

2023 UNIT SPECIFICATION

Title:	(Unit 15) The Practice of Law for the Elderly Client
Level:	3
Credit Value:	7

Learning outcomes	Assessment criteria	Knowledge, understanding and skills
The learner will:	The learner can:	
1. Understand what the practice of law with particular application to an elderly client may involve	1.1 Identify typical situations where advice or proceedings may be required by or on behalf of the elderly client 1.2 Identify from given situations where conflict of interest may exist	1.1 Action or proceedings which would fall into this practice area, egs: housing and accommodation; <ul style="list-style-type: none"> • tax; • welfare benefits; • pensions; • living and statutory wills; • mental capacity and Enduring and Lasting Powers of Attorney. 1.2 Identify potential conflict of interest, to include undue influence between family members and the elderly client and relevant case law, eg: <u>Pearce v Beverley</u> (2013).

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	<p>1.3 Identify from given situations the need to refer to other non-lawyer professionals</p>	<p>1.3 Application to a scenario;</p> <ul style="list-style-type: none"> • identify other non-lawyer professionals who may need to be involved, such as accountants, independent financial advisers, doctors, and social services officials, and any practical or professional issues which may arise.
<p>2. Understand the importance of mental capacity in an elderly client and the effect of lack of mental capacity</p>	<p>2.1 Explain the requirements for mental capacity</p> <p>2.2 Identify from given characteristics and situations where capacity can be said to exist and where it is lacking</p>	<p>2.1 The requirements for mental capacity under s.s 1,2, and 3 Mental Capacity Act 2005 and subsequent case law, eg: <u>Pearce v Beverley</u> (2013);</p> <ul style="list-style-type: none"> • the requirements for mental capacity to make a lasting power of attorney; • the requirements for mental capacity to make a will under the rule in <u>Banks v Goodfellow</u> (1870). <p>2.2 Capacity, including the relevance of medical evidence.</p>
<p>3. Understand the purpose of Enduring and Lasting Powers of Attorney</p>	<p>3.1 Define Enduring Power of Attorney and explain its associated process</p>	<p>3.1 What is an Enduring Power of Attorney;</p> <ul style="list-style-type: none"> • Enduring Powers of Attorney Act 1985; • the circumstances in which it is used; • an explanation of the procedure for registering an Enduring Power of Attorney, including recognising the essential elements of the required documentation.

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	<p>3.2 Explain the effects and issues for consideration in the use of an Enduring Power of Attorney</p> <p>3.3 Define Lasting Power of Attorney and explain its associated process</p>	<p>3.2 Explain the effects;</p> <ul style="list-style-type: none"> • eg: can be used by the attorney immediately; • no limitation that it can only be used when the donor loses mental capacity unless specified as a condition; • consideration of remuneration, a lay attorney is entitled to out of pocket expenses only, professionals are entitled to charge; • abuse of duty by an attorney or acting dishonesty; • elderly client unable to take action as lacks mental capacity; • powers created before Mental capacity Act 2005 will still be valid. • The EPA does not allow for replacement attorneys to be appointed. <p>3.3 What is a Lasting Power of Attorney;</p> <ul style="list-style-type: none"> • the Mental Capacity Act 2005; • the circumstances in which it is used; • an explanation of the procedure in relation to the making and registering of a Lasting Power of Attorney, including recognising the elements of the required documentation and the role of the certificate provider. The LPA allows for replacement attorneys to be appointed. • Identifying the two types of Lasting Powers of Attorney – property & affairs and health & welfare.
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	<p>3.4 Explain the effects and issues arising from the use of a Lasting Power of Attorney</p> <p>3.5 Compare and contrast the differences between the Enduring Power of Attorney and the Lasting Power of Attorney</p>	<p>3.4</p> <ul style="list-style-type: none"> • Explain the effects, eg: the Lasting Power of Attorney can include authority for the attorney to make decisions about the donor’s health and care, as well as financial decisions; • attorney can take decisions about the health and care of the donor, eg: where they live, who with, including refusal to consent to medical treatment; issues here in relation to the donor’s preferences and instructions; • if expressed explicitly Lasting Power of Attorney can give attorneys authority to give or refuse consent to ‘life sustaining treatment’; • attorneys duty to act in the ‘best interests’ of the donor and relevant case law, eg: Re Buckley (2013); • attorneys duties and responsibilities as set out in the Mental Capacity Act 2005 Code of Practice; • consideration of the suitability and appointment of attorney(s); • sole attorney, jointly or jointly and severally; • lay or professional; • preferences and instructions. <p>3.5</p> <ul style="list-style-type: none"> • Compare the similarities and differences of the two powers, eg: when the power comes into operation;
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	<p>3.6 Describe the role of the Court of Protection and the Public Guardianship Office (the Office of the Public Guardian)</p>	<ul style="list-style-type: none"> • acting in the ‘best interests’ of the donor, the statutory duties enshrined in a Lasting Power of Attorney. <p>3.6</p> <ul style="list-style-type: none"> • The role of the Court of Protection in the regulation and resolution of disputes arising from the property and affairs of persons suffering from mental incapacity and its administrative arm The Office of the Public Guardian, its supervisory role in the registration, maintenance, and revocation of Enduring Power of Attorney and Lasting Powers of Attorney; • considering and processing applications made for a Deputy to be appointed to deal with the property and affairs of a person who has lost mental capacity without having appointed an attorney to act on their behalf and the supervision of a Deputy; • applications made under the Mental Capacity Act 2005 in relation to the making of a Statutory Will or a lifetime gift on behalf of a person who has lost mental capacity.
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	<p>3.7 Apply an understanding of powers of attorney to a given situation</p>	<p>3.7</p> <ul style="list-style-type: none"> • Application to a scenario; • drafting requisite documentation associated with the registration of Enduring Power of Attorney; • drafting requisite documentation associated with making and registering Lasting Powers of Attorney; • drafting requisite documentation associated with the appointment of a Deputy.
<p>4. Understand the range of housing and accommodation issues affecting the elderly client</p>	<p>4.1 Explain issues arising from a range of housing/accommodation situations</p>	<p>4.1 Owner-occupation: eg: buying retirement housing, moving in with relatives and investing in their property, or buying another property together;</p> <ul style="list-style-type: none"> • will the investment be reflected in the legal ownership of the property or will a more informal arrangement be envisaged – is there a conflict; • Equity release schemes: eg: a scheme may generate income, which in turns disentitles the client from benefit; • Lifetime mortgages; • Home reversion plans; • sheltered accommodation: eg: the extra cost of the services provided such as wardens; • the client’s ability to pay; • Care homes: eg: the treatment of the value of the former home as capital for funding a care home; • the obligations of the local authority and NHS to meet funding for care homes for

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	<p>4.2 Apply an understanding of these housing/ accommodation issues to a given situation</p>	<p>both England and Wales and to be aware of the regional differences;</p> <ul style="list-style-type: none"> • Home care: including care assessments under Part 1 Care Act 2014; • Disabled facilities grants. <p>4.2 Application to a scenario.</p>
<p>5. Understand the consequences of taxation in relation to proposals for change</p>	<p>5.1 Explain the effects of relevant taxation</p>	<p>5.1 Inheritance Tax (IHT), the consequences for finance, probate;</p> <ul style="list-style-type: none"> • explain basic tax planning measures, eg: Lifetime gifts (Potential exempt Transfers Pet), gifts between spouses (Spouse Exemption), equalisation of estates, transferable nil-rate bands, residence nil rate band allowance, IHT exemptions on lifetime transfers, gifts with a reservation of benefit taper relief on lifetime gifts and reduction after 3 years. • Capital Gains Tax (CGT), principle of CGT and the exemptions including the principal private residence exemption, and transfers on death and annual CGT allowance and CGT rate. • Income Tax (IT), principle of IT, and savings including benefiting from higher personal allowances for the elderly, and transferring unused allowances between spouses and civil partners.

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	<p>5.2 Apply an understanding of taxation to a given situation</p>	<p>5.2 Application to a scenario;</p> <ul style="list-style-type: none"> including, the implications for tax purposes and consequences of a particular course of action eg: sale or gift of an asset.
<p>6. Understand the availability of welfare benefits and pension entitlement both from the state and former employers</p>	<p>6.1 Explain eligibility for welfare benefits</p> <p>6.2 Outline state pension entitlement, employer's pensions and annuities</p> <p>6.3 Apply an understanding of welfare benefits and pension entitlement to a given situation</p>	<p>6.1 Attendance Allowance and the basis rate and higher rate (including the qualifying criteria for both);</p> <ul style="list-style-type: none"> Pension Credit; Council Tax reduction scheme and single occupant discount, Housing Benefit, and Carer's Allowance. <p>6.2 Outline the types of pension entitlement such as;</p> <ul style="list-style-type: none"> Occupational Pensions from an employer, including defined benefits such as career final salary average schemes, and defined contributions (also known as money purchase) where contributions are made into a pension pot; Personal Pensions which are usually taken up by the self-employed with restrictions on contributions made, with profits or unit linked; State Pensions including age addition for over 80's and the State Second Pension (formerly known as SERPS); Winter fuel payment. <p>6.3 Application to a scenario.</p>

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<p>7. Understand the nature, effects and limitations of Living Wills and Statutory Wills</p>	<p>7.1 Explain the nature, effects and limitations of a Living Will</p>	<p>7.1 Also called an Advance Decision, under the Mental Capacity Act 2005 or an Advance Statement;</p> <ul style="list-style-type: none"> • making an Advance Statement allows the client to indicate a specific wish to refuse all or some forms of medical treatment and the circumstances under which this refusal would apply; • the mental competence of the client when preparing it; its use only once they have lost the capacity to participate in the decision making process and or the ability to communicate; the role of relatives: relatives do not normally have the legal right to be consulted or to make decisions for the client about medical treatment in these circumstances; • what the Living Will contains: written information that reflects the client’s views and wishes; • it can nominate someone whom they would like to be consulted; • it cannot be used to ask for help to commit suicide or for the purposes of euthanasia; • relationship between a Living Will and a Lasting Power of Attorney for health and care.
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	<p>7.2 Explain the nature, effects and limitations of a Statutory Will</p> <p>7.3 Apply an understanding of Living and Statutory Wills to a given situation</p>	<p>7.2 Under the Mental Capacity Act 2005 the Court of Protection may authorise execution of a Statutory Will for a person who has lost mental capacity if it is in their ‘best interests’ as defined in s.4 MCA 2005, in a situation where the will made before loss of capacity and already in existence is considerably out of date or may not carry out the intentions of the testator, and refer to relevant case law, egs: Re <u>D,VAC v JAD</u> (2010), <u>NT v FS</u> and others (2013);</p> <ul style="list-style-type: none"> • the uses of a Statutory Will: where the existing will or the application of the intestacy rules, would produce an inequitable outcome, and the person lacks capacity to change it; • an application under the MCA 2005 can also be made where it relates to the disposal of a client’s property by a lifetime gift, where the proposed gift is substantial; eg: where the person is adequately provided for financially, but their adult child is in dire need of financial assistance now. • The factors the COP will consider include the clients past and future wishes and changes to current Wills. <p>7.3 Application to a scenario.</p>
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Additional information about the unit	
Unit aim(s)	The learner will understand key concepts, terms and processes in the practice of law for the elderly client
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards
Details of the relationship between the unit and other standards or curricula (if appropriate)	Courses of study leading towards the achievement of the unit may offer the learner the opportunity to satisfy requirements across a number of Level 3 Key Skill areas; most specifically, Communication, Improving own learning and performance, Problem solving and Working with others
Assessment requirements specified by a sector or regulatory body (if appropriate)	N/A
Endorsement of the unit by a sector or other appropriate body (if required)	N/A
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	CILEx (The Chartered Institute of Legal Executives)
Availability for use	Only available to owning awarding body
Availability for delivery	1 September 2011

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