

# ELDER LAW: CASES AND MATERIALS

Sixth Edition

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# ELDER LAW: CASES AND MATERIALS

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*Sixth Edition*

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MATTHEW  BENDER

# *Dedications*

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To  
Winnefred and Cornelius  
—L.A.F.

To  
Walter O. Weyrauch, 1919–2008  
Mentor and Friend  
Professor Emeritus, University of Florida College of Law  
—A.M.B.



# *Preface*

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ELDER LAW CASES AND MATERIALS, Sixth Edition, integrates new developments in law and policy into the familiar framework of past editions. We have selected new cases and excerpts from expert commentators with care and have weaved them together with narratives that develop the issues in the reader's mind and raise the questions that remain to be resolved.

We recognize that a casebook of this length and scope of issues will seldom be covered in its entirety in a single course. The chapters generally are intended to be freestanding to accommodate any number of different approaches. We recommend, however, that certain related chapters be read in the sequence in which they are presented. For example, Chapter 5, Health Care, should be covered before Chapter 6, Long-Term Care: Payments Sources, since the second is a latter-day development that extends the concepts and quirks of the first. Other chapters can be reordered to better fit the approach of the user. Some users of the book may prefer to cover Chapter 10, Property Management, before Chapter 9, Guardianship.

Chapters 1 and 2 warrant special treatment because they introduce issues ripe for analysis in many areas within the field of elder law. The first invites the reader to grapple with the question: Why is aging a subject for the law? The possible justifications are demographic, economic, technological, sociological, and psychological. The first part of Chapter 2 helps the student clarify his or her possible role as a private practitioner, legal services specialist, legislative advocate, or as an aging member of an aging family in an aging world. The last half of Chapter 2 examines the ethical issues that arise when working with older persons, particularly those of impaired mental capacity.

Although the issues presented in Chapters 1 and 2 cannot be fully developed unless they are raised during the substantive discussions of the other chapters, we recommend that students read Chapters 1 and 2 at the beginning of the course as a basis for later discussions as more specific issues arise throughout the course. For example, Chapter 1 describes issues relating to income, natural aging processes, and the incidence of chronic disability in the elderly. The complexity of public policy issues, however, is revealed only with an examination of the history, eligibility criteria, and benefits of the Social Security, Supplemental Security Income, and private pension programs discussed in Chapter 4, and issues in health and long-term care and housing in Chapters 5 through 8. Similarly, the questions raised in Chapter 2 about conflicts of interests among the elderly, their family members, and professionals in law, medicine, or finance assume their real significance in cases on guardianship and alternatives in Chapters 9 and 10, and health care decision making in Chapter 11.

Changing public policy in the beginning of the 21st century brings to the field important discussion and some major changes. The Social Security debate, for example, to date has raised awareness without yielding any solutions. Medicare has a new dimension with different payments for equal benefits depending on beneficiary income. Paying for long-term care continues to be a source of public policy debate.

Thanks to many are due from the authors for the existence of this book. Special thanks go to four of our colleagues who were present at the very birth of the field of elder law, who joined us at a lunch table where we first conceived the possibility of this book. We

## *Preface*

were gathered in 1988 at Wingspread, the Frank Lloyd Wright-designed home located near Racine, Wisconsin, for a conference on guardianship convened by the American Bar Association Commission on Law and Aging. A snapshot (intended to capture the architecture) shows the authors and Marshall Kapp, now at Florida State University College of Law; Allan Bogutz, of Bogutz and Gordon in Tucson and the first president of the National Academy of Elderlaw Attorneys; Penelope Hommel, of the Center for Social Gerontology in Ann Arbor; and Charlie Sabatino, of the ABA Commission on Law and Aging and past president of NAELA. All were important actors in the evolution of elder law and policy, all had experience teaching Elder Law, and all were convinced of the need for a casebook to use in law school courses.

The authors also thank those who made this book possible by providing their valuable time, their priceless criticism, and their invaluable moral support. Important researchers include (at the University of Pittsburgh) Julia M. Tedjeske, Maryann Bozich-DiLuigi, Pamela J. Waggoner, Rayni Moutsos, Susan L. Herilla, and Stephanie Gallo. At Marquette, all the members of the Elder's Advisor, whose judgment and diligence helped to develop the topics in these chapters.

Professor Frolik also gives a special note of thanks for notable efforts of the Document Technology Center: LuAnn Driscoll, Karen Knochel, Darleen Mocello, and Barbara Salopek. Professor Barnes specially thanks Catherine Pfeffer, whose stalwart support and computing skill made preparation of this work possible.

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

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