

Elder Law

Elder Law

Cases, Materials, and Problems

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Lawrence A. Frolik

PROFESSOR OF LAW EMERITUS

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To
Winnefred and Cornelius
— L.A.F.

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Preface

ELDER LAW CASES, MATERIALS, AND PROBLEMS, Seventh Edition, integrates new developments in case law, statutory law and policy into the familiar framework of past editions. It also introduces a new feature, “Problems,” that enables students to analyze and apply the law in realistic hypotheticals that mirror what elder law lawyers face in their practices. These problems do not yield a single answer. Rather they are open to several solutions, which reflect the multiple values and concerns that should be brought to bear when assisting a client.

I have reorganized the chapters by moving the materials on Elder Law Practice and Ethics, formerly Chapter 2, to the end of the book, now Chapter 12. This reflects my belief that the practice of elder law is best discussed after coverage of the substantive issues that together make up what is called elder law.

Chapter 1 discusses why an aging population has led to the development and recognition of elder law. The remaining chapters reflect the three major themes of elder law. The first theme is ensuring adequate income for the elderly. The need to protect the employment rights of older workers is provided by the Age Discrimination in Employment Act that is covered in Chapter 2. Income for retirees is the subject of Chapter 3 that covers Social Security and other public pension programs as well as employer provided retirement plans.

The second theme is health care. For older persons, paying for health care is a paramount concern. That is discussed in Chapter 4, Medicare, which pays for acute health care for the elderly. Payment for long-term care is the subject of Chapter 5, Paying for Long-Term Care, which examines Medicaid, the primary payor of the costs of long-term care. Nursing homes provide much of the long-term care for the elderly and are discussed in Chapter 6, Nursing Homes. Most elderly reside in the community, however, and that is the topic of Chapter 7, Housing.

The third theme of the book is the possible loss of mental capacity. Chapter 8, Guardianship, discusses the legal response to mental incapacity. That response is continued in Chapter 9, Property Management. How mental incapacity affects an individual’s right to control their health care is the subject of Chapter 10, Health Care Decision Making.

Unfortunately, some elderly are victims of abuse and neglect. Some even become criminals. Those topics are discussed in Chapter 11, Elder Abuse, Neglect, and Crime. Finally, Chapter 12, Elder Law Practice and Ethics, introduces the student to what is meant by the “Practice of Elder Law” and how to practice it in an ethical manner.

Sadly, my previous co-author, Professor Alison Barnes died in 2022. Her contributions to previous editions of this book are her legacy. She strongly believed in the need to educate future lawyers about the substance, practice, and ethics of elder law. She is missed.

NOTE ON THE TEXT — I have edited the cases and, in order to maintain the readability of the text, have often not indicated the deletions. Readers are advised to consult the official reporters if they wish to read the cases in their entirety.

Rather than use “he or his” as a gender free nouns, I have used “they or their” throughout the text and problems.

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