Unit 15

Title:	The Practice of Law for the Elderly Client
Level:	**3**
Credit Value:	**7**

Learning outcomes **The learner will:**	**Assessment criteria** **The learner can:**	**Knowledge, understanding and skills**
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	**1.1** 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.
	1.2 Identify from given situations where conflict of interest may exist	**1.2** Application to a scenario; evaluation and analysis of potential conflict of interest to include undue influence between family members and the elderly client.
	1.3 Identify from given situations the need to refer to other non-lawyer professionals	**1.3** 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.
2 Understand the importance of mental capacity in an elderly client and the effect of lack of mental capacity	**2.1** Explain the requirements for mental capacity	**2.1** The requirements for mental capacity under the Mental Capacity Act 2005 and any subsequent case law.
	2.2 Identify from given characteristics and situations where capacity can be said to	**2.2** Application to a scenario; evaluation and analysis of mental capacity.

	exist and where it is lacking	
3 Understand the purpose of Enduring and Lasting Powers of Attorney	**3.1** Define Enduring Power of Attorney and explain its associated process **3.2** Explain the effects and issues for consideration in the use of an Enduring Power of Attorney **3.3** Define Lasting Power of Attorney and explain its associated process **3.4** Explain the effects and issues arising from the use of a Lasting Power of Attorney	**3.1** 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. **3.2** 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 dishonesty; 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. **3.3** 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. **3.4** 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 health and welfare, as well

		as property and financial affairs; attorney can take decisions about the health and 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 attorneys authority to give or refuse consent to "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, jointly or jointly and severally; lay or professional; restrictions and/or conditions; and guidance.
	3.5 Compare and contrast the differences between the Enduring Power of Attorney and the Lasting Power of Attorney	**3.5** 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.
	3.6 Describe the role of the Court of Protection and the Public Guardianship Office (the Office of the Public Guardian)	**3.6** 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 and maintenance of Enduring and Lasting Powers of Attorney; 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; applications made under the Mental Health Act (2005) in relation to the making of a Statutory Will or a lifetime gift on behalf of a person who has lost the mental capacity.
	3.7 Apply an understanding of powers of attorney to a given situation	**3.7** Application to a scenario; drafting requisite documentation associated with Lasting Power of Attorney, ie, Lasting Power of Attorney: Health and Welfare (LPA HW 10.9); Lasting Power of Attorney: Property and Financial Affairs (LPA PA 10.09).
4 Understand the range of housing and accommodation issues affecting the elderly client	**4.1** Explain issues arising from a range of housing/accommodation situations	**4.1** Owner-occupation: eg, buying retirement housing; moving in with relatives and investing in their property or buying another property together; 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; Roll-up mortgages; Home annuity/Home income plans; sheltered accommodation: eg, the extra cost of the services provided such as wardens, guest accommodation, alarm systems; 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; in outline only, the obligations of the local authority to meet funding for care homes for both England and Wales and to be aware of the regional differences.
	4.2 Apply an understanding of these housing/	**4.2** Application to a scenario.

	accommodation issues to a given situation	
5 Understand the consequences of taxation in relation to proposals for change	**5.1** Explain the effects of relevant taxation **5.2** Apply an understanding of taxation to a given situation	**5.1** 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). **5.2** 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.
6 Understand the availability of welfare benefits and pension entitlement both from the state and former employers	**6.1** Explain eligibility for welfare benefits **6.2** Outline state pension entitlement, employer's pensions and annuities	**6.1** Attendance allowance; Pension Credit; Council Tax Benefit and carer's allowance. **6.2** In outline only an understanding of the types of pension entitlement such as; Occupational Pensions from an employer – types ie, 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.

	6.3 Apply an understanding of welfare benefits and pension entitlement to a given situation	**6.3** Application to a scenario.
7 Understand the nature, effects and limitations of Living Wills and Statutory Wills	**7.1** Explain the nature, effects and limitations of a Living Will **7.2** Explain the nature, effects and limitations of a Statutory Will	**7.1** Also called an Advance Directive or Advance Decision, or an Advance Statement under the Mental Capacity Act 2005; 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. **7.2** See The Mental Health Act (2005); Court of Protection may authorise execution of a Statutory Will for a person who has lost mental capacity called the "client", 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; the uses of a Statutory Will: where the existing will or the application of the intestacy rules if no will, would produce an inequitable outcome and the "patient" lacks capacity to change it; an

		application under the MHA (2005) can also be made where it relates to the disposal of a patient’s property by a 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.
	7.3 Apply an understanding of Living and Statutory Wills to a given situation	**7.3** Application to a scenario.

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
Unit expiry date	31 March 2015
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	ILEX (Institute of Legal Executives)
Availability for use	Only available to owning awarding body
Availability for delivery	1 September 2011