

The background features several thin, light-colored curved lines, some solid and some dashed, creating a sense of motion or flow. A large, solid green callout box is positioned in the center, containing the text. The box has a pointed bottom edge.

Class 7

Alternative Dispute Resolution

Settlement Agreements – Contract Rules Concerns

- A settlement agreement is a contract, no more or less enforceable than any other contract. Therefore, like any other contract, to be enforceable, a settlement agreement must comply with contract rules, including:
 1. Mutual assent (offer and acceptance)
 2. Consideration
 3. Capacity to enter into a contract
 4. Legality of the subject matter of the settlement
 5. Writing requirement
- This applies if and only if the Statute of Frauds or other rule requires writing for that type of agreement. Oral settlements *are generally enforceable* even if they were supposed to be put into writing later on, but never were, as long as the intent was for it to be enforceable.

Settlement Agreements and the Problem of Consideration

- The general rule of consideration requires each party to agree to suffer a *legal detriment* for a contract to be valid.
- The consideration for a settlement agreement typically is giving up the right to pursue the claim via litigation.
- But, what if the claim was, in any case, invalid?
- **General Rules:**
 1. If the claim may have had validity under the law, giving it up is certainly valid consideration for a settlement agreement.
 2. If the claim was invalid, but the other litigant in good faith believed it was valid, giving up the claim is still probably valid consideration.
 3. If the claim was invalid and the other litigant knew that, giving up the claim is NOT valid consideration for a settlement agreement.

QUIZ TIME!

Settlement Agreements – Duress and Unconscionability

- As with any contract, a settlement agreement can be set aside if it is made under duress or is “unconscionable.”
- **Duress** must be effected by a threat to do something illegal or immoral to harm the other party in some way; types of duress include:
 1. *Physical* duress
 2. *Emotional* duress
 3. *Economic* duress
- **Unconscionability** typically requires:
 1. That the terms are unfair
 2. That one party had a superior bargaining position based on better education, better knowledge of the situation, etc.
 - Part 2 makes unconscionability less relevant to settlement agreements because both sides are represented by counsel.
- The fact that a child support agreement was in excess of what would have been awarded in family court did NOT make the agreement unconscionable.