

CASE STUDY MATERIALS

January 2017
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

- You will be provided with a clean copy of the case study materials in the examination.
- You are **NOT** permitted to take your own copy of the case study materials or any other materials including notes or textbooks into the examination.
- In the examination, candidates must comply with the CILEx Examination Regulations.

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

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ADVANCE INSTRUCTIONS TO CANDIDATES

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

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

Document 1 Attendance note of a meeting with Hugh Quigley, Sylvester Quigley and Denise Johnson

Document 2 Enduring Power of Attorney of Hugh Quigley

Document 3 Attendance note of a telephone conversation with Denise Johnson

Document 4 Attendance note of a meeting with Yasmine Potter

Document 5 Attendance note of a meeting with Vivienne Lawton

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DOCUMENT 1

ATTENDANCE NOTE

Attending: Hugh Quigley, Sylvester Quigley, Denise Johnson

Date: [Yesterday's date]

Time engaged: 48 minutes

Reference: TA/2017/Quigley

Attending Hugh Quigley, who was accompanied by his son Sylvester and his daughter Denise. I wanted to see them because I am now in a position to conclude the administration of the estate of Hugh's wife, Grace, who died nine months ago.

I produced to them a draft of the estate and distribution account, which I went through in some detail with them, and which they approved. Sylvester commented that although he and his sister had received a small part of their mother's residuary estate, it was a pity that more tax planning had not been done, because the remainder of their mother's estate passed to their father who did not need any more money. To my surprise, Sylvester said that he thought his father must now be worth around £1.5 million. Hugh said nothing, and appeared to be still looking at the estate and distribution account. Denise looked a little uncomfortable and embarrassed by her brother's comments.

Denise told me that her father wanted to change his Will and was also thinking about making a lasting power of attorney, and they all wanted my advice. She said that her father's Will mirrors the terms of their late mother's Will.

Denise produced to me an enduring power of attorney made by her father in September 2005, and from which I noted that she and her late mother were appointed as Hugh's attorneys. Sylvester commented that he had not been appointed as an attorney because he was working in the United States at the time and rarely came home.

I noticed throughout the conversation that Hugh had hardly spoken and he still appeared to be staring at the accounts for his wife's estate. I asked Hugh if he had any questions and he slowly shook his head.

Denise explained to me that their father had become very withdrawn following the death of their mother and rarely left his home. She said that although she would continue to visit him on a daily basis, they were coming to the view that their father might be more comfortable living in a care home. They explained that Hugh had stopped driving because of his poor eyesight. Sylvester added that his father was very forgetful and often tended to be in a world of his own. He added that his father was very confused at times and for these reasons thought it would be better now if he and his sister took control of their father's affairs, including selling his home and settling him into a care home. Denise commented that their father's surviving sister, Winnie, lived happily in a care home, and his elder sister, Theresa, had also lived in a care home until she died last year.

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I asked Hugh what his thoughts were, and in a quiet voice he replied: 'I am happy as I am'. Sylvester, who looked irritated, immediately told his father that he was not alright and he could not continue as he was. Denise interrupted to say that they would need to have a further discussion with their father about what was best for the future. She said the main reason her father wished to speak to me was to make a new Will because he was anxious to include his youngest son, Michael.

Denise explained that Michael had fallen out with their parents many years ago and they had been estranged until their mother had become ill. She said that it was a great relief to her that Michael had reconciled with their mother before she died, and she was equally pleased that he had also reconciled with their father. Denise explained that when her parents made their Wills, they only made provision for her and Sylvester; no provision at all being made for Michael. She said their father had always wanted to give an equal share of his estate to Michael, but had felt unable to do so during his wife's lifetime.

I asked Hugh if this was correct and he nodded and said: 'yes, that's what I want'. Sylvester immediately said that Michael was only showing interest in Hugh now in the hope that he was going to inherit something. Turning directly towards me, Sylvester said that he would never forgive his brother for his behaviour towards his parents and wanted nothing to do with Michael, whereupon Denise said to him that it was their father's decision what he included in his Will and he should not be speaking like that in front of me. After an awkward silence, I said that perhaps it might be best for them to have a family discussion before Hugh let me have his further instructions. In the meantime, I said that I would locate Hugh's existing Will, and I passed to each of them some explanatory information relating to lasting powers of attorney for them to consider.

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DOCUMENT 2
ENDURING POWER OF ATTORNEY OF HUGH QUIGLEY

ENDURING POWER OF ATTORNEY

Part A: About using this form

1. You may choose one attorney or more than one. If you choose one attorney then you must delete everything between the square brackets on the first page of the form. If you choose more than one you must decide whether they are able to act:

- Jointly (that is, they must all act together and cannot act separately) or
- Jointly and severally (that is, that they can all act together but they can also act separately if they wish).

On the first page of the form, show what you have decided by crossing out one of the alternatives.

2. If you give your attorney(s) general power in relation to all your property and affairs, it means that they will be able to deal with your money or property and may be able to sell your house.

3. If you don't want your attorney(s) to have such wide powers, you can include any restrictions you like. For example, you can include a restriction that your attorney(s) must not act on your behalf until they have reason to believe that you are becoming mentally incapable; or a restriction as to what your attorney(s) may do. Any restrictions you choose must be written or typed where indicated on the second page of the form.

4. If you are a trustee (and please remember that co-ownership of a home involves trusteeship), you should seek legal advice if you want your attorney(s) to act as a trustee on your behalf.

5. Unless you put in a restriction preventing it your attorney(s) will be able to use any of your money or property to make any provision which you yourself might expect to make for their own needs or the needs of other people. Your attorney(s) will also be able to use your money to make gifts, but only for reasonable amounts in relation to the value of your money or property.

6. Your attorney(s) can recover the out-of-pocket expenses of acting as attorney(s). If your attorney(s) are professional people, for example solicitors or accountants, they may be able to charge for their professional services as well. You may wish to provide expressly for remuneration of attorney(s) (although if they are trustees they may not be allowed to accept it).

7. If your attorney(s) have reason to believe that you have become or are becoming mentally incapable of managing your affairs, your attorney(s) will have to apply to the Court of Protection for registration of this power.

8. Before applying to the Court of Protection for registration of this power, your attorney(s) must give written notice, using a special form of notice, that that is what they are going to do, to you and your nearest relatives as defined in the Enduring Powers of Attorney Act 1985. Your or your relatives will be able to object if you or they disagree with registration.

9. This is a simplified explanation of what the Enduring Powers of Attorney Act 1985 and the Rules and Regulators say. If you need more guidance, you or your advisers will need to a look at the Act itself and the Rules and Regulations. You can obtain details of these from the Court of Protection.

10. Note to attorney(s). After the power has been registered you should notify the Court of Protection if the donor dies or recovers.

11. Note to Donor
Some of these explanatory notes may not apply to the form you are using if it has been adapted to suit your particular requirements.

Please do not detach these notes. They are part of the Enduring Power of Attorney.

YOU CAN CANCEL THIS POWER AT ANY TIME BEFORE IT HAS TO BE REGISTERED

**Part B: To be completed by the 'donor' (the person appointing the attorney(s))
Don't sign this form unless you understand what it means**

Please read the notes in the margin which follow and which are part of the form itself.

Donor's full name and address.

Donor's date of birth.

Attorney's full name and address.

See note 1 on the front of this form. If you are appointing only one attorney you should cross out everything between the square brackets. If appointing more than two attorneys please give the additional name(s) on an attached sheet.

Cross out the one which does not apply (see note 1 on the front of this form).

Cross out the one which does not apply (see note 2 on the front of this form). Add any additional powers.

If you don't want the attorney(s) to have general power, you must give details here of what authority you are giving the attorney(s).

Cross out the one which does not apply.

I Hugh Quigley
of 10 Meadow Way, Bedford MK10 5TA
born on 7th May 1931
appoint Grace Quigley
of 10 Meadow Way, Bedford MK10 5TA
• and Denise Johnson
of 32 Brook Street, Cambridge CB10 3RP

- ~~jointly~~
- jointly and severally

to be my attorney(s) for the purpose of the Enduring Power of Attorney Act 1985

- with general authority to act on my behalf
- ~~with authority to do the following on my behalf:~~

in relation to

- all my property and affairs
- ~~the following property and affairs:~~

Turn over

Part B: continued

Please read the notes in the margin which follow and which are part of the form itself.

If there are restrictions or conditions, insert them here; if not, cross out these words if you wish (see note 3 on the front of this form).

If this form is being signed at your direction:-

- The person signing must not be an attorney or any witness (to Parts B or C);
- You must add a statement that this form has been signed at your direction;
- A second witness is necessary (please see below).

Your signature or mark.

Date.

Someone must witness your signature.

Signature of witness.

Your attorney(s) cannot be your witness.

~~• Subject to the following restrictions and conditions:~~

I intend that this power shall continue even if I become mentally incapable.

I have read or have had read to me the notes in Part A which are part of, and explain, this form.

I understand the purpose and effect of this document and the nature and extent of the powers I am granting my attorney(s).

Signed by me as a deed *Hugh Quigley*
and delivered

On 30th September 2005

in the presence of *O P Bold*
Full name of witness OWEN PAUL BOLD

Address of witness Solicitor of 101 High Street,
Bedford, MK42 7AB

A second witness is only necessary if this form is not being signed by you personally but at your direction (for example, if a physical disability prevents you from signing).
Signature of second witness.

in the presence of _____

Full name of witness _____

Address of witness _____

YOUR ATTORNEY MUST NOW COMPLETE PART C

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Part C: To be completed by the attorney(s)

Note: 1. This form may be adapted to provide for execution by a corporation.

2. If there is more than one attorney additional sheets in the form as shown below must be added to Part C.

Please read the notes in the margin which follow and which are part of the form itself.

Don't sign this form before the donor has signed Part B, or if, in your opinion, the donor was already mentally incapable at the time of signing Part B.

If this form is being signed at your direction:-

- The person signing must not be an attorney or any witness (to Parts B or C);
- You must add a statement that this form has been signed at your direction;
- A second witness is necessary (please see below).

Signature (or mark) of attorney.

Date.

Signature of witness

The attorney must sign the form and his signature must be witnessed. The donor may not be the witness and one attorney may not witness the signature of another.

A second witness is only necessary if this form is not being signed by you personally but at your direction (for example, if a physical disability prevents you from signing).
Signature of second witness.

I understand that I have a duty to apply to the Court for the registration of this form under the Enduring Powers of Attorney Act 1985 when the donor is or is becoming mentally incapable.

I understand that I am able to use the donor's money to make gifts, but only on specified occasions and for reasonable amounts in relation to the donor's money and property.

I also understand that I have a duty to keep proper accounts and records and produce them to the Court when requested.

I am not a minor.

Signed by me as a deed
and delivered

Grace Quigley

On 30th September 2005

in the presence of

O P Bold

Full name of witness

OWEN PAUL BOLD

Address of witness

Solicitor of 101 High Street,
Bedford MK42 7AB

in the presence
of _____

Full name of
witness _____

Address of
witness _____

Turn over

CASE STUDY MATERIALS

Part C: To be completed by the attorney(s)

- Note: 1. This form may be adapted to provide for execution by a corporation.
 2. If there is more than one attorney additional sheets in the form as shown below must be added to Part C.

Please read the notes in the margin which follow and which are part of the form itself.

Don't sign this form before the donor has signed Part B, or if, in your opinion, the donor was already mentally incapable at the time of signing Part B.

If this form is being signed at your direction:-

- The person signing must not be an attorney or any witness (to Parts B or C);
- You must add a statement that this form has been signed at your direction;
- A second witness is necessary (please see below).

Signature (or mark) of attorney.

Date.

Signature of witness

The attorney must sign the form and his signature must be witnessed. The donor may not be the witness and one attorney may not witness the signature of another.

I understand that I have a duty to apply to the Court for the registration of this form under the Enduring Powers of Attorney Act 1985 when the donor is or is becoming mentally incapable.

I understand that I am able to use the donor's money to make gifts, but only on specified occasions and for reasonable amounts in relation to the donor's money and property.

I also understand that I have a duty to keep proper accounts and records and produce them to the Court when requested.

I am not a minor.

Signed by me as a deed and delivered

Denise Johnson

On 1st October 2005

in the presence of

R Unwin

Full name of witness

RUTH UNWIN

Address of witness

19 River Walk
Cambridge CB10 2PA

A second witness is only necessary if this form is not being signed by you personally but at your direction (for example, if a physical disability prevents you from signing).
Signature of second witness.

in the presence of _____

Full name of witness _____

Address of witness _____

DOCUMENT 3

TELEPHONE ATTENDANCE NOTE

Attending: Denise Johnson
Date: [Today's date]
Time engaged: 10 minutes
Reference: TA/2017/Quigley

Denise Johnson telephoned to apologise for having the heated exchanges with Sylvester in front of me yesterday. She said that Sylvester has no time for Michael and does not want him to share their father's estate. She said that Sylvester always puts his own interests first.

Denise said that she wanted to speak to me about her father, as she did not want to say some things to me yesterday in front of him. She said that since her mother's death, her father seemed to have had a change in personality and now showed little interest in anything, even his grandchildren. She said that she visited him daily because she had found that he was becoming very forgetful and, for example, would leave the gas cooker on. She has also found taps left running and at other times she has found him sitting in the dark. On other days she said that he would be quite different and almost his normal self.

The point she wanted to make was that she is concerned about her father's welfare, and does agree with Sylvester that they are going to have to be involved in decisions their father makes in the future.

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DOCUMENT 4

ATTENDANCE NOTE

Attending: Yasmine Potter

Date: [Yesterday's date]

Time engaged: 30 minutes

Reference: TA/2017/Potter

Attending Yasmine Potter, who came to discuss the finalisation of her late husband's estate. Yasmine commented that it was almost a year since her husband, Norman, died. She said that it was so sad that he had died at the comparatively young age of 68, although she was comforted by the fact that Norman died after only a short illness.

Yasmine seemed to want to talk about Norman and said that she believed his illness had been brought on by the failure of his business. Further, she said that Norman blamed his two sons by his first marriage for the failure of the business and he bitterly regretted his decision to let them run the business. Consequently, she said that she held them at least partly responsible for her husband's death and she now has no contact with them whatsoever.

I produced to Yasmine the draft accounts I had prepared for her husband's estate and which I then proceeded to go through in detail. I told her that now all of Norman's debts had been paid in full, there was virtually nothing left of his savings. She said that she had already come to terms with that fact, but was thankful that all his debts had been paid.

I explained to Yasmine that as their home was owned by them both as beneficial joint tenants, the sole legal and beneficial ownership automatically passed to her. I said I would prepare the necessary documentation to register the property at the Land Registry in her sole name.

Yasmine said that she was still considering what to do with her home. She finds it quite lonely living there on her own. She reminded me that she had no children from either of her two marriages. Yasmine commented that she was five years older than Norman and they had anticipated having a long retirement together once he had retired. She said her biggest regret was that Norman had not enjoyed any retirement.

Yasmine said that her home was worth about £250,000 and confirmed that it was mortgage-free as it had been bought when she married Norman ten years ago and they had been fortunate enough to be able to buy the property outright. She said that she was minded to sell the property and start afresh. Alternatively, if she decided to stay in the property, at least in the short term, she would need to spend quite a bit of money on repairs and modernisation. Yasmine commented that very little money had been spent on maintaining the property throughout their marriage, because most of their income and much of their savings had been invested in her husband's business.

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Yasmine realises she has a number of decisions to make, although she has already decided to make a new Will and a lasting power of attorney, just as I had suggested during one of our earlier discussions. She said she would like to take the opportunity of explaining her position to me at this stage so that I could then advise her further.

I asked Yasmine about her current financial circumstances and she told me that other than her personal and household belongings, she has savings of approximately £7,000. She has a car which is ten years old and has recently been valued at £1,000. It urgently needs replacing. So far as her income is concerned, Norman had to cash in his pension several years ago in order to raise funds for his business. Consequently, she only has her state pension and the pension credit she receives. Yasmine mentioned that she receives both the guarantee credit and savings credit part of pension credit. The only other benefit she receives is council tax reduction, which means that she does not have to pay council tax. Rather tearfully, she told me that she was finding it difficult to meet all of her regular household expenditure, and said it helped when she received her winter fuel payment before Christmas.

I asked how much money she would need to repair and modernise her home and she replied that it would be a considerable amount because it needs a new roof, rewiring throughout, and the central heating system needs replacing. As the kitchen and bathroom fittings are at least 30 years old, they urgently need replacing. Without going into detail she said that numerous other things required either attention or replacement. Yasmine said that during the last few months she has only been heating three rooms in her home to save money. She thinks the cold conditions are adversely affecting her general health, and also making her arthritis worse. I briefly explained to Yasmine how she could raise money by using her home as security.

We agreed that once I had completed the registration of her home in her sole name, we would have a further discussion. Yasmine will give further thought to her future and will contact me in the meantime if she has any questions.

Turn over

DOCUMENT 5

ATTENDANCE NOTE

Attending: Vivienne Lawton
Date: [Yesterday's date]
Time engaged: 30 minutes
Reference: TA/2017/Lawton

Attending Vivienne Lawton of 56 Manor Drive, Bedford, MK42 2PQ. I had not seen Vivienne since I prepared a codicil to her Will about two years ago. She told me she was considering making some changes to her Will. Rather than write to me with the details of the changes she was considering, she wanted to tell me of her present circumstances. By chance, she said that since she had arranged the appointment with me, there had been an unexpected change in her circumstances.

Vivienne said that she celebrated her 80th birthday last month and commented that it did not seem six years ago since her husband, Eric, died. I asked about her children and she said that her daughter, Abigail, and her son, Charles, were both doing well, and that she now has four grandchildren.

Vivienne explained to me that since her husband's death, she has become increasingly involved in her local church and Women's Institute and, indeed, this occupies most of her time. She is thinking of giving legacies to both of them. Since her husband's death she has found solace in carrying out charitable works.

Vivienne then gave me some details of her financial circumstances. In essence she has a lot of capital, but her income only just covers her expenditure. I recalled that she received her late husband's entire estate and she confirmed that was the case. Her house is worth about £385,000 and she has an investment portfolio valued at about £55,000. She also mentioned that she had been given a flat by her late uncle in 1977. Although she has never lived there, it has been occupied by both her children in the past while they were at university, and since those days it has been rented out and has given her an additional income. She thinks the flat is now worth at least £250,000.

Vivienne then told me that her situation had changed dramatically in the last week. She was surprised to receive notification from National Savings that she has won a premium bond prize of £100,000. This has just been deposited into her bank account.

I asked Vivienne about her income and she said that besides the rental income for the flat, she receives a modest private pension and her state pension. She finds it surprising that she still has to pay basic rate tax on her income.

As a result of her unexpected windfall, she is now going to have to give further thought to her plans generally.

Vivienne told me that recently some of her closest friends had mentioned to her that they were going on a world cruise and had suggested that she go as well.

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It would be extremely expensive but, given her age, she is mindful of the fact that if she is ever going to go on such a cruise, now is the time to do so, particularly as she currently enjoys good health.

She wanted to inform me of her current circumstances and said that once she had given further thought to her future plans generally, she would contact me again.

End of Case Study Materials

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