

Syllabus for RSP Part 2: Law for Settlement Planners

Contact Information:

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Course Description:

RSP Part 2: Law for Settlement Planners addresses the basics of litigation, alternative dispute resolution, civil liability principles, estate planning, incapacity, property transfers, planning for government benefits, special needs trusts, disability benefits, OASDHI, Medicare liens, and Medicare Set Asides.

Required Textbook:

The Legal & Regulatory Environment of Business, 17th Edition; ISBN: 978-0078023859.

Note: While we recommend students purchase the latest edition, many students have successfully used the 15th and 16th edition which can be purchased used on Amazon (or similar sites) for a few dollars.

Grading:

This course will be graded on a pass/fail basis. In order to pass the course, you must successfully complete all of the requirements of each section.

Exams & Quizzes:

A score of at least 70% is required on all final exams. The required score for the reading quizzes are specific to each quiz, but is never higher than 70%.

Assignments & Lectures:

Students are expected to view the presentations, read the assigned articles, complete the reading assignments, and finish any other assignments before taking the final exam for that section. Students are encouraged to attempt to “master the material” instead of just gaining exposure to it before attempting the exam.

Course Structure:

RSP Part 2 is divided into five different sections. Each section has the same format:

- Presentations
- Articles & Quizzes
- Textbook Reading
- Assignments
- Final Exam

The course syllabus provides a general plan for the course; deviations may be necessary.

PART 2: LAW FOR SETTLEMENT PLANNERS

Section 1: Trial Procedure and ADR

Trial Procedure

- 1) Pre-filing negotiations
 - a. Client hires lawyer(s)
 - b. Investigation and negotiations
 - c. Statute of limitations
- 2) Plaintiff's complaint or petition
 - a. Jurisdiction
 - b. Venue
 - c. Elements of a pleading
 - i. Demand
 - ii. Damages
- 3) Service of Process
- 4) Defendant's response or answer
- 5) Ad litem appointed
- 6) Discovery
 - a. Interrogatories
 - b. Requests for production
 - c. Requests for admissions
 - d. Requests for disclosure
 - e. Depositions
 - f. Discovery regarding testifying experts
- 7) Summary judgment
- 8) Pre-trial
 - a. Pre-trial motions
 - b. Voir Dire
- 9) Trial process
 - a. Opening statements
 - b. Plaintiff's case-in-chief
 - c. Defendant's motion for directed verdict
 - d. Defendant's rebuttal
 - e. Closing arguments
 - f. Court's charge to the jury
 - g. Jury deliberations
 - h. Verdict
 - i. Entry of judgment
- 10) Appeals
- 11) Enforcement of judgment

Alternative Dispute Resolution

- 1) Mediation

- a. Purpose
 - b. Confidentiality
 - c. Required v. voluntary
 - d. Role of the mediator
 - e. Typical procedure
 - i. Joint meeting of all parties
 - 1. Plaintiff presents case
 - 2. Defendant presents case
 - 3. Mediator explains rules
 - 4. Parties separated
 - ii. Negotiation
 - 1. Plaintiff's initial demand
 - 2. Defendant's response
 - 3. Continued negotiation through mediator
 - iii. Settlement reached
 - 1. Tentative settlement agreement
 - 2. Final settlement agreement
 - 3. Settlement amount paid
- 2) Arbitration
 - a. Binding
 - b. Non-binding
 - 3) Settlement conferences

Section 2: Civil Liability

Torts

- 1) Intentional Torts
 - a. Defamation
 - b. Discrimination
 - c. Others
- 2) Unintentional Torts
 - a. Negligence
 - b. Gross negligence
 - c. Strict liability
 - d. Absolute liability
 - e. Vicarious liability
- 3) Elements of a tort
 - a. Duty
 - b. Breach
 - c. Causation
 - i. Actual cause
 - ii. Proximate cause
 - d. Damages
- 4) Defenses
- 5) Burden of proof

6) Survival actions and wrongful death

Principles of Contract Law

- 1) Elements of a binding contract
- 2) UCC vs. common law
- 3) Contract classifications
 - a. Express
 - b. Implied-in-fact
 - c. Implied-in-law
- 4) Contract enforcement
- 5) Executed vs. executory contract
- 6) Breach of contract
 - a. Remedies
- 7) Contract formation
 - a. Offer
 - b. Acceptance
 - c. Consideration
- 8) Offer termination
- 9) Contractual capacity
- 10) Voidable contracts
 - a. Fraud
 - b. Mistake
- 11) Statute of Frauds
- 12) Parol evidence rule
- 13) Conditional performance

Section 3: Estate Planning, Estate and Gift Tax Planning, and Property Transfers

Estate Planning for Settlement Planners

- 1) Wills & succession
 - a. Types of wills
 - b. Requirements of statutory written will
 - c. Goals of will
 - i. Dispose of property
 - ii. Appoint fiduciaries
 - iii. Establish testamentary trusts
 - iv. Probate process
 - v. Ancillary probate administration
 - d. Probate estate
 - e. Probate avoidance strategies
 - f. Non-probate transfers at death
 - i. Transfers by operation of law
 - ii. Transfers through trusts
 - iii. Transfers by contract

- g. Intestacy
- h. Executors & personal representatives
- 2) Trusts
 - a. Parties
 - i. Trustee
 - ii. Grantor
 - iii. Beneficiaries
 - b. Classifications
 - i. Grantor vs. non-grantor
 - ii. Simple vs. complex trusts
 - iii. Revocable vs. irrevocable trusts
 - iv. Inter-vivos vs. testamentary
 - v. Reversionary
 - c. Income taxation of trusts & estates
 - i. Grantor trusts – taxed to grantor
 - ii. Simple trusts – taxed to beneficiary
 - iii. Complex trusts & estates
 - 1. Distributed DNI to beneficiary
 - 2. Undistributed income taxed to trust or estate
- 3) Legal Incapacity
 - a. Definition of incapacity
 - b. Procedure for appointment of guardian
 - c. Planning for incapacity
 - i. Declaration of guardian
 - ii. Advance medical directives (e.g. living wills)
 - iii. Powers of attorney
 - 1. Health care decisions
 - 2. Asset management
 - 3. Durable feature
 - 4. Springing power
 - 5. General or limited powers

Estate & Gift Tax Planning

- 1) Liquidity needs analysis
- 2) Transfer taxation
- 3) Lifetime gifting strategies
- 4) Gift tax compliance & calculation
 - a. Annual exclusion
 - b. Applicable credit amount
 - c. Gift splitting
 - d. Prior taxable gifts
 - e. Education and medical exclusions
 - f. Marital and charitable deductions
 - g. Tax liability
- 5) Estate tax compliance and tax calculation

- a. Estate tax filing requirements
- b. The gross estate
 - i. Inclusions
 - ii. Exclusions
- c. Deductions
- d. Adjusted gross estate
- e. Deductions from AGE
- f. Taxable estate
- g. Adjusted taxable gifts
- h. Tentative tax base
- i. Tentative tax calculation
- j. Credits
- k. Gift tax payable
- l. Applicable credit amount
 - i. Portability of spouse's unused credit
 - ii. Credit shelter trusts
- m. Prior transfer credit
- n. Generation-skipping transfer tax
- o. Trust solutions
- p. Spendthrift trust
- q. Marital deduction planning
- r. Sprinkle and spray

Property Transfers

- 1) Types of property interests
- 2) Property titling
 - a. Community vs. non-community property
 - b. Forms of property ownership
 - c. Marital property agreements
- 3) Transferrable property interests
- 4) Lifetime transfers
 - a. Advantages
- 5) Transfers at death
 - a. Probate
 - b. Intestacy
 - c. Non-probate (e.g. insurance, JTWRROS)
- 6) Probate
 - a. Advantages of probate
 - b. Disadvantages of probate
 - c. Alternatives to probate

Section 4: Government Benefits and Special Needs Trusts

Preserving Government Benefits

- 1) Preserving government benefits – an overview
- 2) Medicaid
 - a. Federal and state interaction
 - b. Impact of Affordable Care Act
 - c. Determining eligibility for Medicaid
- 3) Medicaid planning
- 4) Supplemental Security Income (SSI)
 - a. Who SSI covers
 - b. Resource limits
 - c. Assets included in resource calculation
- 5) Social Security Disability Income (SSDI)
 - a. Eligibility criteria
 - b. Income limits
- 6) Options for preserving needs-based benefits

Benefits Not Based on Needs

- 1) Social Security (OASDI)
- 2) Paying into the system
- 3) Eligibility and benefit
 - a. Retirement
 - b. Disability
 - c. Survivor
 - d. Family limitations
- 4) How benefits are calculated
- 5) Working after retirement
- 6) Taxation of benefits

Special Needs Trusts

- 1) Benefits of special needs trusts
- 2) Scenarios when special needs trusts are appropriate
- 3) d(4)(a)
- 4) d(4)(c)
- 5) First party
 - a. Requirements
 - b. Trustee and administration
- 6) Third party
- 7) SNT funding and planning considerations

Section 5: MSP Compliance

Medicare Liens

- 1) Medicare conditional liens
 - a. History of Medicare secondary payer statute
 - b. SMART Act's impact
- 2) Process
- 3) MMSEA Sec. 111 reporting requirements

Medicare Set Asides

- 1) Medicare as secondary payer
- 2) MSA accounts
 - a. Why MSA accounts are necessary
 - b. Who must have an MSA
 - c. Use of MSA funds
 - d. Reporting requirements
 - e. MSA administration
 - f. Determining MSA amount
 - g. Funding an MSA
- 3) MSA accounts in liability settlements