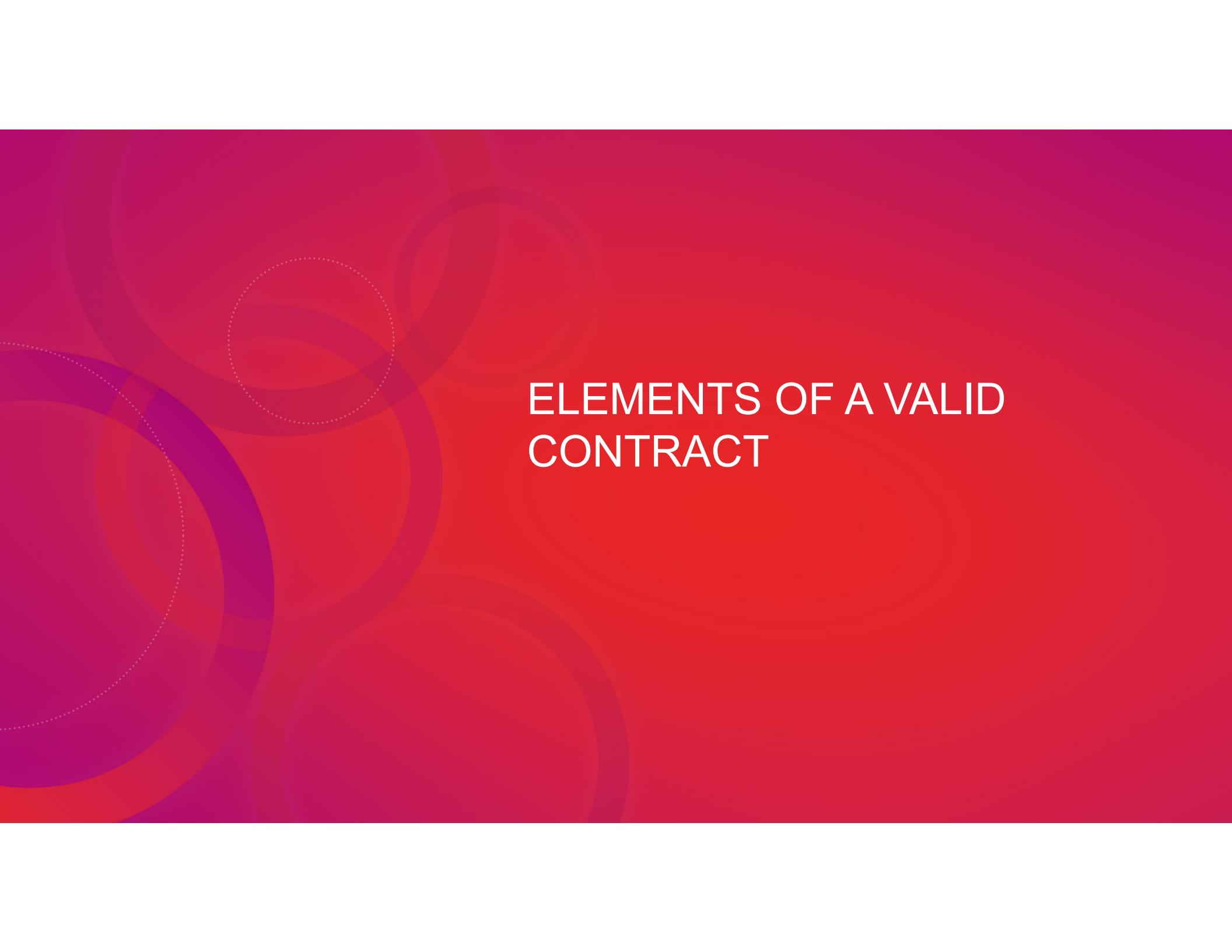
Bilateral Contracts involve an exchange of mutual promises (or completed performance and a promise of future performance)



Unilateral Contracts are like a contest, with no promise of performance by the contestant

Types of Contracts as to Validity

- Valid contract
- Void contract
 - Not legally valid or enforceable at any point
 - e.g., illegal, against public policy, minor, against regulation
- Voidable contract
 - Seemingly valid and legal, except and until ...
 - Can be performed – but may be voided or may be cancelled
 - e.g., withheld information, misrepresentation, undue influence, mutual mistake, minor
- Unenforceable contract
 - Valid contract cannot be enforced in a court of law
 - e.g., capacity, duress/fraud, unconscionable/safety/unfair, mistake, public policy, also – statute of limitations and laches (delay)

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ELEMENTS OF A VALID CONTRACT

Elements of a Valid and Enforceable Contract

- Proper **offer**
- Proper **acceptance**
- Mutual **consideration**
- **Absence of a valid defense** to enforcement

Offer and Acceptance – Timing and Termination

- Recipient may reject offer or make a counter-offer
 - both actions terminate the offer
- An offer terminates after a “reasonable” period of time
- Offer terminates as a matter of law upon death or insanity of the parties or destruction of the subject matter (fire, theft, etc.)

Offer and Acceptance – Timing and Termination

- The party making the offer may revoke the offer, the revocation is effective upon communication to the other party
- Timing problems with acceptance/revocation
 - Offers and their revocation are effective when **received** by the second party
 - Acceptance is effective when it is made, even if notice of the acceptance not yet received by the party who made the offer being accepted
 - The “mailbox rule” and the risk of multiple acceptances
 - What happens when you reject after you accept?
 - Timing here is important

What is Consideration?

- ▶ Giving or agreeing to give something of value
- ▶ Performing or offering to perform something of detriment
- ▶ Examples of consideration:
 - ▶ Payment of money
 - ▶ Performing a service
 - ▶ Giving up ownership of something
 - ▶ Agreeing to forego anything that has the possibility of being valuable

What is Consideration?

- ▶ “Illusory” promises do not constitute consideration
 - ▶ Where only one side is required to perform
 - ▶ Unenforceable; may include deception; unclear language
 - ▶ Sell you everything I want to; May sell you an item for a specific price
- ▶ Consideration may go to a third party (e.g., “third-party beneficiary”)
- ▶ A substitute for consideration: detrimental reliance/promissory estoppel

Defenses to an Otherwise Valid Contract

- ❑ Mutual Mistake of Fact
- ❑ Unilateral Mistake (not always a defense; reformation; rescission)
- ❑ Fraud
- ❑ Illegality
- ❑ Lack of Capacity to Contract
- ❑ Duress or Coercion

Defenses to an Otherwise Valid Contract *(Cont'd.)*

Statute of Limitations

- Ten (10) years for written contracts
- Five (5) years for oral or implied contracts
- Special statute for design/construction in Illinois §13-214
 - Four (4) years from discovery of problem
 - Ten (10) years from date of act or omission
 - That could allow up to 13 years and 364 days before you file a lawsuit

Defenses to an Otherwise Valid Contract (*Cont'd.*)

Unconscionability

- Terms so extremely unjust or so overwhelmingly one-sided in favor of the party with the superior bargain power (no warranty v. implied warranty of habitability)
- Contrary to good conscience
- Entire contract invalid; partial; enforceable/modify

Assignment of Rights and Delegation of Duties

- Assignment: Giving a contract right or duty to another party and being disconnected from the transaction
- Delegation: Same as an assignment, except that the “giver” stays involved in the transaction
- What can be assigned or delegated?
 - Personal duties usually cannot be assigned/delegated
 - General/generic duties usually can be assigned/delegated

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INTERPRETATION OF CONTRACTS

Goal: To Effectuate the Intent of the Parties

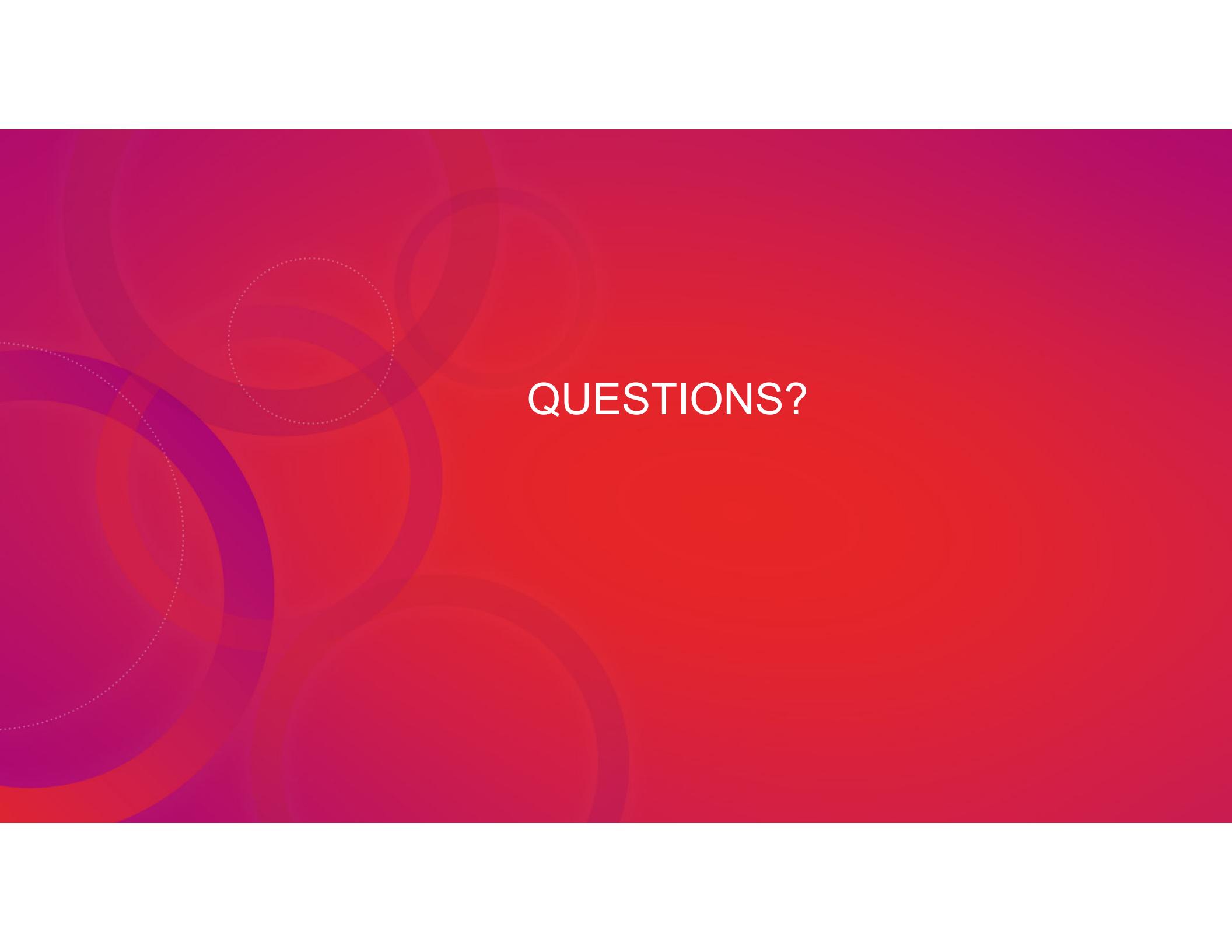
- The “trier of fact” looks to determine the actual bargain
- The court or arbitrator will not rewrite the contract

First Level of Analysis – The Objective Language of the Contract

- Clear and unambiguous language is always enforced as written
- No explanations or clarifications of the language is permitted
- Why this process of analysis? To resolve conflicts; To confirm the deal

Express and Implied Terms

- ▶ **Express terms** are spelled out either in writing or orally
- ▶ **Implied terms** are part of the agreement but not discussed or communicated – either orally or in writing
- ▶ Some commonly *implied terms* in construction contracts:
 - ▶ Neither party will hinder the other from performing the contract
 - ▶ Construction will be performed in a good and workmanlike manner
 - ▶ An architect will perform his duties in accordance with the appropriate standard of care

The background features a subtle, abstract design. It consists of several overlapping circles in shades of red, orange, and purple. A thin, dotted line forms a curved path that starts from the bottom left, goes up and to the right, then down and to the right, and finally up again towards the top left. The overall effect is organic and modern.

QUESTIONS?