

The background features a white surface with several thin, light gray lines. Some lines are solid and curve across the frame, while others are dashed. A large, dark green callout box is positioned in the center, containing the text. The box has a pointed bottom edge.

Class 8

Alternative Dispute Resolution

Rule 68 Settlement

- Rule 68 of the Federal Rules of Civil Procedure encourages early settlements by shifting costs away from a party that made a reasonable settlement offer that was rejected:
- The rule provides that if:
 1. The defendant makes a settlement offer at least 10 days before trial;
 2. That is rejected by the plaintiff or ignored for 10 days; and
 3. The plaintiff later fails to win a verdict that's greater than the settlement offer;
- **THEN**
 - The plaintiff must pay the defendant's costs from the point of the offer forward.
 - This applies as well to hearings to determine damages after liability has been established.
 - The Supreme Court has applied this even to attorneys' fees incurred by the plaintiff after the settlement offer.

Settlements: Tax Considerations

- Settlement money received as compensation are not considered taxable income if they are merely meant to make the recipient “whole” again.
- Settlement money that is a "windfall" or replaces income is taxable.
- So, settlement money can be:
 1. Tax-free
 - damages on account of physical illness or injury
 - damages paid for the cost of medical care
 - payment of plaintiff’s attorney’s fees and costs
 2. Taxable
 - damages on account of lost salary or severance
 - damages on account of emotional distress, etc.
 - (though this is not income for payroll tax purposes)
 3. Tax deferred
 - any payments made into tax-deferred account
 - e.g., payment by an employer to a 401(k) as part of a severance package.
 - structured settlements (taxable as payments are made)

QUIZ TIME!

Settlements: Common Features to be Aware of

- Some of the common provisions (clauses) included in settlement agreements are:
 1. **Releases and waivers** to be signed by each party.
 2. **Confidentiality agreement**, especially in the case of “non-standard” agreements.
 3. **“Non-disparagement” clauses** and/or references clauses, especially in the context of employment settlements.
 4. Restrictive covenants/ **non-compete agreements**.
 5. **Future cooperation**, mainly in the case a business partnership that fell apart of employer-employee relationship.
 6. **“Gag” clauses**, prohibiting either party from revealing general information about the parties’ relationship; again, especially in cases of employer-employee relationship.
 7. **Liquidated damages clauses**, in case one of the other clauses are violated.
 8. **Dispute resolution** and attorney’s fees clause in case on party violates the settlement agreement.