

Unit 15



<b>Title:</b>	<b>The Practice of Law for the Elderly Client</b>
<b>Level:</b>	<b>3</b>
<b>Credit Value:</b>	<b>7</b>

<b>Learning outcomes</b>	<b>Assessment criteria</b>	<b>Knowledge, understanding and skills</b>
<b>The learner will:</b>	<b>The learner can:</b>	
<b>1 Understand what the practice of law with particular application to an elderly client may involve</b>	<p><b>1.1</b> Identify typical situations where advice or proceedings may be required by or on behalf of the elderly client</p> <p><b>1.2</b> Identify from given situations where conflict of interest may exist</p> <p><b>1.3</b> Identify from given situations the need to refer to other non-lawyer professionals</p>	<p><b>1.1</b> Action or proceedings which would fall into this practice area, eg, housing and accommodation; tax; welfare benefits; pensions; living and statutory wills; mental capacity and Enduring and Lasting Powers of Attorney</p> <p><b>1.2</b> Application to a scenario; evaluation and analysis of potential conflict of interest to include undue influence between family members and the elderly client</p> <p><b>1.3</b> Application to a scenario; other non-lawyer professionals who may need to be involved, such as accountants, doctors or Social Services officials and any practical or professional issues, which may arise</p>
<b>2 Understand the importance of mental capacity in an elderly client and the effect of lack of mental capacity</b>	<p><b>2.1</b> Explain the requirements for mental capacity</p> <p><b>2.2</b> Identify from given characteristics and situations where capacity can be said to exist and where it is lacking</p>	<p><b>2.1</b> The requirements for mental capacity under the Mental Capacity Act 2005 and any subsequent case law</p> <p><b>2.2</b> Application to a scenario; evaluation and analysis of mental capacity</p>

<p><b>3 Understand the purpose of Enduring and Lasting Powers of Attorney</b></p>	<p><b>3.1</b> Define Enduring Power of Attorney and explain its associated process</p> <p><b>3.2</b> Explain the effects and issues for consideration in the use of an Enduring Power of Attorney</p> <p><b>3.3</b> Define Lasting Power of Attorney and explain its associated process</p> <p><b>3.4</b> Explain the effects and issues arising from the use of a Lasting Power of Attorney</p>	<p><b>3.1</b> What is Enduring Power of Attorney; Enduring Powers of Attorney Act (1985); the circumstances in which it is used; an outline of the procedure in relation to registering an Enduring Power of Attorney, including recognising the basic elements of required documentation</p> <p><b>3.2</b> Evaluation and analysis of the effects; 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; suitability of the attorney, whether lay or professional attorney used; 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 dishonestly; elderly client unable to take action as lacks mental capacity; impact of Mental Capacity Act 2005 on creation of new Enduring Powers of Attorney; powers created before then will still be valid</p> <p><b>3.3</b> What is Lasting Power of Attorney; the Mental Capacity Act (2005); the circumstances in which it is used; an outline of the procedure in relation to the making and registering of a Lasting Power of Attorney including recognising the basic elements of required documentation</p> <p><b>3.4</b> Evaluation and analysis of the effects, eg, the Lasting Power of Attorney can include authority for the attorney to make decisions about the donor's personal welfare, which includes health care as well as property and affairs; attorney can take decisions about the</p>
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	<p><b>3.5</b> Compare and contrast the differences between the Enduring Power of Attorney and the Lasting Power of Attorney</p> <p><b>3.6</b> Describe the role of the Court of Protection and the Public Guardianship Office (the Office of the Public Guardian)</p>	<p>personal welfare of the donor, eg, where they live, who with, including refusal to consent to medical treatment; issues here in relation to restricting the scope of the authority or imposing conditions; if expressed explicitly Lasting Power of Attorney can give authority to refuse “life sustaining treatment”; attorneys receiving authority under a Lasting Power of Attorney have a statutory duty to act in the best interest of the donor; duties set out in the Mental Capacity Act Code of Practice; consideration of the suitability and appointment of attorney(s); sole attorney, joint or joint and several; lay or professional; limitation on powers; conditions imposed?</p> <p><b>3.5</b> Evaluation of the similarities and differences between the two powers, eg, when the instrument comes into operation; “acting in the best interest of the donor”: the statutory duties enshrined in a Lasting Power of Attorney</p> <p><b>3.6</b> 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 Public Guardianship Office (to be called The Office of the Public Guardian under the Mental Capacity Act 2005): its supervisory role in the registration and maintenance of Enduring and Lasting Powers of Attorney; processing applications made for a Receiver 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; applications made under the Mental Health</p>
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<p><b>5 Understand the consequences of taxation in relation to proposals for change</b></p>	<p><b>5.1</b> Explain the effects on the client of relevant taxation</p> <p><b>5.2</b> Apply an understanding of taxation to a given situation</p>	<p><b>5.1</b> Income Tax, Capital Gains Tax (“CGT”) (in outline only), Inheritance Tax (“IHT”), (in outline only); the consequences for finance, probate; an outline of basic tax planning measures, eg, Lifetime gifts, gifts between spouses, equalisation of estates, IHT exemptions on lifetime transfers, gifts with a reservation of benefit, Capital Gains Tax and consideration of the principal private residence exemption, income tax savings (ie benefiting from higher allowance for the elderly; transferring unused allowances between spouses)</p> <p><b>5.2</b> Advising the client on their tax position in relation to a given set of circumstances; identifying from given characteristics, the implications for tax purposes and consequences of a particular course of action e.g. sale or gift of an asset</p>
<p><b>6 Understand the availability of welfare benefits and pension entitlement both from the state and former employers</b></p>	<p><b>6.1</b> Explain eligibility for welfare benefits</p> <p><b>6.2</b> Outline state pension entitlement, employer’s pensions and annuities</p> <p><b>6.3</b> Apply an understanding of welfare benefits</p>	<p><b>6.1</b> Attendance allowance; Pension Credit; Council Tax Benefit and carer’s allowance</p> <p><b>6.2</b> In outline only an understanding of the types of pension entitlement such as; Occupational Pensions from an employer – types i.e. final salary based, average earnings, flat rate based on the number of year’s service or money purchased based on contributions made; Personal Pensions – usually taken up by self employed with restrictions on contributions made, with profits or unit linked; State Pensions including Over 80 Pension and the Additional State Pension (formerly known as SERPS); Stakeholder Pensions</p> <p><b>6.3</b> Application to a scenario</p>



	<b>7.3</b> Apply an understanding of Living and Statutory Wills to a given situation	lifetime gift, where the proposed gift is substantial; eg where the patient is adequately provided for financially, however, their adult child is in dire need of financial assistance now  <b>7.3</b> Application to a scenario
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<b>Additional information about the unit</b>	
Unit aim(s)	The learner will understand key concepts, terms and processes in the practice of law for the elderly client
Unit expiry date	31 December 2010
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)	Na
Endorsement of the unit by a sector or other appropriate body (if required)	Na
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	ILEX (Institute of Legal Executives)
Availability for use	Only available to owning awarding body
Availability for delivery	1 September 2008