

CASE STUDY MATERIALS

January 2021
Level 3
THE PRACTICE OF LAW FOR
THE ELDERLY CLIENT
Subject Code L3-15



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 15 – THE PRACTICE OF LAW FOR THE ELDERLY CLIENT*

CASE STUDY MATERIALS

Information for Candidates on Using the Case Study Materials

- This document contains the case study materials for your examination.
- In the examination, you will be presented with a set of questions which will relate to these case study materials. You will be required to answer **all** the questions on the examination paper.
- You should familiarise yourself with these case study materials prior to the examination, taking time to consider the themes raised in the materials.
- You should take the opportunity to discuss these materials with your tutor/s either face-to-face or electronically.
- It is recommended that you consider the way in which your knowledge and understanding relate to these case study materials.

Instructions to Candidates Before the Examination

- A clean/unannotated copy of the case study materials is attached to this examination.

You are permitted to take your own clean/unannotated copy of the case study materials into the examination. You are **NOT** permitted to take any other materials including notes or textbooks.
- In the examination, candidates must comply with the CILEx Examination Regulations – Online Examinations or with the CILEx Examination Regulations – Online Examinations with Remote Invigilation.

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* This unit is a component of the **CILEx LEVEL 3 PROFESSIONAL QUALIFICATIONS and LEVEL 3 LEGAL SERVICES KNOWLEDGE QUALIFICATIONS**

CASE STUDY MATERIALS

ADVANCE INSTRUCTIONS TO CANDIDATES

You are employed as a trainee lawyer by the firm of Kempstons, 101 High Street, Bedford MK42 7AB.

Your supervising solicitor is Thomas Andrews. He hands you a number of files and the following related documents:

- Document 1** Attendance note of a meeting with Peter Walters and Dennis Walters

- Document 2** Attendance note of a meeting with George and Christine Matthews

- Document 3** Attendance note of a meeting with Fariba Ahmed

DOCUMENT 1

ATTENDANCE NOTE

Attending: Peter Walters and Dennis Walters

Date: 4 January 2021

Time engaged: 45 minutes

Reference: TA/2021/Walters

Attending Peter Walters in the office to discuss his Will and a Lasting Power of Attorney (LPA). Also present was his son Dennis Walters, who had contacted me last week to arrange this appointment.

I acted for Peter and his wife, Joyce, approximately four years ago, when they instructed me to prepare their Wills. I also acted for Peter as sole executor of his wife's estate, when she died in 2019.

Peter looked much frailer than I remembered and was walking with the aid of a stick. When I asked Peter how he had been keeping, his son Dennis replied immediately, explaining that his father's health had deteriorated since Joyce had died and that, although Peter continues to live alone, his memory is not as good as it used to be. Dennis went on to explain that Peter is finding it hard to deal with his own affairs; he often gets confused when he receives letters, including utility bills, and forgets his pin number at times.

Dennis mentioned that he is finding it hard to assist Peter, unless he is with him. This is not always possible, as Dennis lives over an hour's drive away from Peter. Dennis explained that Peter wants to arrange an LPA.

Peter has seen his GP recently about his memory loss, and his GP has referred him to the memory clinic. He is currently waiting for an appointment. It was his GP who mentioned an LPA, explaining that many of his elderly patients have made them. Dennis said that he wants his father to appoint him as sole attorney, to make life easier for Dennis in helping to manage his father's affairs. I explained the purpose and effect of an LPA, but Peter did not seem to be taking in what I was saying, and he kept looking down at the table.

I recalled that Peter and Joyce also had a daughter, Rosemary, who was very close to her mother. I also recalled discussing LPAs with Peter and Joyce at the time when they made their Wills. They wanted to appoint their children as attorneys but, as both the children lived abroad then, Peter and Joyce decided not to have an LPA. The children are now both living in the UK, and Rosemary lives nearer to her father than Dennis.

I asked about Rosemary. Peter said that Dennis does not see her anymore and he seemed upset about this. Dennis explained that, following their mother's death, he had had an argument with his sister. Rosemary no longer has any contact with Dennis or Peter. Dennis said that Rosemary was always closer to their mother than their father and that the argument was in respect of Peter's care. Dennis appeared angry at the fact that Rosemary has turned her back on their father and that he has to look after their father on his own.

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I asked Peter if he has tried to contact Rosemary or asked her to visit. Peter shook his head. Dennis replied by saying no, and commented that there is no point in trying, as she will not help.

With regard to Peter's Will, Dennis said that now their mother is dead, he and Rosemary will inherit Peter's estate equally. He went on to explain that Peter has mentioned on several occasions that he wants to change his Will and leave a larger share of his estate to Dennis, as a thank you for everything that he has done for him since Joyce died. I asked Peter what his thoughts were on what Dennis had said. He just smiled and said he agrees with his son and will do what he thinks is best.

Peter was not engaging in our conversations and I could see that he was getting tired and anxious. I suggested locating Peter's original Will from store and then arranging another meeting to take instructions regarding any changes that he wishes to make. I gave Peter some information regarding LPAs to take away and read, and I confirmed that we will discuss them in more detail when he comes back to review his Will.

DOCUMENT 2

ATTENDANCE NOTE

Attending: George and Christine Matthews
Date: 12 January 2021
Time engaged: 60 minutes
Reference: TA/2021/Matthews

Attending George and Christine Matthews in the office to review their Wills and generally to discuss their affairs.

By way of background, George and Christine advised me that they are 69 and 68 respectively and that they are both in good health. They have three adult children, namely William, Elizabeth and Susan, who are all married. They also have four grandchildren; two are over the age of 18 and two are under 18. Their family members do not have any special needs or disabilities and do not receive state benefits.

George explained that they want to review their Wills because, since making them, they have had two more grandchildren and wish to provide for them. They handed me copies of their Wills, from which I noted that they have appointed each other as sole executor and trustee, followed by their children if the surviving spouse is unable or unwilling to act, or on the death of the survivor of them.

They leave the residue of their estate to each other in the first instance and on the death of the second spouse, they leave their estate equally between their three children. If any of their children die before their parents, their share will pass to their own children, which is exactly what George and Christine want to happen. I confirmed that this would include their new grandchildren and therefore they do not need to update their Wills.

In addition, the clients wanted me to review their Enduring Powers of Attorney, copies of which they handed to me. They had heard about Lasting Powers of Attorney and wanted to know if they needed to replace their Enduring Powers of Attorney with the new types. I reviewed the documents and confirmed that they have appointed each other to be sole attorney to act without any restrictions. I explained the purpose of the Enduring Powers of Attorney and the circumstances when they can be used and registered.

Christine thought that the Enduring Powers of Attorney gave her attorneys power to make health decisions, as she wants to express her wish to refuse medical treatment in the future. She does not want to give permission to anyone to make other health decisions for her, as she wants to leave those decisions to the doctors, but she does wish to refuse medical treatment if she became terminally ill, or if she lost the ability to make decisions for herself. Her views have come about as a result of the situation of her aunt, who was very ill.

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I explained that she could make a Living Will instead of a Health and Welfare Lasting Power of Attorney. Christine said she would need time to think carefully about the instructions she would like to include in the Living Will, and she will arrange another meeting to go through those wishes with me.

Regarding her aunt, Christine mentioned that she lives alone and has carers looking after her three days a week. However, her house needs extensive repair and her aunt does not have the means to pay for the works.

Finally, George explained that their youngest daughter, Susan, is looking to buy her first house. They have helped their other two children in the past and feel it is only fair that they help Susan too. They explained they have an estate of £1.7 million and that they have not made any gifts in the last seven years outside of their allowable gifting exemptions. They are looking to give Susan a gift of £70,000. They have the cash available to make the gift straightaway. They also jointly own a rental property worth £250,000, which has been lying empty for some time; they suggested that they might sell this and use some of the net proceeds of sale to make the gift to Susan instead.

The clients wanted to know if there is anything they need to consider from a tax point of view, before they make the gift. I said I would send them a letter summarising the points that they need to consider, and then arrange another appointment for them to return to discuss matters further.

DOCUMENT 3

ATTENDANCE NOTE

Attending: Fariba Ahmed
Date: 14 January 2021
Time engaged: 40 minutes
Reference: TA/2021/Ahmed

Attending Fariba Ahmed at her home to discuss her welfare. I acted for Fariba three years ago, when her husband passed away. Fariba does not have any children nor any close family. She lives on her own at home. Since I last saw her, she has started to walk with the aid of a walking frame and she also wears a hearing aid. Despite her lack of mobility and being 86 years old, Fariba was alert and did not show any signs of memory loss.

She explained that since her husband had died, she has become less mobile and now relies on her carers to look after her and keep the house clean and tidy. They come in twice a week, but Fariba anticipates having to increase their hours in the near future.

Fariba has made a Lasting Power of Attorney (LPA) for both health and finances, and has appointed her closest friend and her friend's husband as her attorneys. She has known them for over 30 years and she trusts them to look after her. They are currently not using the LPA, as Fariba is still able to manage her own affairs.

Fariba was concerned about her long-term care, and explained that she does not want to have to go into a care home. She has heard stories about care homes, and she wants to avoid them at all costs. Instead, she wants to be cared for at home, but she is worried that she will not have the funds to pay for her care, should her care needs increase. She explained that she receives a state pension of £155 each week (totalling £8,060 each year). She does not have any savings, and her property is worth approximately £250,000.

She went on to explain that her house needs some work doing to it. She and her late husband had bought it over 40 years ago, and the house now needs a new bathroom and a new roof. She also needs to convert her dining room into a bedroom for herself, as she cannot climb the stairs as well as she used to.

Fariba is worried about how she is going to fund these works with the small income that she receives. She is adamant that she does not want to have to sell her home and go into care. She is also concerned that she would not have enough income to pay for her carers, if she needs to increase their hours.

Fariba wants to know what she can do to remain in her own home and to be able to afford to pay for the works needed. I said I would consider her position and write to her with the options available to her.

End of Case Study Materials