

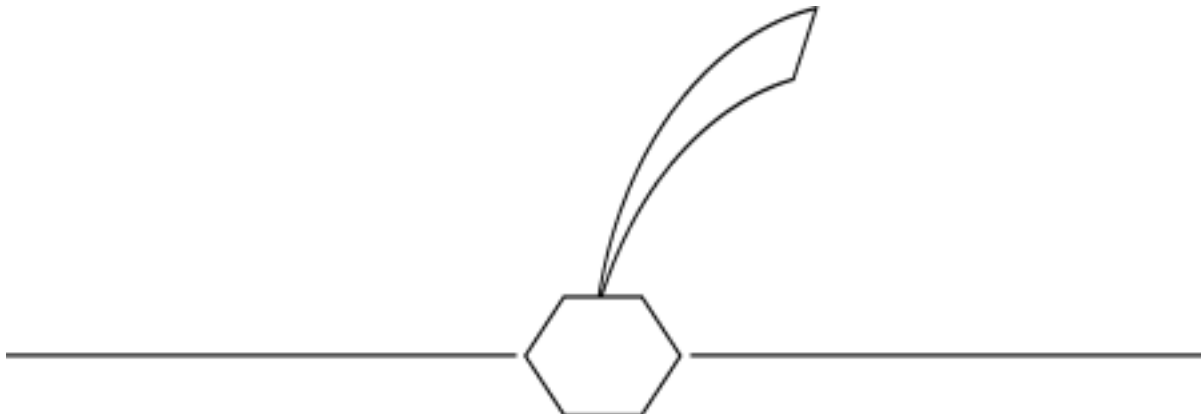
LAW AND AGING: Essentials of Elder Law

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Instructor Manual & Test Bank

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Introduction

The following points touch upon the essential issues raised in each of the fourteen chapters herein. They are submitted by the author only to assist the instructor in teaching this course and should be supplemented by the teacher's own thought-provoking questions and classroom discussions.

Elder law is in its embryonic stages and is growing and changing; therefore, a teacher must keep informed of the changing laws and current court decisions that affect the practice of elder law. These new issues should be brought into the classroom for analysis and discussion and should be the basis of additional examination questions. The author sincerely hopes that you will enjoy teaching this course and also learn from it.

Please send your comments on how the teaching of this course could be improved to Ronald A. Schwartz at Pearson Publications Company, 9614 Greenville Avenue, Dallas, TX 75243, or e-mail at pearsonpub@aol.com

Course Description

This course is an introduction to the emerging field of elder care law, covering the areas of advance directives, wills and guardianships. Special attention is focused on patients' rights in healthcare decision-making and the entitlement programs of Medicare and Medicaid. The subjects of managed care, long-term-care insurance, living facilities for the elderly, and financial planning for aging and elderly clients are also a significant feature of the course.

General Overview

The population of America is graying, Americans are living longer, and their lives are healthier and more productive. As a direct result, the number of elderly citizens is rapidly increasing. Statistical information helps us understand how America's population is gradually changing. Currently, approximately 33,000,000 Americans are over age 65. The fastest growing age group in the United States, between the years 1980 and 1990 was 85 to 90 years. The fastest growing age group from 1990 to 2000 is 90 to 95 years. It is predicted that in the year 2000, 1 million Americans will be over the age of 100. After the year 2000, the aging generation dubbed, "baby boomers" will have a significant impact upon the resources of American society. They will need the assistance of skilled professionals to solve the many problems related to aging. Elder care lawyers and their paralegals have already begun to service the elderly. This skill is new and growing, and the demand for elder care lawyers and their paralegal staff will be increasing for years to come.

Chapter One is an overview of the medical, social, financial, and legal problems associated with aging. It focuses on the role of the paralegal as an essential member of the elder care law team.

Chapter Two focuses on the initial interview and the use of the elder care law confidential questionnaire. It discusses what to look for in reviewing the client's personal papers and documents and the role of elder law in crises intervention and non-emergency situations.

Chapter Three concentrates on advance directives, including powers of attorney, healthcare

proxies, living wills, and advance directives for the appointment of a guardian. It discusses the nature of these documents and how and when they are used in the practice of elder care law.

Chapter Four is a comprehensive discussion of the law of wills. It begins with an introduction to the law of wills, analyzing the terms of a basic will. The student will receive instructions on how to complete a confidential will questionnaire with further discussions involving the probate process and challenges to legal documents.

Chapter Five is a basic introduction to the law of guardianship with typical case scenarios. It focuses on the judicial process including petitions, hearings, duties of a guardian, termination of guardianships, and how the Paralegal should complete a guardianship intake questionnaire.

Chapter Six discusses patients' rights in healthcare decision making, including patients' right to die, physician-assisted suicide, the controversial Dr. Kevorkian, euthanasia in the United States and, finally, current legal decisions.

Chapter Seven focuses on the entitlement programs known as Medicaid and Medicare. It discusses Medicare in detail including eligibility and coverage under Part A and Part B. The chapter further focuses on Medicaid and its eligibility requirements, benefits, transfer rules and Medicaid rights of recovery.

Chapter Eight contains a review of managed care including an introduction to healthcare maintenance organizations, their benefits, capitation process, and gag clauses. It also discusses long-term care insurance, its historical background, and its uses in financial planning for the elderly, an analysis of basic long-term care insurance policies.

Chapter Nine discusses a new topic entitled viatical settlements.

Chapter Ten presents a discussion of living facilities for the elderly including a comprehensive study of independent living facilities, assisted-living facilities and skilled nursing homes.

Chapter Eleven focuses on financial planning for aging and elderly clients with emphasis on estate tax, gift tax, income tax, trusts, and life estates.

Chapter Twelve discusses Social Security benefits.

Chapter Thirteen focuses on the topic of elder abuse.

Chapter Fourteen provides resources for the elder law team.

Chapter One: Introduction to Elder Care

Topical Outline

- Aging in America
- Problems Associated with Aging
 - Medical
 - Social
 - Financial
 - Legal
- The Role of the Paralegal as an Essential Member of the Elder Law Team

Learning Objectives

To become aware of the demographics of aging in the United States and to understand how the emerging field of elder care law and the paralegal will be directly affected by this phenomenon.

Job Competencies

A paralegal who works in the elder care law field must have an understanding of the aging process, the planning and programs available to the elderly. The paralegal must be able to work patiently with the elderly who are experiencing a variety of new stresses in their lives.

Key Concepts

As people live longer, the likelihood of their immune system breaking down increases, subjecting them to many new diseases. Knowing what they are is important and how they affect the elderly. There are also social problems that involve the well elderly as well as the ill elderly and their life styles.

The elderly will also confront certain financial problems that are unique to them. This will require them to do financial planning to protect their assets. The paralegal must understand that the aging process may result in mental incompetency and incapacity, negating the ability to decide for oneself, ultimately requiring the appointment of a guardian or a conservator. In addition, an inability to make medical decisions may occur; therefore, the use of advance directives is an important feature in planning to protect the elderly and help them retain their dignity, self-respect and independence.

Readings and Assignments

- Readings: *Law and Aging, Essentials of Elder Care Law*, Chapter 1, Introduction, pp 1-5.
- Assignment: None

Discussion Questions of the Week

1. Do you have any aging parents or relatives?
2. Have they done any estate planning?
3. Do you have any relatives in nursing homes? If so, try to find out their case history.

External Activity #1

Contact an elder care attorney in your area. Inquire as to the services the law firm provides for the clients and families. (Call your local bar association for a referral to an elder care lawyer, contact the National Association for Elder Law Attorneys in Tucson, Arizona, or look in your local Yellow Pages).

Chapter Two: Initial Interview

Topical Outline

- Assessing the Situation
 - Situations requiring crises intervention
 - Situations involving non-emergency intervention
- The Elder Law Initial Confidential Questionnaire. The legal assistant must obtain and review the following documents from the new client:
 - Personal Papers
 - Proof of Ownership of Property
 - Financial Papers
 - Insurance Policies
 - Miscellaneous Documents
 - Conducting the Initial Interview
 - The Demeanor of the Paralegal
 - Information to be Elicited from the Client During the Interview
 - Determine Family Relationships
 - Determine Whether or Not the Patient/Client is Competent
 - Determine the Client's Domicile
 - Determine if Client is Receiving Any Entitlement Benefits
 - Determine Insurance Coverage
 - Determine the Client's Financial Status
- The Elder Care Law Office
 - Physical surroundings
 - How to make the client comfortable

Learning Objectives

- The paralegal should be able to complete the initial intake questionnaire, conduct an interview and obtain all necessary information enabling the elder care lawyer to review the file and begin to assist the client.
- To be familiar with all types of legal documents involving property, including deeds, mortgages, shareholder certificates, proprietary leases, etc.
- To be familiar with financial papers, including bank statements, income tax returns, trust agreements, pension plans, and annuity contracts.
- To be familiar with and understand the terms of a will, when a client presents it during an interview.
- To be able to understand homeowners insurance, personal insurance, auto insurance, life insurance, health insurance, long-term care insurance, asset and disability insurance.

Job Competencies

- To be able to make recommendations to the elder care attorney concerning the core issues that are confronting the client and their families.
- To make recommendations to the elder care attorney as to what services should be considered to protect the client.
- To advise the elder care attorney of the family relationships and how they impact on the handling of the case.

Key Concepts

The initial interview is the first contact that the client will have with the elder law office. It is important that the paralegal conduct this interview in such a manner as to obtain as much

information as possible from the client by filling out the initial elder care law intake, and yet not create anxiety on the part of the client during the interview. Once this information has been obtained, the paralegal's duty is to analyze the information, make recommendations to the elder care attorney as to procedure, point out potential problems, including financial, competency, family relationships, etc.

Reading and Assignments

- Readings: *Law and Aging, Essentials of Elder Care Law*, Chapter 2 - Initial Interview, pp 7-12, and Appendix I
- Assignment: None

Discussion Question of the Week

Have the students "role play" and conduct the initial interview of an elderly client and the family where the elderly individual is stricken with early stages of Alzheimer's.

External Activity #2

Contact an elder care attorney, and see if you can visit the office and possibly sit in on an interview with a client. Study the physical surroundings of the office.

Chapter Three: Advance Directives

Topical Outline

- Durable Power of Attorney
- Healthcare Proxy
- Living Will
- Appointment of a Guardian
- The Law of Principle and Agent
- Revocation of Advance Directives
- Surrogate Healthcare Decision Making
- Patient Self-Determination Act of 1990
- Failure to Have a Healthcare Proxy
- Anatomical Gifting - The Uniform Anatomical Gifts Act

Learning Objectives

- To understand the general rules of the Law of Principle and Agent as it relates to the use of advance directives in Elder Care Law.
- To understand the theory of advance directives and how they are treated as an integral tool in the practice of elder law.
- To have a thorough understanding of surrogate healthcare decision making and its historical background, as well as an analysis of the landmark cases in the area.

Job Competencies

- To determine what advance directives an elder law client should execute.
- To be able to draft advance directives including Healthcare Proxies, Living Wills, Powers of Attorney and Advance Directives for the Appointment of a Guardian.
- To research the current case law in this area and follow it as it continues to evolve.
- To have the ability to explain to clients in detail what advance directives are and why they need them.

Key Concepts

One of the key facets of elder care law is the use of advance directives in healthcare decision-

making. It is important to understand the concept of surrogate healthcare decision making and what occurs if an individual does not have advance directives, i.e., how the medical establishment and the judicial system treat such individuals. The core issue is the individual's rights versus the state's rights. An understanding of the current case law is crucial.

Readings and Assignments

- Readings: *Law and Aging, Essentials of Elder Care Law*, Chapter 3 - Advance Directives, pp 13-40, and Appendix II
- Assignment: None

Discussion Question of the Week

Who is Dr. Jack Kevorkian and what principles does he advocate?

External Activity #3

Visit your local hospital or nursing home and ask them for copies of healthcare proxies that they provide their patients.

Case Reviews

- *Scholendorf v. Society of New York Hospitals*, 211 N.Y. 125 (1914)
- The *Quinlan* Case in New Jersey, 137 N.J. Super. 227, 348 A.2d 801, 70 N.J. 10 (1975), 355 A.2d 647 (1976)
- The *Cruzan* Case, 497 U.S. 261 (1990), 10 S.Ct. 2d 841 (1990)
- The *O'Connor* Case, 72 N.Y. 2d 517 (1988), 534 N.Y.S. 2d 886
- *Compassion in Dying vs. State of Washington*, U.S. Supreme Court No. 94-3553749
- *Quill v. Vacco*, U.S. Supreme Court No. 95-7028

Chapter Four: Wills

Topical Outline: General Clauses in a Last Will & Testament

1. Preamble
2. Article 1 - Burial Directions and Payment Just Debts and Funeral Expenses
3. Article 2 - Distribution of Tangible Property
4. Article 3 - Residuary Clause
5. Article 4 - Alternate Beneficiary Clause
6. Article 5 - Appointment of General Guardian for the Person and Property of Minors
7. Article 6 - Creation of a Trust for the Benefit of a Minor
8. Article 7 - Appointment of Executor and Alternate Executor
9. Article 8 - Will Contest Clause
10. Article 9 - Fiduciary Bond Clause
11. Article 10 - Grammatical Construction Clause
12. Article 11 - Executor and Trustee's Power Clause
13. Article 12 - Estate, Inheritance and Succession Taxes
14. Article 13 - Simultaneous Death Clause
15. Article 14 - Will Construction Clause
16. Attestation Clause
17. Self-Proving Affidavit
18. Probate Process
19. Challenges to Legal Documents
 - ◆ Competency
 - ◆ Undue Influence

Learning Objectives

- To have a basic understanding of the law of wills.
- To understand how assets are distributed by a Last Will and Testament.
- To understand the duties of an executor.
- To understand the construction and execution ceremonies of a will.
- To have a basic understanding of how competency and undue influence affect the validity of a will.

Job Competencies

- To be able to discuss with the client their testamentary plan.
- To be able to interview a client and complete a basic will questionnaire.
- To be able to draft a simple will.
- To be able to partake in the will execution ceremonies.

Key Concepts

Students must have a basic understanding of the law of wills—a key part of the elder care law practice. They should have the ability to meet with a client, ask pertinent questions, establish a testamentary plan, and explain the functions of an executor, trustee, and guardian. They must also be conversant in the areas of testamentary capacity and will construction, as well as challenges to legal documents. For example, if a client presented himself at the elder care law office and it was determined the client was suffering from early stages of Alzheimer's disease, does that client have capacity? What should be done to determine the client's capacity? What documentation should be kept in the file to establish that the client did, in fact, have the capacity to execute a last will and testament?

Readings and Assignments

- Readings: *Law and Aging, Essentials of Elder Care Law*, Chapter 4 - Wills, pp 41-54, and Appendices III and V
- Assignment: None

Discussion Question of the Week

How do we determine testamentary capacity in patients suffering from diseases of aging, such as Alzheimer's, Parkinson's, senile dementia, etc.?

External Activity #4

1. Go to your local probate court and examine several files containing wills that have been probated. Read the will and any pleadings that have been filed in connection with the proceeding. You may also ask the probate clerk to select several contested will proceedings and read those files.
2. Visit your local probate court and sit in on a probate hearing.

Chapter Five: Guardianships

Topical Outline

- Typical Case Scenario: Completion of Guardianship Intake Questionnaire
- Judicial Intervention
- Initial Pleading
- Hearing
- Duties of Guardian
- Termination of Guardianships

Learning Objectives

- To have a basic understanding of the law of guardianships for the elderly.
- To become familiar with the use of guardianships in cases where clients are not able to handle their own affairs, due to illness and incapacity.
- To assess situations and determine if it is appropriate to institute guardianship proceedings.

Job Competencies

- To conduct an interview with the family of an individual who may be the subject of a guardianship.
- To complete the guardianship questionnaire, which is found in Appendix VI of the textbook.
- To be able to draft the initial pleadings in a guardianship proceeding.
- To be able to prepare a financial inventory of the client's assets.
- To be able to assist the elder law practitioner at a hearing.
- To draft necessary documents in connection with the termination of a guardianship.

Key Concepts

In the practice of elder law it is recommended that clients prepare advance directives so they can maintain control of their lives even when they do not have the mental or physical capacity to do so on their own. What happens if a client should become ill without the benefit of having these documents in place? If married, the well spouse has no legal authority, unless their marital partner has executed advance directives. Contrary to popular belief, neither a husband or wife nor a child has the authority to act on behalf of a spouse or parent based upon marital or filial standing. If an individual has not planned ahead for catastrophic illness, then judicial intervention may become necessary. A keen understanding of guardianship law and medical decision-making is crucial. Judicial intervention should be considered only when advanced planning has not been done and there is no other alternative. A guardianship proceeding can be costly and emotionally draining for the family and can result in stripping the individual of all dignity, self-respect and independence.

Readings and Assignments

- Readings: *Law and Aging, Essentials of Elder Care Law*, Chapter 5 - Guardianships, pp 55-60, and Appendices IV and VI
- Assignment: Review the guardianship intake questionnaire.

Discussion Question of the Week

What happens to a person who develops a catastrophic illness, who has not had the foresight to execute any advance directives or do basic financial planning?

External Activity #5

Visit your local guardianship court and sit in on a guardianship proceeding.

Chapter Six: The Patient's Rights in Healthcare Decision Making

Topical Outline

- Three Typical Case Scenarios
- Core Issues
 - An individual's liberty rights pursuant to the 14th Amendment to the U.S. Constitution
 - The state's paramount interest to prevent suicide and keep patients alive under any

- condition
 - The medical profession's dedication to sustaining life
- Landmark Cases
- Physician-assisted Suicide
- Position of the U.S. Supreme Court on a patient's right to die, as of June, 1997

Learning Objectives

- To learn about the U.S. Constitution's 14th Amendment protection of an individual's liberty rights, in connection with patient self-determination.
- To read and interpret the major landmark cases in the area, such as, *In re: Quinlan*, 1976, *O'Connor v. Westchester County Hospital*, 1988 and *Cruzan v. Director Missouri Department of Health*, 1991.
- To understand the current theories on physician assisted suicide in the United States, including those of Jack Kevorkian, M.D.

Job Competencies

- To draft healthcare advance decision making instruments.
- To be able to assist the client in executing healthcare decision making documents.
- To understand how to help a client in the event that no advance directives have been executed.
- To be develop relationships with healthcare professionals, such as nurses, psychiatrists, gerontologists and social workers.

Key Concepts

Many clients are confronted with problems for which there are no simple solutions. These problems call for crisis intervention or deal with issues of declining quality of life due to degenerative and catastrophic illnesses or imminent mortality. Professionals in this area must have the ability to deal with life-and-death situations on a daily basis. They must learn how to be compassionate, while remaining objective in order to best serve their clients. The major focus of elder care law practice is to represent clients and their families in planning for and during the end of life. The legal professional must be willing to deal with these problems daily.

Readings and Assignments

- Readings: *Law and Aging, Essentials of Elder Care Law*, Chapter 6 - Patients' Rights in Healthcare Decision Making, pp 61-70
- Assignment: None

Discussion Question of the Week

If you or a close family member or friend were terminally ill, would you consider physician-assisted suicide, as a means of terminating suffering?

External Activity #6

Contact your local family physician to obtain his opinion on physician-assisted suicide.

Chapter Seven: Entitlement Programs, Medicare and Medicaid

Topical Outline

- Eligibility
- Benefits
- Part A Coverage
- Part B Coverage

- Medicare hospital patients' rights
- Medicaid eligibility
- Benefits
- Transfer rules
- Medicaid rights of recovery
- Medicaid application procedure
- Institutional Medicaid/Home Medicaid
- What is Medicaid Asset Planning?
- The Health Insurance Portability and Accountability Act of 1996, (Kennedy-Kassebaum Bill), effective January 1, 1997.

Learning Objectives

- To be familiar with the rules for eligibility for Medicare.
- To be familiar with the basic benefits that Medicare provides in Part A and Part B.
- To understand and be familiar with patients' rights in a hospital, including premature discharge.
- To understand Medicaid and its eligibility rules.
- To understand Medicaid asset transfer rules.
- To understand Medicaid asset planning.
- To understand new legislation effective January 1, 1997, and how it affects Medicaid asset transfers.

Job Competencies

- To be able to do an in-depth interview with a Medicaid applicant or their immediate family.
- To prepare an inventory of all assets of the applicant.
- To trace all assets that have been transferred within the past 36 months.
- To organize necessary documentation.
- To be familiar with of Medicaid and Medicare rules and regulations.
- To understand Medicaid rules governing the recovery of assets.

Key Concepts

One of the functions of an elder care attorney and his paralegal staff is to prepare Medicaid application as well as to advise clients of their rights as Medicare beneficiaries. Most of the clients who will be requesting assistance from an elder care law office will be Medicare eligible due to age or disability. Elderly clients who are seriously ill and candidates for a nursing home may require assistance in preparation of Medicaid applications. It is, therefore, crucial for the paralegal to understand Medicaid and Medicare eligibility and rights of recovery in this area.

Readings and Assignments

- Readings: *Law and Aging, Essentials of Elder Care Law*, Chapter 7 - Entitlement Programs, pp 71-105
- Assignment: None

Discussion Question of the Week

How does the Kennedy-Kassebaum Bill affect the practice of elder law?

External Activity #7 - None

Chapter Eight: Managed Care and Long-Term Care Insurance and Chapter Nine: Viatical Settlements

Topical Outline

- Introduction to Health Maintenance Organizations (HMO)
 - Benefits
 - Capitation Process
 - Gag Clauses
 - HMO and Long-Term Care
- Long-Term Care Insurance
 - Historical background
 - Use as a financial planning tool for the well elderly
 - Analysis of the basic long-term care insurance policy
- Viatical Settlements

Learning Objectives

- To be able to understand how an HMO operates.
- To understand what long-term care insurance is.
- To understand how long-term care insurance is an integral part of financial planning for the elderly.
- To understand the basic long-term care insurance policy:
 - Rating
 - Levels of care
 - Hospital stay
 - Coverage of certain illnesses
 - Covered facilities
 - Preexisting conditions
 - Waiver of premium
 - Guarantee of renewability
 - Daily benefit amount
 - Payment of long-term care insurance benefits, in addition to other coverages
 - Level of premium
 - Age limits
 - Coverage should be reviewed after policy issued
 - Inflation guard
 - Term of policy
 - Deductible period
 - Convalescent benefits at home
- To learn how a viatical settlement operates.
- To communicate with viatical settlement companies and to obtain any information necessary to prepare a favorable viatical settlement for a client.

Job Competencies

- To be able to read and understand a long-term care insurance policy and advise the client about its benefits and restrictions.
- To assist a client to apply for long-term care insurance.
- To assist a client to determine what coverage they should obtain.

Key Concepts

It is important to understand how an Healthcare Maintenance Organization (HMO) works. The paralegal also should understand what the advantages and disadvantages are and what the client-subscriber's rights are in the event he or she does not receive what has been contracted for with the HMO.

It is crucial to understand how long-term care insurance fits into Medicaid planning, as the client ages. The paralegal should have a basic understanding of long-term care insurance policies, their benefits and restrictions, and how such insurance can avoid a financial disaster in the event of catastrophic illness. Assisting a client in this area is a key role for the paralegal.

It is also crucial, for the paralegal to understand the nature of viatical settlements and how they can also be used to relieve the financial burden of catastrophic illness.

Readings and Assignments

- Readings: *Law and Aging, Essentials of Elder Care Law*, Chapter 8 - Managed Care and Long-term Care Insurance, pp 107-119, and Chapter 9 - Viatical Settlements, pp 121-127
- Assignments:
 - Contact several insurance companies to obtain brochures on long-term care insurance.
 - Obtain brochures regarding viatical settlements.

Discussion Questions of the Week

- Compare coverage of various policies obtained as part of assignment.
- Why is it necessary for an individual to obtain long-term care insurance?
- Compare viatical settlement procedures.

External Activity #8 – None

Chapter Nine: Viatical Settlements (test bank only)

Chapter Ten: Living Facilities for the Elderly

Topical Outline

- Independent Living Facilities
 - Residency agreement
 - Lease agreement
 - Admission procedure
 - Termination of lease
 - Life care communities
- Assisted Living Facilities
 - Residential agreement
 - Admission
 - Discharge
 - Services provided by an assisted living facility
 - Ancillary services
- Skilled Nursing Facilities
 - Types of skilled nursing facilities
 - Considerations in the selection of a nursing home
 - The nursing home contract
 - Bed hold policy
 - Change in source of funding
 - Discharge policy
 - Policy regarding living wills

Learning Objectives

The paralegal should be aware of alternate living facilities in his/her community and be able to assist the client in applying for admission.

Job Competencies

- To be able to read and understand admission contracts for independent living facilities; life care communities; assisted living facilities; skilled nursing facilities.
- To assist in placing clients in the independent living facilities, life-care communities, assisted living facilities and nursing homes.
- To make contacts with various alternative living facilities, including, but not limited to independent living facilities, life-care communities, assisted living facilities, nursing homes.
- To meet with nursing home administrators and understand their admission requirements.
- To understand the nature of catastrophic illnesses that would compel an individual to be admitted to a skilled nursing facility.
- To understand the rules and regulations common to all nursing home facilities.

Key Concepts

The elderly population is growing. They are returning to school at 50, starting new careers at 60, jogging at 70 and playing tennis into their 80s. The traditional family as we know it, no longer exists. Parents have located to warmer climates and children have moved away to marry or work in other parts of the country. Children no longer care for their elderly parents. Alternate living facilities have been created to meet the needs of the graying population. It is crucial for a paralegal in this area to understand the demographics of aging and to assist elderly clients in their transition into new living facilities, whether the movement is by choice or necessitated by illness.

Readings and Assignments

- Readings: *Law and Aging, Essentials of Elder Care Law*, Chapter 10 - Living Facilities for the Elderly, pp 129-140
- Assignment: Contact local alternate living facility and obtain a copy of admission agreement.

Discussion Question of the Week - none

External Activity #10 (Follow-up to External Activity #9)

Visit an independent living facility, an assisted living facility, life-care community and a skilled nursing facility. Discuss your observations and differences noted among the various types facilities.

Chapter Eleven: Financial Planning For Aging and Elderly Clients

Topical Outline

- Estate tax
- Gift tax
- Income tax
- Trusts
 - Living trust
 - Irrevocable trust
 - Credit shelter trust
- Life estates
- Social Security Benefits

Learning Objectives

- To acquire some understanding of financial planning for the elderly, including, but not limited to: estate tax, gift tax, income tax, trusts, life estates and Social Security benefits.
- To be able to complete an inventory of a client's assets.
- To become familiar with certain tax laws specific to the aging population.

Job Competencies

- To prepare a simple estate tax return.
- To prepare a simple gift tax return.
- To be able to draft a simple living trust, irrevocable trust or credit shelter trust.
- To be able to draft the necessary documents to create a life estate in connection with the transfer of real property.
- To be able to advise a client regarding Social Security retirement, disability, and Supplementary Security Income benefits provided under the Social Security Act.

Key Concepts

It is crucial for a paralegal in the elder law field to understand basic financial planning for aging and elderly clients. Planning will assist a client to preserve his or her assets in the event of a catastrophic illness.

Readings and Assignments

- Readings: *Law and Aging, Essentials of Elder Care Law*, Chapter 11 - Financial Planning, pp 141- 172 and
- Assignment: Contact a local brokerage house and request information about the financial planning services they provide.

Discussion Question of the Week

Why is it important for the aging individuals to do financial planning?

External Activity #11

Visit a local Social Security office and obtain their publications regarding entitlement benefits and read them.

Chapters Twelve & Thirteen (test bank only)

Test Bank Introduction

The following questions and answers touch upon the essential issues raised in each of the fourteen chapters of the textbook, *Law and Aging, Essentials of Elder Law*. I submit them only as a guide to assist you in teaching this course. They should be supplemented by your own thought-provoking questions and classroom discussions.

Elder law is in its embryonic stages and is growing and changing; therefore, it should be noted that a teacher must keep informed of the changing laws and current court decisions that affect the practice of elder law. These new issues should be brought into the classroom for analysis and discussion and should be the basis of additional examination questions. I sincerely hope that you will enjoy teaching this course and also learn from it yourself.

Please feel free to forward any comments on how the teaching of this course could be improved to Ronald Schwartz at Pearson Publications Company, 9614 Greenville Avenue, Dallas, TX 75243 or e-mail at pearsonpub@aol.com.

INTRODUCTION

<i>Question</i>	<i>Answer</i>
1. What is the fastest growing age group in America today?	90-95 Years.
2. Is it predicted by demographers that in the year 2000, one million Americans will be over the age 100: true or false?	True.
3. Define “baby boomers.”	Children born at the end of World War II.
4. A child born in 1998 has an average life expectancy of 76 years: true or false?	True.
5. Name at least 10 illnesses and conditions that are commonly found to afflict the elderly.	<ul style="list-style-type: none"> • Alzheimer’s Disease • Arthritis • Cancer of the Prostate • Coronary Artery Disease • Diabetes • Parkinson’s Disease • Persistent Vegetative State • Senile Dementia • Strokes • Organic Brain Syndrome.
6. What alternate lifestyles are available for the well and ill elderly?	<ul style="list-style-type: none"> • Life Care Communities • Independent Living Facilities • Assisted Living Facilities • Home Care Assistance in the Community • Long-Term Care Facilities • Hospice Care
7. What are the major issues that an elder lawyer must deal with?	<p>a. Legal documents for the elderly, such as health-care proxies, living wills, powers of attorney, advance directives for the appointment of a guardian.</p> <p>b. Financial planning, including the areas of long-term care insurance, Medicare, Medicaid and nursing homes.</p> <p>c. Right-to-die issues including biomedical ethics.</p>
8. Briefly explain what long-term care insurance is.	This is private insurance designed to provide coverage for catastrophic illness when a person is confined to a skilled nursing facility or an assisted living facility. The policy will also cover home care and respite care.
9. What is Medicare?	This is a federal entitlement program that provides partial coverage for medical costs.

10. What is Medicaid?	This is a federal entitlement program administered by the individual states and is designed to provide funding to pay for skilled nursing care and home care of indigent individuals.
11. What role does the paralegal play in the field of elder law?	Generally, the paralegal makes the initial contact with the client. It is either by telephone, at an initial interview in the office, at a hospital bedside or at a home visit. The paralegal must have a comprehensive understanding of the aging process and how it impacts upon clients and their families. The paralegal is often thought of as the coordinating link of the elder law team, which includes lawyers, paralegals, nurses, and social workers.

Chapter Two
INITIAL INTERVIEW

<i>Question</i>	<i>Answer</i>
1. Describe situations that require crisis intervention by an elder lawyer.	<ul style="list-style-type: none"> a. Discharge from a hospital b. Sudden catastrophic illness, such as stroke or a heart attack c. Death of a client
2. What are nonemergency situations that elder lawyers handle on a daily basis?	<ul style="list-style-type: none"> a. General issues concerning transfer of assets including tax implications b. Drawing of wills and other advance directive documents c. Medicaid applications d. Nursing home placement
3. What legal documents should a paralegal instruct a new client to bring to an initial interview?	<ul style="list-style-type: none"> a. Last will and testament b. Power of attorney c. Healthcare proxy d. Living will advance directives for the appointment of a guardian
4. What financial papers should a client be instructed to bring with him on an initial interview?	<ul style="list-style-type: none"> a. Bank passbooks b. Bank statements and cancelled checks for past 36 months. c. Income tax and gift tax returns for the past 36 months. d. Estate tax returns e. Trust agreements f. Brokerage accounts g. Inventory of individually held stocks h. List of pension plans i. Annuity contracts j. List of all pending inheritances

<p>5. What personal papers should the paralegal instruct the client to bring on the initial interview?</p>	<ul style="list-style-type: none"> a. Birth certificates of children b. Death certificates of spouse c. Driver's license d. Social Security card and award letter e. Passport or citizenship papers f. Certificates of marriage g. Prenuptial, postnuptial agreements h. Divorce decrees, annulment decrees, separation agreements, alimony and property settlement agreements i. Adoption papers j. War reparation awards, (i.e., Holocaust victims) k. Veterans Administration benefit awards l. Change of name, involving court decrees m. Deeds to primary residence and all real property n. Proof of ownership of personal property o. Leases or rental on rental apartments p. Closing statements for real property on businesses sold within the past six months
<p>6. What insurance policies should the client be instructed to bring on the initial interview?</p>	<ul style="list-style-type: none"> a. Homeowners policies b. Personal articles floater c. Umbrella liability policy d. Automobile insurance policies e. Life insurance policies f. Health insurance policies g. Long-term care insurance policies h. Accident disability policies
<p>7. What are the essential issues that the paralegal should focus on in the initial interview?</p>	<ul style="list-style-type: none"> a. Who is the client? Is it the person who makes the initial contact or is it the elderly person who needs assistance? b. Are the relationships good between the parties or are there any animosities? c. Is the client competent? d. Is there a need for a psychiatric evaluation? e. What is the client's domicile? Are there multiple residences? f. Is the client receiving any entitlement benefits, pensions, or union benefits? g. Does the client have any supplemental medical insurance policies? h. Does the client have long-term care insurance? i. What is the client's financial situation?
<p>8. What are the direct benefits resulting from the proper transfer of assets by an elder law client?</p>	<ul style="list-style-type: none"> a. Medicaid eligibility b. Reduction of inheritance tax c. Avoid Probate d. Avoid the necessity of guardianship or conservatorship proceedings.

<p>9. What are the impairments and disabilities that may be exhibited by a client that a legal professional should be aware of when conducting an initial interview? What can be done to possibly compensate for these afflictions during the interview?</p>	<p>The elderly often have hearing and vision impairment. The office should also be equipped with augmentative hearing devices to aid hard of hearing clients. If client has vision problems, write larger and make sure there is enough available light. The elderly often fatigue easily. Avoid extended interviews.</p>
<p>10. If you were designing an elder law office, what amenities would you provide for your clients to make them more comfortable?</p>	<ol style="list-style-type: none"> a. Wheel chair access b. Hand rails on all stair cases c. Outdoor steps, driveways and sidewalks should be kept free of ice and snow in the winter d. Inside temperature should be kept at approximately 70°F e. Straight back chairs. Elderly often find it difficult to get up once seated f. Easily accessible bathroom facilities

**Chapter Three
ADVANCE DIRECTIVES**

<i>Question</i>	<i>Answer</i>
<p>1. Explain what an advance directive document is.</p>	<p>This is a document executed by an individual while competent in order to direct in advance, what should be done under certain circumstances while the individual is alive and when he or she dies.</p>
<p>2. What are the six most commonly used advance directives?</p>	<ol style="list-style-type: none"> a. Durable Power of Attorney b. Health Care Proxy c. Living Will d. Directive for Anatomical Giving e. Appointment of a Guardian f. Last Will and Testament.
<p>3. Do all Powers of Attorney derive their authority from statutory legislation? True or False?</p>	<p>True.</p>
<p>4. What is a Power of Attorney?</p>	<p>It is a legal instrument executed by a competent adult, authorizing another individual to act in a fiduciary capacity on his or her behalf.</p>

5. Describe the basic elements of a Power of Attorney and how it operates.	The origin of a Power of Attorney is in the law of principle and agency. The principle appoints an agent, also known as a fiduciary, to act for the principle under certain circumstances and to execute specific duties set forth in the Power of Attorney. The agent receives the powers and becomes the attorney in fact for the principle. The act of the agent is treated as the lawful act of the principle.
6. The principle of a Power of Attorney is required to be a citizen: true or false?	False.
7. Who may act as an agent in a Power of Attorney?	An adult competent individual. There is no citizenship requirement. A corporation, such as a bank or a trust company, may also act as an agent (fiduciary).
8. Why should a principle of a Power of Attorney always appoint a substitute agent?	If the principle of a Power of Attorney appoints only one agent and that agent dies or ceases to act in a fiduciary capacity for any reason, the Power of Attorney will lapse and become ineffective. To avoid this situation, the principle must appoint a substitute, if possible.
9. Can a principle appoint multiple agents: yes or no?	Yes
10. Explain the difference between agents acting jointly and agents acting severally.	Where agents act jointly, they must act in concert in order for there to be a legal act. Where the Power of Attorney provides that they act severally, either agent can act individually without the consent of the other agent and still bind the principle.
11. Name the three basic types of Powers of Attorney.	a. General Power of Attorney b. Durable Power of Attorney c. Springing Durable Power of Attorney.
12. The General Power of Attorney does not cease upon the incapacity of the principle: true or false?	False.
13. Is there any state in the union that does not have Durable Power of Attorney Legislation: yes or no?	No.
14. What special language does a Durable Power of Attorney contain that makes it durable?	“This power shall survive the incapacity of the principle” or “This instrument will not be affected by the subsequent disability or incompetence of the principle.”

<p>15. Explain the difference between a Durable Power and a Springing Durable Power of Attorney.</p>	<p>The Standard Durable Power of Attorney and the Springing Durable Power of Attorney are basically the same, except that the Springing Power of Attorney contains a unique feature. It springs into affect only on happening of a certain event and becomes effective only if and when this special condition precedent occurs. The condition precedent is the incapacity or incompetency of the principle.</p> <p>A Springing Power of Attorney does not transfer power when the document is executed. Power is transferred only upon the happening of the triggered event.</p> <p>The standard Durable Power of Attorney, on the contrary, transfers power immediately upon the execution of the document.</p>
<p>16. A Springing Durable Power of Attorney continues to be operative when the principle regains capacity: true or false?</p>	<p>False.</p>
<p>17. Powers of Attorney do not have to be notarized. True or False?</p>	<p>False.</p>
<p>18. Why should Powers of Attorney be executed in multiple originals?</p>	<p>Generally speaking the more extensive the principle's assets are, the more originals will be required. The agent will often be required to surrender the original document to a bank or other financial institution and may never get it back. Photocopies of the original document are not acceptable.</p>
<p>19. What is an affidavit as to the Power of Attorney being in full force?</p>	<p>This affidavit is found in a Statutory General Power of Attorney that must be signed by the agent when the document is ready to be used by the agent to conduct a principle's business. The affidavit must be notarized and is used to induce a third party to act. The agent's affidavit represents the following:</p> <ol style="list-style-type: none"> a. That the principle is still alive. b. That this is a true Power of Attorney. c. That the agent was appointed on a specified date. d. That the agent has no actual knowledge or notice of revocation or termination of the Power of Attorney by death or otherwise. e. That the Power of Attorney is still in full force and effect.

<p>20. Explain the process involved in the revocation of a Power of Attorney by the principle.</p>	<p>The principle may revoke a Power of Attorney so long as he retains the capacity to do so. The revocation must be in writing. Oral revocation is ineffective because it lacks proof. The principle must sign a written notice of revocation. It must also be notarized and or witnessed. It should then be served upon the agent, and any third parties who would rely upon the agent's authority. Service should be made personally or by certified mail—return receipt requested.</p>
<p>21. All Powers of Attorney automatically cease upon the death of the principle. True or False?</p>	<p>True.</p>
<p>22. What amendment of the U.S. Constitution guarantees patients' rights?</p>	<p>14th Amendment.</p>
<p>23. What was the principle decision in the Cruzan case?</p>	<p>The court held that a person's liberty interest under the due process clause of the 14th Amendment includes the right of the person to refuse all medical treatments even though it might lead to the death of that person.</p>
<p>24. What was the decision in <i>O'Conner v. Westchester County Hospital</i>?</p>	<ol style="list-style-type: none"> a. A person has the right to decline medical treatment, even life saving treatment, absent overriding state interest. b. No person should be denied essential medical care unless evidence clearly and convincingly shows that a person intended to decline treatment under some particular circumstance. c. A clear and convincing evidence standard must be established and satisfied in order for a health care provider to terminate artificial life support for the now incompetent patient.
<p>25. What is a Healthcare Proxy and how does it operate?</p>	<p>This is an advanced directive document executed while a person is competent and able to make decisions about future healthcare and treatment. It operates as a medical durable power of attorney similar to a financial durable power of attorney. The principal appoints a primary agent and a substitute agent who will act as surrogates to make decisions when the patient lacks the capacity and competency to make personal healthcare decisions. The principal states in the healthcare proxy specific wishes regarding treatment or the withholding of treatment. The agent will carry out these directives when the principal can no longer function. The document must be in writing and contain the patient's name, address, Social Security number, agent's name, address, and agent's relationship to the principle.</p>

26. To whom should the Healthcare Proxy be distributed by the principal?	The principal should retain a file copy and distribute the rest to the following individuals: the agents, family doctor, family attorney and clergy, if applicable, and any other healthcare provider who is supplying or giving medical care.
27. Can a Healthcare Proxy become stale?	An advance directive that is more than 24-36 months old might be considered stale, and healthcare providers may not be willing to accept the document. Therefore, it should be reaffirmed and re-dated periodically.
28. In what year did the Federal Patient Self-Determination Act become effective? a. 1987 b. 1988 c. 1989 d. 1990 e. 1991	e. December 1, 1991
29. What are the agent's powers under a Healthcare Proxy?	The agent usually has the power: a. To receive all medical and clinical records. b. To seek a second medical opinion. c. To discuss treatment options with medical staff.
30. What is the paralegal's role in the area of healthcare decision-making?	The paralegal's function is to assess the situation when dealing with clients and or family, and report back to the elder law attorney.
31. What are the critical issues that should be considered by the paralegal in formulating an evaluation report?	a. What is the medical status of the patient? b. What is the client's or patient's mental status? c. Has the client executed advanced directives? d. Analyze the family dynamics. Who is in charge, and is that person acting appropriately?
32. What is a Do-Not-Resuscitate Order?	This is a legal document executed by a patient, usually upon entering a hospital or nursing home facility. It states that in the event the patient goes into cardiac or respiratory arrest, the patient requests not to be resuscitated. It can be signed by a family member if the patient is unable to do so.
33. What is a Living Will?	This is an advanced directive that deals with the removal or withholding of life support systems, including food, hydration and curative medication from the patient. It is usually a direct statement of an individual's wishes regarding terminal illness. It is executed when the patient is competent and put into use when the patient is not.

34. What is an advanced directive for the appointment of a guardian?	This is a legal document in which a competent individual pre-appoints a person to handle the individual's affairs if and when a guardianship or conservatorship is required. The document must be written, notarized and should be executed in several original counter parts.
35. Which federal agency controls organ transplants in each state?	The United States Healthcare Finance Administration.
36. Anatomical gifts are irrevocable: true or false?	False.
37. What are the three basic methods for executing anatomical gifts?	a. Uniform donor card. b. Specific bequests in the donor's Last Will and Testament. c. Completing the form on the reverse side of a driver's license designed to provide for anatomical gifting.

**Chapter Four
WILLS**

<i>Question</i>	<i>Answer</i>
<p>1. Give a brief definition of each of the following terms:</p> <ul style="list-style-type: none"> a. Last Will and Testament. b. Testator (Testatrix) c. Executor (Executrix) d. Nuncupative Will e. Holographic Will f. Fiduciary g. Codicil 	<ul style="list-style-type: none"> a. A will is an advance directive document in which an individual expresses in writing his or her testamentary plan for the disposition of assets upon death. b. The individual who executes the will. A testator is male; a testatrix is female. c. The individual appointed by the testator in the will to carry out his or her testamentary plan upon death. d. This is an oral declaration created under a special circumstance, such as, on a battlefield in wartime. No writing is required to make this form of will effective. e. This is a will that is handwritten by the testator. f. An individual who acts in a position of trust for another person. g. This is a legal instrument that modifies some article or articles in a will without causing a change in the entire will. It is executed in the same manner as though it were a will.

2. What is meant by the term testamentary capacity?	This refers to an individual's mental ability to execute a will. The testator or testatrix must know the nature and consequences of his or her acts and also must know what the assets are and who is to receive the bounty. Whoever executes a will must be oriented as to time and place and have the cognitive ability to understand the nature and consequences of his or her acts.
3. Explain what is meant by publication of a will.	In order for a will to be effective, the testator or testatrix must publish the will. He or she must state to the witnesses of the document that this is his or her other last will and testament and that he or she understands the nature and consequences of these acts.
4. Describe the executor's duties in the early stages of the administration of an estate.	The executor will usually do the following: a. Arrange and pay for the funeral services and the internment of the testator including cremation, cryogenics, and even building a mausoleum. b. Pay the decedent's just debts, such as medical expenses, expenses of the last illness, etc. c. Marshall all of the decedent's assets. d. Pay deposits on inheritance and income tax. e. Retain an attorney to handle the estate.
5. Explain what is meant by the legal term "alternate gift over."	In a will, the testator directs that the executor dispose of property to "A" but if "A" does not survive then to "B." The beneficiary has to survive the testator to inherit. This is known as an "alternative gift over."
6. Explain the term "residuary article" in a will.	This article provides for the disposition of all the testator's assets that have not been disposed of by other articles in the will.
7. Give an example of a specific bequest in a will.	"I hereby bequeath 5,000 shares of IBM stock to my brother, Brandy Schwartz."
8. What is a guardianship clause in a will?	If a testator has minor children, the will may provide for appointment of a general guardian of the person and estate of the children during their respective minorities. The guardian is usually the spouse, and the appointment of a guardian is always subject to the court's approval.

<p>9. Define the term “Interrorem Clause.”</p>	<p>This is an article in a will designed to prevent frivolous will contests that are often costly and divisive. The clause states that if a named beneficiary unsuccessfully contests the will, the beneficiary forfeits any interest the testator provided for the beneficiary in the will. However, if the contest is successful, that contesting beneficiary may inherit more than was intended by the testator.</p> <p>This article cannot affect litigants who are not mentioned in the will.</p>
<p>10. What is a fiduciary bond?</p>	<p>Executors and trustees act in a fiduciary capacity, and most often, the court requires them to be bonded. Bonding is a means of protecting the assets of the estate from gross negligence, malfeasance, and theft by the fiduciary. A bond is issued by a surety company and guarantees that if in fact, there is a theft or malfeasance, it will make good any losses to the estate. The bonding company charges a premium for doing this.</p>
<p>11. List the basic powers that are granted to an executor and trustee pursuant to a will.</p>	<ol style="list-style-type: none"> a. To retain the decedent’s property pursuant to the terms of the will. b. To acquire any other type of property, including common stocks, real estate, etc. c. To sell or otherwise dispose of the decedent’s property at public or private sale. d. To manage and to lease real property. e. To abandon property for any reason whatsoever. f. To deposit funds in any bank without limitations as to time and amount. g. To borrow money from any source. h. To distribute principle and money or in-kind real or personal property. i. To delegate powers to agents or others to the extent permitted by law and to pay them for services rendered and reimburse them for their expenses. j. To employ and pay accountants, custodians, legal investors counsel, etc. k. To sell or continue operating the decedent’s business. l. To determine what is income and what is principle and what expenses, costs, and taxes should be charged against principle.

<p>12. Define the term, “simultaneous death” clause in a will.</p>	<p>The testator’s will can provide that if a beneficiary should die in a common accident with a testator or under circumstances, or cause doubt about who died first, then all the provisions of the will shall take effect in a like manner as if such beneficiary or beneficiaries had predeceased the testator. This clause becomes relevant when husband and wife die at the same time or when it is difficult to determine whether the husband or wife died first. It enables the testator to control the ultimate disposition of particular gifts, avoid multiplicity of probate, and take advantage of certain tax-saving techniques.</p>
<p>13. Define the term, “will construction clause.”</p>	<p>This is a clause in a will stating that no matter where the will is probated, whether in another state or foreign country, the probate court should apply the laws of the testator’s domiciliary state.</p>
<p>14. Witnesses to a will are legally permitted to read the contents of a will: true or false?</p>	<p>False.</p>
<p>15. What is a “Self-Proving Will”?</p>	<p>In addition to the will itself, the witnesses to the will execute an affidavit swearing to the proper execution of the will. This is called a self-proving affidavit and is filed with the will in probate court. This affidavit eliminates the need for the witnesses to testify in probate court as to the validity of the will execution procedure. Note that the witnesses’ signature on the will is never notarized, but the witnesses’ signature on the Self-Proving Affidavit must be notarized.</p>
<p>16. Give a brief summary of the probate process.</p>	<p>When a testator dies, the will is filed in the probate court. The court conducts a probate proceeding, which is a judicial process to authenticate the will. The probate process also requires formal notice to all possible heirs who would have inherited had the testator died “intestate” (without a will). This offers them an opportunity to file objections to the will should they feel they have been treated inappropriately. Once the court is satisfied that the will is authentic, it issues letters testamentary authorizing the executor to administer the estate in accordance to the terms of the will.</p>
<p>17. What are the grounds for challenging or contesting a will?</p>	<ol style="list-style-type: none"> a. Lack of testamentary capacity. That the testator lacked the ability to understand the nature and consequences of his or her acts when executing the will. b. Undue influence. This occurs when a testator is forced to sign a will under some type of threat. This is an act of fraud.

18. What should be done if the testator anticipates a will contest?	<ul style="list-style-type: none"> a. Obtain a medical evaluation from a physician or a psychiatrist confirming the testator's competency. b. Videotape the testator during the execution ceremony. c. Obtain affidavits from family, friends, clergymen, and other disinterested parties who know the competency of testator intimately.
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**Chapter Five
GUARDIANSHIPS**

<i>Question</i>	<i>Answer</i>
1. What are the disadvantages of a guardianship proceeding?	<ul style="list-style-type: none"> a. Costly b. Causes extensive delays in pressing matters. c. Interrupts the flow of income to the family and the ill person. d. Emotionally drains the family. e. Strips the ill individual of all dignity, self-respect, and independence.

TYPICAL SCENARIO

Client (John) sets up an appointment to discuss his brother's affairs. During the initial interview, he discloses the following facts:

His brother, Tom, is 72 years old, has never married, and lives alone in the one-family house in which he grew up and which he inherited 20 years ago from his deceased mother. He is retired and receives a pension from a state agency that employed him as an auditor. He has no children. Tom's next of kin are his brother, John, and another brother, Louis, who is an incompetent Medicaid recipient, confined to an out-of-state nursing home. There is a predeceased brother, Arnold, who left two surviving children, Jane and Warren.

Tom has never executed a power of attorney, healthcare proxy, living will, or designation of guardian. He does have a last will and testament, however, a copy of which John produces at the interview. (John stated that the original will, the deed to the house, and all of Tom's other papers are locked in a safe deposit box to which only Tom has access). John also produced a list of Tom's assets as follows:

- a. The one-family house in his name only, value \$200,000, balance of \$40,000 due on the mortgage.
- b. Two bank accounts in trust for each of his two surviving brothers, each in the sum of

\$20,000.

- c. Series E U.S. Savings Bonds bought between 1955 and 1960, all of which have matured, valued at approximately \$80,000 including interest and face value.
- d. Common Stock in General Electric, 500 shares, and 250 shares of ITT, all of which are held jointly in his name and that of his deceased father.
- e. A 1990 Oldsmobile, title in his name, value \$1,000. A \$25,000 life insurance policy naming his predeceased mother as primary beneficiary and his predeceased father as substitute beneficiary. Cash surrender value \$7,500.

Tom has never planned for a catastrophic illness but now, unfortunately, has suffered a severe stroke that occurred three weeks prior to the initial interview. Tom is aphasic, paralyzed on the left side, on a feeding tube, and ready to be discharged from the hospital to a nursing home.

<i>Question</i>	<i>Answer</i>
2. A. How will the household and medical bills be paid?	A. In view of the fact that all of Tom's assets are solely in his name, no one can legally have access to these assets to pay his bills. Therefore, John must institute a guardianship proceeding in order to appoint a guardian so that he may access these assets and pay the medical and household bills.
B. Who will pay the other financial affairs?	B. Once a guardianship proceeding is instituted and John is appointed the guardian, he will have the legal authority issued by the court to pay bills and handle all financial affairs.
C. John states that Tom will probably never go back home. Can the house be sold? Who will handle the sale and execute the deed and other transfer documents necessary to close title?	C. In order for John to sell the house, he must have the court's approval. Once that is done, he will be permitted to sell the property and execute the deed as the guardian for Tom.
D. Tom's brother, Louis, has been declared incompetent. He is the named executor in Tom's will; there is no named substitute. Who will be in charge of Tom's estate when Tom dies?	D. John can petition the local probate court as guardian of Tom and request that he be appointed as the executor. The court will probably grant that request.
E. How can access to Tom's safe deposit box be gained?	E. Once John is appointed by the guardianship court, he will have legal authority to access the box and inventory it. It can subsequently be closed.
F. Who will make medical decisions for Tom?	F. Once John is appointed as Tom's guardian, the court will grant him permission to make medical decisions for Tom.

<p>3. Describe briefly the procedure in commencing a guardianship proceeding.</p>	<p>In most states, the proceeding is commenced by Petition and Order to Show Cause. The court will appoint a court evaluator to assess the situation and report to the court. A hearing will be held and if the court determines that the person is incapacitated, it will appoint a guardian, who most often is the petitioner. The guardian then acts as a fiduciary for the benefit of the incapacitated person, paying all bills and handling all financial affairs.</p>
<p>4. Explain under what circumstances a guardianship can be terminated.</p>	<ol style="list-style-type: none"> a. The incapacitated person recovers sufficiently to handle his or her own affairs. b. The initial guardianship is limited to a specific period of time and will terminate automatically. c. The assets of the incapacitated person have been completely depleted and there will be no necessity for the continuation of a guardianship. d. The death of the incapacitated person.
<p>5. How is venue determined in a guardianship proceeding?</p>	<p>Venue is the county where the incapacitated person lives, or it may be the county where the incapacitated person is confined.</p>
<p>6. What are the duties of the guardian?</p>	<p>The guardian's primary responsibility is to manage all of the affairs of the incapacitated person's assets.</p> <ol style="list-style-type: none"> a. To marshal all the assets. b. To pay bills. c. To preserve assets. d. The guardian can obtain court permission to make gifts and take advantage of the annual gift exclusion. e. The guardian can petition in court for permission to do financial planning for the incapacitated person. f. The guardian can petition the court for the power to sell or transfer real property belonging to the incapacitated person.

<p>7. What are the basic elements of a guardianship proceeding and state what information a Petition for Guardianship should contain?</p>	<ul style="list-style-type: none"> • The court must have jurisdiction in order to render a valid decision. The court obtains jurisdiction by having the proper venue. • The petitioner will file an initial pleading usually called “An Order to Show Cause” which brings the matter before the court. • The court will appoint a court evaluator, usually an attorney or a social worker who will serve as the eyes and ears of the court. The evaluator is responsible for evaluating the situation and recommending whether or not the appointment of a guardian by the court is appropriate. <p>The Petition should contain the following information:</p> <ol style="list-style-type: none"> a. The name and address of the petitioner and the relationship, if any, to the incapacitated person. b. A list of the incapacitated person’s next of kin. c. The jurisdiction and venue. d. The present medical and mental status of the alleged incapacitated person. e. A medical report must be attached to the petition describing the alleged incapacitated person’s illness and that it is the physician’s opinion with reasonable medical certainty that the incapacitated person is in need of the appointment of a guardian. f. Statement of all the incapacitated person’s assets. g. State of income and its sources, i.e., Social Security, VA benefits, pensions, dividends, etc. h. State as to any transfer of assets within the past 36 months by the alleged incapacitated person. i. Statement as to whether the alleged incapacitated person has executed a Last Will & Testament or a Durable Power of Attorney. j. Statement of ownership of a safety deposit box by the alleged incapacitated person. k. A statement of the petitioner’s qualifications to be a guardian. l. Whether the proposed duration of a guardianship is temporary or permanent. m. A proposed plan to anticipated guardianship.
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PATIENT'S RIGHTS IN HEALTHCARE DECISION MAKING

<i>Question</i>	<i>Answer</i>
1. Identify the three core issues involved in patient's rights healthcare decision making.	<ul style="list-style-type: none"> a. An individual's liberty and equal protection rights pursuant to the Fourteenth Amendment to the U.S. Constitution. b. The state's paramount interest to prevent suicide and keep patients alive under any condition, regardless of their quality of life. c. The medical profession's dedication to sustain life, not to terminate it.
2. Holland permits physician-assisted suicide under certain legislative guidelines. State what they are.	<ul style="list-style-type: none"> a. The terminally ill patient must undergo a psychiatric evaluation and there must be a finding of competence. b. It must be documented that the patient has repeatedly requested the termination of life voluntarily and consistently over an extended period of time. c. The patient's medical records must indicate clearly that the patient is suffering intolerably with no hope of relief. d. The assisted suicide may only be performed by a physician in consultation with another physician.
3. Explain "physician-assisted suicide."	A terminally ill, competent patient, requests termination of life with the assistance of a physician. This is not legal in the United States.
4. What is "euthanasia?"	This is defined as the act of putting to death, painlessly, a person suffering from an incurable and painful disease and condition. It is also commonly known as mercy killing. The ultimate decision to terminate life is made by the medical establishment or the state without specific input or consent of the patient. Euthanasia is prohibited in the United States and Canada as well as in most of the western world.
5. What is Dr. Jack Kevorkian famous for?	He is the retired Michigan pathologist who advocates physician-assisted suicide in the United States. He has assisted in over 100 suicides in Michigan, making that state the assisted-suicide capital of the country. He has been prosecuted on numerous occasions, for murder and manslaughter.

<p>6. Explain the <i>Donaldson v. Dekamp</i> decision of the California Court of Appeals.</p>	<p>The court held that it is one thing for a person to take his or her own life, but to allow another party to assist in that suicide and not to investigate is a violation of state law. The court decided that there is no question that an individual has the right to commit suicide, but one has no constitutional right for someone to assist and shield that person from prosecution. The court held that the state must strictly and unequivocally enforce a criminal law to protect against the arbitrary homicide of terminally ill patients who do not wish to prematurely terminate their lives.</p>
<p>7. Define the term “palliative care.”</p>	<p>This is a medical procedure, which uses pain-killing drugs to alleviate pain for the terminally ill patient without actually curing the condition. Its object is to control pain, to relieve suffering and promote dignity and autonomy of dying patients.</p>
<p>8. Explain the U.S. Supreme Court’s decision in <i>Cruzan v. Director, Missouri Department of Health</i>.</p>	<p>Nancy Cruzan was the driver of a car that overturned, injuring her and leaving her in an irreversible persistent vegetative state. She was placed on life-support systems, and her parents petitioned the court to withdraw all forms of artificial nutrition and hydration and allow her to die with dignity and respect. The case was appealed to the U.S. Supreme Court that affirmed the decision of the lower courts. In order to terminate life-support systems, there has to be clear and convincing evidence that the patient did in deed wish to terminate her life if she ever entered into a persistent vegetative state. In this case, no such evidence was presented to the court. The Supreme Court upheld the established doctrine of “clear and convincing evidence.” The court held that the United States Constitution would grant a competent person the constitutionally protected right to refuse life-saving hydration and nutrition.</p>
<p>9. On June 26, 1997, the U.S. Supreme Court rendered a decision involving physician-assisted suicide. What was the court’s decision in this matter?</p>	<p>The court upheld the state’s constitutional right to ban physician-assisted suicide and to make it a criminal act. The individual state governments continue to have the right to make their own decision concerning physician-assisted suicide. This means that individual states have the right to ban physician-assisted suicide or permit it. So far, only Oregon has voted to permit physician-assisted suicide. This law has yet to take affect, because it is being contested.</p>

Chapter Seven

ENTITLEMENT PROGRAMS

<i>Question</i>	<i>Answer</i>
1. Which federal agency administers the Medicare and Medicaid entitlement program?	Healthcare Finance Administration
2. What are the two parts of Medicare?	<p>Part A, Hospital insurance pays for care in a hospital, skilled nursing home, home health and hospice care facility.</p> <p>Part B, Medical insurance helps pay for doctor's bills, out-patient hospital care, and other medical services not otherwise covered by part A.</p>
3. What are the eligibility requirements to qualify for Medicare?	<p>a. The applicant must be a U.S. citizen or a permanent resident of the United States.</p> <p>b. The individual must be at least 65 years of age, with the following exceptions:</p> <ul style="list-style-type: none"> • A disabled person of any age after two years from the day of onset of the disability. • A person of any age with a chronic kidney disease. <p>c. The individual or a spouse must have worked at least 10 years in Medicare-covered employment. (Payable deductions must have been paid into Medicare fund.)</p> <p>All individuals who have met the above eligibility requirements are entitled to Part A benefits without having to pay premiums.</p>
4. Does an individual who meets the qualification criteria for Medicare, Part A, automatically qualify for coverage under Part B?	Yes, provided the person pays a monthly premium. The 1997 premium was \$3.80 per month. It usually increases annually.
5. What is a Medicare benefit period?	The benefit period is a measurement of coverage in hospitals and skilled nursing homes. The period commences on the day of admission to a hospital and ends upon discharge for an interrupted 60-day period. It also ends where a patient in a skilled nursing home has not received skilled care for a 60-day uninterrupted period. Upon every admission to a hospital, an individual is entitled to a new benefit period and Part A benefits are renewed. There are no limits to the number of benefit periods a Medicare recipient can receive during his or her life- time, provided there is a 60-day uninterrupted period as described above.

<p>6. What is the specific coverage in Medicare Part A, for in-patient hospital care?</p>	<ul style="list-style-type: none"> a. Patient pays the first \$760 (1997). This is known as the patient's deductible, which increases every year and is paid only once during a benefit period. b. Medicare pays all other hospital expenses for the first 60 days of admission. c. From the 61st day through the 90th day, Medicare also pays all covered expenses except for a co-insurance of \$190 per day (1997), which is the responsibility of the insured. d. Every Medicare recipient has a lifetime reserve of 60 days. If a patient is hospitalized for more than 90 days in a benefit period, the patient can draw on the reserve days to help pay for the excess cost. In each reserved day, there is a patient co-insurance cost of \$380 (1997); all costs above the co-insurance amount are paid by Medicare.
<p>7. What are the covered services provided for by Medicare Part A?</p>	<ul style="list-style-type: none"> a. Semi-private room b. Meals c. Regular nursing services d. Rehabilitation services e. Drugs f. Medical supplies g. Laboratory tests h. X-rays i. Operating rooms j. Recovery rooms k. Intensive care units l. Coronary care units m. All other medically necessary services and supplies.
<p>8. Medicare psychiatric hospital coverage lifetime maximum is limited to 250 days: true or false?</p>	<p>False</p>
<p>9. How many hours must a patient be confined to a hospital before admission to a skilled nursing facility in order to obtain Medicare Nursing Home coverage?</p>	<p>72 hours</p>
<p>10. Medicare Part A has limited home healthcare coverage: true or false?</p>	<p>True</p>
<p>11. In order to qualify for hospice care, a physician must issue a certificate indicating that the patient's life expectancy is terminal—less than 6 months: true or false?</p>	<p>True</p>

12. Medicare Part B does not cover patient hospital services: true or false?	False
13. Medicare Part B coverage includes a routine physical. True or False?	False
14. What is the annual deductible for Medicare, Part B?	\$100
15. Explain the term “assignment of Medicare benefits.”	This is a procedure where the physician, healthcare provider and medical suppliers agree always to accept the Medicare-approved amount as payment in full.
16. Medicare pays for second opinions of medical conditions covered by Medicare: true or false?	True
17. What is a peer review organization (PRO)?	PROs are physician-sponsored organizations under contract to the Healthcare Finance Administration. They review services provided to Medicare beneficiaries and determine whether or not the care given meets the community and professionally recognized standards for quality. They also assist with complaints about premature discharge from hospitals, patient complaints about quality of care received in hospitals, out-patient departments, skilled nursing facilities and care provided by home healthcare agencies.
18. What is the Medicaid Assistance Program?	Medicaid is a federal entitlement program established in 1965 to provide assistance to individuals who are poor and are unable to afford healthcare. This program is strictly based on financial need.
19. Medicaid pays for nursing home care: true or false?	True
20. Medicaid does not pay for hospice care coverage: true or false?	False
21. If an individual becomes a nursing home resident and qualifies for Medicaid assistance, the Medicaid program will automatically seize all his or her assets: true or false?	False
22. Can the Medicaid Assistance Program seek reimbursement from the estate of a Medicaid recipient after his or her death: yes or no?	Yes
23. Will transfer of a residence by a Medicaid applicant to a disabled child disqualify the applicant from receiving Medicaid benefits: yes or no.	No

24. Can a Medicaid applicant transfer their primary residence to a child who has been living with the Medicaid applicant for two or more years and still qualify for Medicaid: yes or no?	Yes
25. What basic benefits does the Medicaid program provide?	a. Long-term nursing home care b. Home care c. Hospital & physician services for eligible recipients of any age
26. What are the residency requirements for an individual to qualify for Medicaid?	<ul style="list-style-type: none"> • The applicant must be a U.S. citizen. • Applicant must be a lawful permanent resident of the United States—a legal alien. • Applicant must be a resident of the state and county in which the application is filed.
27. Explain what “Medicaid Resource Limits” are?	Medicaid Resource Limits, refer to the maximum amount (countable resources) that an individual can have and still be eligible for the Medicaid Assistance Program. Certain resources are exempt, such as a family residence and small amounts of cash, which can be used for a burial account and a patient resources account.
28. The current “Medicaid Look Back Period” is: a. 24 months b. 30 months c. 36 months	c. 36 months
29. What is the look-back period for transfers of assets to a trust?	60 months
30. Transfers to the spouse of a Medicaid applicant of any amount and any time will render the applicant ineligible to obtain Medicaid. True or False?	False
31. Transfer of a residence to a blind child of a Medicaid applicant will not affect Medicaid eligibility: true or false?	True
32. Is a nursing home legally permitted to provide different services and levels of care for private paying patients, as opposed to Medicaid recipients?	Federal law specifically requires all nursing home operators to treat all residents equally regardless of the source of payment.
33. Is it possible for a Medicaid recipient to receive benefits for a period before the filing of the Medicaid application?	Yes. Medicaid will provide coverage for the 90-day period immediately before the filing of the application, if all Medicaid requirements are met for that period.
34. How often does the Medicaid agency re-certify a Medicaid recipient?	This is normally done once every twelve months.

35. Does a transfer of an individual's residence for fair market value create a penalty period in connection with a Medicaid application?	No. An actual sale is taking place and the transferor has received actual fair market value. It is not a gift.
36. Will Medicaid treat the revocable trust of a Medicaid applicant as a countable resource?	Yes, because the applicant has retained the right to revoke the trust, any funds transferred to this trust are considered Medicaid resources and are counted in determining eligibility for Medicaid assistance.
37. The Health Insurance Portability and Accountability Act of 1996, also known as the Kennedy-Kassbaum Bill, criminalizes Medicaid asset transfers: true or false?	True
38. Discuss the amendment to the Health Insurance Portability and Accountability Act of 1996, effective August 5, 1997.	The amendment makes it a misdemeanor for a paid advisor to knowingly and willfully counsel or assist a person to dispose of assets for the purpose of obtaining Medicaid assistance, where the disposition of the assets would create the imposition of a period of eligibility for obtaining Medicaid assistance. There is no longer a criminal provision affecting the transferor of the assets. However, the advisor of the transferor, such as lawyer or accountant, is subject to criminal prosecution.
39. Discuss the Family & Medical Leave Act.	The Family and Medical Leave Act was passed by congress in 1993. It protects an employee who takes a leave of absence from his employment in order to care for a family member. The act requires employers of fifty or more workers to provide unpaid time off to care for a seriously ill spouse or for the employee's own illness. The eligibility requirements are: <ul style="list-style-type: none"> • The employee must work for a firm that employs fifty or more employees within 75 miles of the employee's worksite. • The length of employment must be a minimum of twelve months; these months do not have to be consecutive before the employee will qualify for a leave under this act. • During the twelve-month period, the employee must have worked 1,250 hours. If the employee is eligible, then he or she is legally permitted a total of twelve weeks of leave during any twelve-month period.

Chapter Eight
MANAGED CARE &
LONG-TERM CARE INSURANCE

<i>Question</i>	<i>Answer</i>
1. Explain the term “capitation.”	This is a monthly sum paid in advance by a health maintenance organization to a healthcare provider as payment for providing contractually covered services to a subscriber of the plan. The provider, who is normally a physician, receives a flat monthly fee per patient. The amount of this fee remains constant regardless of the frequency of the patient’s visits or intensity of the patient’s treatment. The provider receives the patient capitation fee regardless of whether or not the provider sees the patient. It is in the provider’s best financial interest to limit the visits of the patient, as well as treatment and diagnostic testing.
2. Explain the term “Gag Clause.”	A “gag clause” is found in most HMO provider contracts with physicians. It is designed to hinder the provider physician from giving patients full medical information about costly treatment or options not covered by the HMO plan. The provider physician is instructed not to disclose all the options available, including experimental procedures that a private physician may advise the patient to explore. A typical “gag clause” on other treatment options might read as follows: “The physician shall make no communication that undermines or could undermine the confidence of enrollees, their employers or the public.”
3. Long-term care insurance is now deductible as a medical expense on federal income tax: true or false.	True

4. What is long-term care insurance?	This is an insurance policy (contract) between a licensed private insurance carrier and an insured. The policy is created to pay for skilled nursing home care, assisted-living facility care, and home care.
5. Name five activities of daily living as they relate to basic long-term care insurance.	<ul style="list-style-type: none"> a. Bathing b. Toileting c. Walking d. Feeding e. Dressing f. Moving from bed to chair
6. When evaluating a long-term care insurance policy, what ten items should the insured be concerned with?	<ul style="list-style-type: none"> a. Policy rating b. Levels of care c. Hospital stay d. Coverage for certain illnesses e. Covered facilities f. Pre-existing conditions g. Waiver of premium h. Guarantee renewability i. Daily benefit amount j. Payment of long-term care insurance benefits in addition to other coverages k. Level premium l. Age limits m. Coverage to be reviewed after policy issued n. Inflation guard o. Term of policy p. Deductibility period q. Convalescent benefits at home.
7. Define the term “respite care.”	Respite care provides temporary relief for the primary caregiver of a patient who is ill. Most long-term care home care policies provide coverage for respite care.

Chapter Nine

VIATICAL SETTLEMENTS & ACCELERATED INSURANCE BENEFIT

<i>Question</i>	<i>Answer</i>
1. Explain what is meant by the term “Viatical Settlement.”	This is the sale of an in-force life insurance policy to a viatical settlement company by the policyholder. The insured is also known as the viator.

<p>2. Discuss how a viatical settlement operates.</p>	<p>A terminally ill patient wishing to cash in on a life insurance policy during his or her lifetime will negotiate a settlement with a viatical company. The policyholder must be terminally ill with a two-year maximum life expectancy. Some viatical settlement companies will go out as far as seven years. The policy must be in force and effect for at least two years. The policy must be assignable. The policy must be issued by a highly rated insurance company. The terminally ill patient must produce releases from the primary and contingent beneficiaries. The terminally ill patient must also sign releases allowing the viatical settlement company to obtain all medical records and finally the terminally ill patient also known as the viator must complete a viatical application. An offer is negotiated between the viator and the viatical company. Once an agreement is reached, the money is transferred to an independent escrow agent by the viatical company. The policy is then endorsed over to the viatical company and then the escrow agent releases the funds to the terminally ill “viator.”</p>
<p>3. How does the Health Insurance Portability & Accountability Act of 1996 affect viatical settlements?</p>	<p>The new law exempts from viatical settlements and accelerated death benefits from federal income tax. To date, the only states, to treat these proceeds also as nontaxable, are New York and California.</p>
<p>4. The Health Insurance Portability & Accountability Act of 1996 also protects chronically ill insureds. Explain how the law operates in favor of chronically ill insureds.</p>	<p>The law defines a chronically ill individual as someone who has been medically certified within the previous twelve months as being unable to perform without assistance at least two activities of daily living, (bathing, eating, toileting, walking, moving from bed to chair and dressing) for at least 90 days. The proceeds received by a chronically ill insured also receives tax-free treatment under IRS section 101G. There is a cap on the total viatical settlement proceeds that can be received tax-free by a chronically ill person. Either \$175 per day or \$63,875 annually. Excess payments will be subject to income taxation.</p>
<p>5. What is meant by the term “accelerated death benefit?”</p>	<p>This is an option provided in certain life insurance policies to benefit the policyholder so that under certain conditions, he or she may cash in a portion of the death benefit while the policyholder is still alive.</p>

Chapter Ten

LIVING FACILITIES FOR THE ELDERLY

<i>Question</i>	<i>Answer</i>
1. What is an “independent living facility?”	This is a community that provides housing, maid services, dining room services, recreational activities, and transportation for the healthy elderly.
2. What is an “assisted-living facility?”	It provides all those services found in an independent living facility and additional medical and social services for residents who require limited supervision.
3. What is a “skilled nursing home?”	These facilities provide the highest degree of care for residents who are admitted only when they are seriously ill and in need of skilled nursing care, rehabilitation, and custodial care.
4. What is a “residents agreement?”	This is a legal contract between the facility and the resident that states in detail what services the facility provides to the resident.
5. An independent living facility can terminate a lease because the resident is deemed not medically suitable to occupy the premises. True or False?	True
6. What is a life care community?	In this type of living arrangement, the residents transfer all or a substantial portion of their assets to the life care community. The resident signs a life lease agreement permitting the resident to live in the community for the rest of his or her life; the resident continues to pay the monthly maintenance on the occupied unit. Some life care arrangements provide for the refund of some portion of the initial down payment upon the death of the resident or upon of his or her leaving the facility for any other reason. These are campus-like operations, providing all levels of care, including independent living facilities, assisted-living facilities, skilled nursing home care, and hospice care.
7. Can a patient on private pay who has exhausted all his or her funds and is placed on Medicaid be discharged from the facility because the source and amount of payment has changed?	No. Federal law prohibits a patient from being discharged from a facility due to a change of financial status from private pay to public assistance. However, Medicaid will not pay for a private room and, therefore, the patient can be transferred to a semi-private room, which will be covered by Medicaid.

8. Under what circumstances may a facility have the right to discharge patients?	<ul style="list-style-type: none"> a. Failure to pay their monthly charges b. Disruptive or abusive behavior endangering themselves or other residents c. Medical reasons—patients become too ill to be treated by the facility or no longer need skilled care
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Chapter Eleven

FINANCIAL PLANNING

<i>Question</i>	<i>Answer</i>
1. Explain the term “Unified Credit” and how it affects federal taxation of a decedent’s estate.	The current threshold for a decedent’s estate to be subject to federal estate tax is \$625,000. This produces a unified credit for the taxpayer. The credit is unified because it can be used to reduce gift tax during a lifetime or inheritance tax after death. The unified credit is phased out gradually as the gross estate reaches between \$10 million and \$21,040,000.
2. What are the filing requirements for estate tax returns?	The estates of U.S. citizens who die owning property having taxable sites within the U.S., no matter how old they are when they die, no matter where they died, must file an estate tax return if the estate exceed \$625,000 (1998). Foreign residents of the U.S. must also file estate tax returns if their estates have assets in the U.S. in excess of \$625,000 (1998). The return must be filed within 9 months from the date of death.
3. Define “Gross Estate.”	Any type of property, real or personal of any kind or nature that was owned by the decedent at the time of his death.
4. List 6 items that are included in a decedent’s gross estate.	<ul style="list-style-type: none"> a. Real estate b. Stocks and bonds c. Cash, mortgages, bank accounts d. Life insurance e. Jointly held assets f. Powers of appointments g. Annuities h. Miscellaneous assets, i.e., automobiles, boats, airplanes, art objects, jewelry, etc. i. Gifts made within 3 years of death j. Gifts of life insurance k. Release of a retained life estate l. Power to revoke a revocable trust.

<p>5. List 10 of the standard deductions from a decedent's gross estate.</p>	<ul style="list-style-type: none"> a. Funeral expenses b. Probate & administration fees c. Legal fees d. Medical expenses in connection with the decedents last illness e. Executor's commission f. Brokerage commissions g. The unlimited marital deduction h. Losses of casualty or death i. Unpaid taxes j. Unpaid debts k. Balances on mortgages l. Charitable bequests m. Tax credit for state death taxes paid n. Credit for state death taxes paid o. Credit for foreign estate taxes paid.
<p>6. What is generation-skipping transfer tax?</p>	<p>This tax is generally levied upon a "direct skip," which is defined as a transfer directly to a grandchild or in trust for the grandchild while the parent of the grandchild is still living. There is currently a \$1 million exemption.</p>
<p>7. The Taxpayer Relief Act of 1997 has increased the \$600,000 exclusion to \$2 million dollars effective 1/1/98: true or false?</p>	<p>False. The maximum exclusion in the year 2006 will be \$1 million.</p>
<p>8. Define the term "donor."</p>	<p>A donor is a person who transfers property from the donor to another person.</p>
<p>9. Define the term "donee."</p>	<p>A donee is a person who receives property from a donor.</p>
<p>10. Can a donor or a donee be an individual, corporation, charitable foundation, trust or any other entity? Yes or No</p>	<p>Yes.</p>
<p>11. What is a gift?</p>	<p>The internal revenue service defines a gift as a transfer of an asset for less than fair market value. In order for the gift to be complete, the donor must transfer all title, right, and interest into said property, whether it is real or personal.</p>
<p>12. When is a gift considered complete?</p>	<p>A gift is complete when a donor has parted with all dominion and control of the property so as to leave the donor without any power to change its disposition.</p>
<p>13. After a gift is made, which party is required to file the tax return, pay the tax, if any, and what is the IRS form number?</p>	<p>The donor is required to file the tax return and pays tax, if any. The form number is IRS form 709.</p>

<p>14. What is the procedure to obtain an extension to file a gift tax return?</p>	<p>There are two methods to extend the time to file gift tax returns. Neither method extends the time to pay the gift or the generation skipping transfer taxes. It could be done either by letter, signed by the donor, or by filing Form 4868, 2688 or 2350. The forms must also be signed by the donor. The extension, if granted, will avoid penalties but will not abate interest.</p>
<p>15. What is the maximum federal gift tax rate?</p> <p>a. 45%</p> <p>b. 55%</p> <p>c. 60%</p>	<p>B. 55%</p>
<p>16. Are transfers to a revocable trust subject to gift taxation? Yes or No</p>	<p>No</p>
<p>17. All states have enacted gift tax legislation. True or False</p>	<p>False.</p>
<p>18. A. What is the maximum amount that an individual can gift annually without being subject to federal gift tax?</p> <p>B. What is the maximum amount a married couple can give annually without being subject to federal gift tax?</p>	<p>A. \$10,000</p> <p>B. \$20,000</p>
<p>19. What is the maximum amount that an individual can give away during his or her lifetime as of 1998 without paying any federal gift tax?</p>	<p>\$625,000</p>
<p>20. A. Is there any limit on the amount of gifts that one spouse can make to another spouse, provided they are legally married?</p> <p>B. In 1998, does the donor spouse have to file a gift tax return if all the assets are being transferred to the donee spouse?</p>	<p>A. No limit.</p> <p>B. Marital transfers regardless of amount do not have to be reported to the IRS.</p>

<p>21. Discuss gift tax exclusions for grandparents.</p>	<p>a. Education: The IRS code provides grandparents with an unlimited gift tax exclusion for any tuition paid directly to educational institutions on behalf of grandchildren. A grandchild must be a natural or legally-adopted grandchild not a step-grandchild. Room, board, and books are not considered an exclusion under this section of the IRS code.</p> <p>b. There is also an unlimited exclusion allowing grandparents to pay medical expenses on behalf of a natural grandchild to a healthcare provider for medical services rendered to the grandchild. This also includes legally adopted grandchildren. The payment of the medical expenses, provided they are paid directly to a healthcare provider are not subject to gift tax and there is no limit on the amount that can be paid.</p>
<p>22. If a decedent owned a life insurance policy, are the proceeds of the policy upon the insured's life includable in the decedent's gross estate?</p>	<p>Yes</p>
<p>23. How many years must a transfer of life insurance be in effect so that the proceeds of the policy upon the insured's life will not be included in the decedent's gross taxable estate?</p>	<p>3 years</p>
<p>24. There is no upper age limit for filing federal income tax return: true or false?</p>	<p>True</p>
<p>25. Nursing home expenses are not deductible as a medical expense on federal income tax returns. True or False?</p>	<p>False</p>
<p>26. Long-term care insurance as of 1997 is now deductible on Federal Income Tax Returns as a medical expense. True or False?</p>	<p>True</p>

<p>27. Discuss the new capital gains tax law and how it will affect the sale of a primary residence.</p>	<p>The tax law effective May 6, 1997, permits homeowners to avoid paying capital gains tax on the first \$250,000 in profits for a single taxpayer and \$500,000 for a married taxpayer, filing jointly. This is not a one-time credit; it can be used over and over again. The new legislation provides that the only qualification is that the taxpayer resides in each residence for at least 2 of the last 5 years before the sale. Congress designed the law in such a way that the average married American homeowner will never have to pay capital gains tax in connection with the sale of a residence so long as the profit is \$500,000 or less, (for a single taxpayer \$250,000 or less). Wealthier taxpayers who receive profits in excess of \$500,000 from the sale of the residence will pay capital gains tax. The new law terminated the provision that exempted only \$125,000 from capital gains tax profit for homeowners age 55, which incidentally was a one-time tax benefit. There are no age restrictions in this law.</p> <p>In order to qualify for the \$500,000 exclusion, the residence must be sold during a tax year when the taxpayer can file a joint tax return with a spouse. The year that the seller's spouse dies is also included. The 1997 tax law requires that only one of the spouses reside in the residence to obtain the capital gains tax exclusion. Therefore, a single person who buys a residence and marries before the sale would qualify for the \$500,000 exemption. The subsequent divorce does not affect the use of the \$500,000 exemption. The old law remains in effect regarding losses resulting from a sale of a residence. The seller is not entitled to a tax deduction for the loss.</p>
<p>28. (a) Define the term "capital gains." (b) Discuss how capital gains on the sale of stock are treated under the Tax Relief Act of 1997.</p>	<p>a. Capital gains are defined as the profits made on the sale of stocks, bonds, property and other investments or assets. Long-term capital gains involve the tax on profits received from the sale of assets held for more than one year. Short-term—less than 12 months.</p> <p>b. Before May 6, 1997, the top long-term capital gains tax rate was 28%. Under the Taxpayer Relief Act of 1997, the capital gains rate was changed. This law reduces the tax from 28% to 20% on long-term gains. If the taxpayer is in the 15% tax bracket, the capital gains rate is reduced even further.</p>

<p>29. Explain when the Roth IRA becomes effective and how it works.</p>	<ul style="list-style-type: none"> a. The Roth IRAs were effective beginning with the tax year 1998. b. All contributions are not tax deductible but the earnings are tax-free after 5 years. c. Eligibility to contribute to the Roth IRA phases out for upper income tax payers at \$160,000 for couples and \$110,000 for individuals. d. This law permits penalty-free withdrawals after age 59_ for educational purposes and for first-time homebuyers. e. Contributors can withdraw an amount up to their original contribution at any time without being subject to any penalty. No requirement exists for distribution to begin before age 70_, as is required with the traditional deductible IRA. f. Conversion of funds from an existing IRA to the Roth IRA is permitted. However, only taxpayers with an adjusted gross income below \$100,000, either on a joint or individual return, can move money from an existing IRA to a Roth IRA, without incurring tax penalties.
<p>30. How is a life estate created?</p>	<p>It is usually created by a simple deed transfer by the owner of a residence, who is known as the grantor/donor to the new owner, who is known as the grantee/donee. The deed must contain the following language “the grantor hereby retains a life estate in the subject premises.” The deed must also be recorded. If the house is owned by a husband and wife as tenant by the entirety, they can retain joint life estates when transferring their residence. If the premise is only owned by one spouse, that spouse who is the grantor can retain a life estate for himself or herself and a spouse.</p>
<p>31. Explain the restriction on sale in a life estate transaction.</p>	<p>The entire title to the transferred property cannot be sold by the donee during the lifetime of the donor/life tenant, unless the life tenant consents, thereby extinguishing the life estate. However, if the life tenant and the donee sell the house during the lifetime of the donor, there could be adverse capital gains tax consequences.</p>

<p>32. What is the tax advantage of creating a life estate?</p>	<p>If a donor transfers his residence to a donee without reserving a life estate, the donee will receive the donor's capital gains tax basis. This may result in substantial capital gains tax. If a life estate has been created and the donee waits until the death of the donor (life tenant), the donee will get what is called a "stepped-up basis," which is defined as the fair market value of the residence on the death of said life tenant.</p>
<p>33. What is a trust?</p>	<p>A trust is a written contractual agreement wherein a party known as a trustee possesses legal title to property, real or personal, and manages the property for the benefit of another party known as the beneficiary.</p>
<p>34. What is the difference between an intervivos trust and a testamentary trust?</p>	<p>An intervivos trust is created during the lifetime of the creator. It is a private agreement and is not filed as a public document. It is customarily funded during the lifetime of the creator.</p> <p>A testamentary trust, is set forth in the Last Will and Testament of the creator and it is funded on the death of the creator from the assets in the creator's estate and becomes a matter of public record when the will is offered for probate.</p>
<p>35. What is the difference between a revocable trust and an irrevocable trust?</p>	<p>In a revocable trust, the settlor or creator reserves the power to revoke the trust. Income from the revocable trust is fully taxable to the settlor and the IRS treats these assets as part of the settlor's estate upon his death. The transfers to the revocable trust are not subject to gift tax. On the other hand, an irrevocable trust once established by the settlor can never be revoked. Any property transferred to this irrevocable trust by the settlor is fully vested in the trustee. The settlor has not retained any power to revoke the trust. The income from the trust is not taxable to the settlor, unless the settlor is the income beneficiary. The assets of the irrevocable trust are not part of the settlor's estate and, therefore, are not subject to probate. Transfers to the trust in excess of the annual gift tax exclusion of \$10,000 or \$20,000, if it is a split marital gift, are subject to federal gift tax.</p>

<p>36. What are the key elements of a trust?</p>	<ol style="list-style-type: none"> a. It must be a written agreement, signed by the settlor and trustee. b. Title to the trust property vests in the trustee, who is responsible for managing the corpus of the trust and acts in a fiduciary capacity. The trustee must also file annual fiduciary tax returns, make prudent investments, and prepare annual accountings. c. There are two types of beneficiaries: <ul style="list-style-type: none"> • Income beneficiary—who receives trust income, according to the terms of the trust. • Residuary beneficiary—who eventually receives the corpus of the trust, when the trust terminates. d. Trust res—the principle of the trust, comprising all the assets transferred by the settlor to the trust, as well as any increase to the principle.
<p>37. What are some of the advantages of creating a living trust?</p>	<ol style="list-style-type: none"> a. It can avoid the costs and delays of probate proceedings. b. It can avoid conservatorship or guardianship proceedings. c. It can avoid ancillary probate. d. The grantor can retain control over the assets for investment purposes. e. It significantly reduces the risk that a trust will be attacked by disinherited heirs on the grounds of the grantor’s lack of capacity, fraud, or undue influence. f. Accounting and administrative procedures are much more informal than probate proceedings.
<p>38. (a) In what type of legal instrument is a credit shelter trust created? (b) What are the tax advantages of using a credit shelter trust?</p>	<ol style="list-style-type: none"> a. This is a testamentary trust created in a Last Will & Testament or in a revocable trust of a decedent and available for use only by married couples. b. It uses the unified tax credit and permits the transfer of this unified credit of a married couple to their children or any other designated beneficiaries. Under the Tax Relief Act 1987, a married couple can shelter up to \$2 million by the year 2006. In 1998, they can shelter \$1.25 million tax-free.

<p>39. What is the Life Insurance Trust and how does it work?</p>	<p>It is basically an inter vivos irrevocable trust. It is created by a settlor and can be used to avoid paying estate inheritance tax on the proceeds of a life insurance policy. The trustee owns the policy and the beneficiary of the policy is the trust. When the insured dies, the proceeds are payable to the trustee for the benefit of the trust.</p> <p>Since the insured does not own the policy and the trust is irrevocable, the proceeds are not subject to inheritance tax. The trust is funded most commonly during the lifetime of the settlor by making gifts to the trust. The settlor can transfer \$10,000 or, if a split marital gift, up to \$20,000 without paying any gift tax. Additional funds are subject to gift tax. When funds are transferred to the trustee, they are now used to pay the annual premium on the life insurance policy.</p> <p>After the initial gift is made to the trust, the trustee applies for a life insurance policy on the life of the settlor, making the trustee the owner of the policy and the trust the beneficiary.</p> <p>Existing life insurance policies may be transferred to the trust; however, the insured must survive for 36 months after the transfer. Otherwise, the proceeds will be treated as taxable to the estate of the insured settlor.</p>
<p>40. What is a reverse mortgage?</p>	<p>The reverse mortgage allows elderly people, usually over the age of 62, to draw out the cash equity from their homes without having to move. They are guaranteed by the Federal Housing Administration or the Federal National Mortgage Association. The reverse mortgage is generally repaid upon the death of the owner or upon the sale of the residence. The difference between an ordinary mortgage and a reverse mortgage is that in a reverse mortgage the equity of the homeowner is reduced as the lender continues to make payments to the homeowner, while in an ordinary mortgage, the equity of the homeowner increases as payments are made on the mortgage.</p>

Chapter Twelve

SOCIAL SECURITY

<i>Question</i>	<i>Answer</i>
1. In what year did Congress pass the Social Security Act?	1935
2. In what year was the first Social Security check issued?	1940
3. List what categories of workers the Social Security Act covers.	<ul style="list-style-type: none"> a. Retired workers b. Spouses of workers c. Children of retired or disabled workers d. Disabled workers e. Survivors of workers f. Self employed g. Farm owners and workers h. Household workers.
4. The Social Security Act was expanded to include Medicare and Supplementary Social Security Income. True or False?	True
5. In 1983, what legislation did Congress pass affecting the Social Security system?	<p>Congress was afraid that the Social Security system might collapse. Therefore, in 1983 it increased payroll taxes, raised the level of earning subject to payroll tax, and increased the retirement age from 65 to 66 by the year 2005. By the year 2022, the retirement age will reach 67. It also provided that after January 1, 1984, all workers hired by the federal government and by non-profit corporations were required to be covered by Social Security. Congress also made Social Security benefits subject to federal income tax for the first time, depending on the income of the beneficiary.</p>
6. The full retirement age to collect Social Security will be gradually increased from 65 to 67 starting after: (a) December 31, 1999 (b) December 31, 2000 (c) December 31, 2001	a. December 31, 1999
7. What is the minimum age to obtain Social Security benefits? (a) 60 (b) 61 (c) 62 (d) 63	c. 62
8. Can a divorced spouse obtain benefits on the formers spouse's Social Security account? Yes or No	Yes

9. Can an illegitimate child qualify for children's benefits under the Social Security account? Yes or No	Yes
10. Who are classified as survivors?	a. Widows b. Widowers c. Divorced widows d. Divorced widowers e. Unmarried dependent children f. Dependent parents.
11. What are the benefits provided under the Social Security Act for a surviving divorced spouse?	If an insured worker has been divorced, the ex-spouse is eligible for survivors benefits with the same requirements as the worker's widow or widower, provided the marriage lasted at least 10 years or more. The former spouse is exempt from the 10-year length of marriage rule, if he or she is caring for the deceased worker's dependent child, who is below 16 or disabled and receiving benefits under the deceased workers Social Security account. The child must be the worker's former spouse's natural or legally adopted child.
12. How much is the special one time Social Security lump sum death benefit? a. \$200 b. \$235 c. \$255 d. \$300	(c) \$255
13. At what age does a fully insured worker become eligible for Social Security disability benefits?	A fully insured worker is eligible at any age.
14. How long is the waiting period before Social Security disability benefits are paid? a. 4 months b. 5 months c. 6 months d. 12 months	(b) 5 months
15. Social Security does not provide for disability benefits for victims of HIV infection. True or False?	False
16. What options are available to an individual who receives an overpayment of Social Security benefits?	a. The overage can be refunded in one lump sum or an arrangement can be made to pay it off in installments. b. Appeal the overage charge. c. Request a waiver of the overpayment.

<p>17. What is a representative payee?</p>	<p>The representative payee is an individual authorized by the Social Security Administration to receive the benefits of a Social Security beneficiary and use them for the benefit of the beneficiary to purchase food, clothing, shelter, medical care, pay debts and expenses, invest any surplus not used for the beneficiary. The representative must file an annual accounting with the Social Security Administration and report to the Social Security Administration any changes that might affect the beneficiary's right to payment.</p> <p>It must first be established to the satisfaction of the Social Security Administration, that the Social Security beneficiary is incapable of handling his or her own benefit payments. Then, it would be in the best interest of the beneficiary to have a representative payee appointed rather than continue direct payment to the Social Security beneficiary.</p>
<p>18. Briefly discuss the supplemental security income program.</p>	<p>It was passed by Congress in 1983 and became effective January 1, 1984. It provides monthly benefits to people who are 65 or older, blind or disabled and who have minimal income. It also provides benefits for adults as well as for disabled and blind children. People who usually qualify for SSI will also be entitled to food stamps and Medicaid. The applicant must be a resident of one of the 50 states, the district of Columbia or the Northern Mariana Islands. Residents of Puerto Rico are excluded from receiving SSI benefits. The applicant must establish a residency for at least 30 consecutive days in the United States. No illegal immigrant can receive SSI benefits. Legislation provides that qualified aliens may receive SSI benefits. A qualified alien is a permanent resident, one granted asylum, a refugee, a person paroled into the U.S. for at least a year, a person whose deportation is withheld for certain statutory purposes or a person who is granted conditional entry into the U.S.</p> <p>To qualify, alien residents are limited to only the first five years after status has been granted. If an application for SSI has been denied, the applicant has the right to appeal to an administrative hearing as well as commence an action in Federal Court for judicial review.</p>

ELDER ABUSE

<i>Question</i>	<i>Answer</i>
1. List the different types of physical elder abuse and give an example of each one.	<ul style="list-style-type: none"> a. The intentional infliction of pain. A family member strikes an elderly relative when the elder spills food. b. Sexual abuse. The rape of a resident in a skilled nursing facility. c. Restraints. Straight jackets, straps, chemical over medication or sedation of a patient. d. General neglect of an elderly person. Failure to perform certain care taking obligations for an elderly relative such as bathing, grooming, dressing, feeding, cooking and marketing.
2. Give an example of psychological abuse of an elderly person.	This basically is the infliction of mental pain and suffering upon an elderly person by not including an elderly person in certain decision-making processes and ignoring that person.
3. If a financial abuse is discovered, what should be done?	<ul style="list-style-type: none"> a. Arrange for the revocation of a Durable Power of Attorney and other documents in which authority has been delegated to the so-called trusted individual who is committing financial abuse. b. Commence legal action to recover any misappropriated funds. c. File a complaint with the economics crime unit of the local district attorney's office. d. File a claim with the local adult protective services agency.
4. Briefly discuss self-abuse by the elderly.	This occurs when elderly persons fail to properly take care of themselves. Passive neglect results in the use of poor judgment in decision-making and neglecting one's person, bills, utilities or taxes. Suicide is considered as active abuse and is a common occurrence among the elderly population.

<p>5. List examples of legislation that has been passed to curb elder abuse.</p>	<ul style="list-style-type: none">a. Power of Attorney statutes have been revised to make it more difficult for these documents to be the subject of financial abuse.b. State agencies pursuant to authorized legislation have created adult protective services that receive reports of elder abuse, investigate them, and report their findings to law enforcement authorities who, in turn, will act on these reports.c. Public health laws now require healthcare providers, doctors, hospitals, and social workers to report any suspected incidents of elder abuse to the proper legal authorities for prosecution.d. Criminal statutes have been enacted to protect the elderly—especially in the area of willful financial exploitation of an elderly person.e. The federal government has created an ombudsman program that investigates claims of abuse in nursing homes.f. The federal government has created standards concerning patients’ rights in nursing homes.
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