

CASE STUDY MATERIALS

June 2011
Level 3
PRACTICE OF LAW FOR THE ELDERLY CLIENT
Subject Code L3-15

ilex

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INSTITUTE OF LEGAL EXECUTIVES
UNIT 15 – PRACTICE OF LAW FOR THE ELDERLY CLIENT*
CASE STUDY MATERIALS

Information for Candidates on Using the Case Study Materials

- This document contains the case study materials for your examination.
- In the examination, you will be presented with a set of questions which will relate to the case study materials. You will be required to answer all the questions on the examination paper.
- You should familiarise yourself with the case study materials prior to the examination, taking time to consider the themes raised in the materials.
- You should take the opportunity to discuss the materials with your tutor/s either face to face or electronically.
- It is recommended that you consider the way in which your knowledge and understanding relates to the case study materials.

Instructions to Candidates Before the Examination

- You will be provided with a clean copy of the case study materials in the examination.
- You are **NOT** permitted to take your own copy of the case study materials or any other materials including notes or text books into the examination.
- In the examination, candidates must comply with the ILEX Examination Regulations.

Turn over

* This unit is a component of the following ILEX qualifications: **LEVEL 3 CERTIFICATE IN LAW AND**

CASE STUDY MATERIALS

ADVANCE INSTRUCTIONS TO STUDENTS

You are employed by the firm of Kempstons of 101 High Street, Bedford MK43 7AB. The firm is a large high street practice, which has been established in Bedford since 1902 and has a large and varied client base. Your supervising solicitor is Thomas Andrews.

You arrive at your desk one morning to find the following documents:

- Document 1** Memo from supervising solicitor, Thomas Andrews.
- Document 2** Attendance note of a meeting with Dorothy Harding and Valerie Harding.
- Document 3** Enduring Power of Attorney of Dorothy Harding.
- Document 4** Attendance note of a meeting with Ajay Mani and Kasu Mani.

DOCUMENT 1

Memorandum

To: Trainee Legal Executive
From: Thomas Andrews
Date: (today's date)
Re: Various Client Matters

I have recently received two new instructions with which I would like your assistance.

Dorothy Harding

I have had a meeting with Mrs Dorothy Harding and her daughter Valerie. I would like you to read my attendance note of that meeting (**Document 2**), and consider the various issues raised. A copy of Mrs Harding's enduring power of attorney is also attached (**Document 3**).

Ajay and Kasu Mani

Please consider the attendance note of an initial meeting I had with Mr and Mrs Mani at their home (**Document 4**). I would like to discuss with you the various issues which arose during that meeting before my next meeting with them both.

Thomas Andrews

DOCUMENT 2

Attendance Note

Attending : Dorothy Harding and Valerie Harding (daughter)
Fee Earner : Thomas Andrews
Date : (yesterday's date)
Time Engaged : 45 minutes
Reference : TA/PC/2010/Harding

Attending upon Mrs Dorothy Harding and her daughter, Miss Valerie Harding. I had not met them before and they told me that they had been recommended to me by their neighbour.

I had noticed as they walked into my room that Dorothy Harding was having difficulty walking and, in addition to using her walking stick, she was having to hold on to her daughter's arm. I also had to assist in seating her at the interview table and she commented that she was finding it increasingly difficult to move around even in her own house.

Valerie Harding then explained that her mother now wished her to take charge of her affairs and the purpose of the meeting was to enable them to seek my advice upon the steps they should take.

Although I was addressing myself to both of them, it was Valerie Harding who spoke in response, and she immediately told me that her mother was becoming increasingly frail and forgetful, and that she was now having to deal with matters generally on her mother's behalf.

I said that it would help me if they could give me some background information about themselves and their circumstances. Valerie told me that she and her mother lived at 7 Cambridge Road Kempston Bedfordshire MK40 3XR and that her mother was a widow and 76 years of age. Valerie said that she was not married and had been living with her mother for the past ten years and had to spend an increasing amount of time looking after her mother. She commented to me that although she did not mind looking after her mother, she did find it time consuming and stressful at times.

I asked her if she had any brothers or sisters who could help and she said, somewhat icily, that her brother Tom lived in Jersey with his family. She said that he had done very well for himself financially and had been able to retire. She also said that they only heard from him occasionally and that he rarely visited them. It was clear that they did not get on very well. Dorothy Harding then asked whether her son was coming to see her, and asked if he was coming to our meeting. She seemed rather confused about where he was. Valerie had to remind her mother that Tom now lived in Jersey.

Valerie said that she had no other brothers or sisters, although her mother had two elder sisters and a younger brother. They are also elderly and live in different parts of the country, so she did not see much of them either.

Valerie then produced and handed to me an enduring power of attorney (**Document 3**) which she said her mother had made when her father, Frank, was alive.

CASE STUDY MATERIALS

Valerie said that she believed that her mother had also made a will following Valerie's father's death. However, she had not been able to find the will among her mother's papers, so she would have to make a more thorough search. Valerie said that she believed that the will left the house to her, together with most of her estate in order to effectively compensate her for living with her mother during recent years and for providing the care that her mother needed. She said that her mother had recognised the fact that she had had to give up a great deal in order to care for her and this was her way of showing her appreciation. Valerie said that due to the amount of time she had to spend caring for her mother she was only able to work part time and her earnings were not very good.

Dorothy Harding then said she thought I had made her will, and I had to tell her that we had not met before.

Valerie told me that she would need to take charge of her mother's affairs as her attorney, and had mentioned this to her brother when they had last spoken by telephone. She thinks that he might be awkward about this because he had said to her that he thought, as her mother's son, he also ought to be involved. I gathered from the comments Valerie made that this had caused an argument between them and they had not spoken since.

Although I had, throughout the interview, tried to engage Dorothy Harding in the conversation, she had only made a few comments and they had been hardly relevant. She did seem to me to be rather confused and towards the end of our discussion had closed her eyes. Noticing this, Valerie commented in a quieter voice that her mother could only concentrate for short periods of time now. She also said that as her mother had a doctor's appointment later this morning, it might be best if we resumed our discussion at a later date. I said that I thought that was best in the circumstances.

Enduring Power of Attorney



Part B: To be completed by the 'donor' (the person appointing the attorney(s))

Don't sign this form unless you understand what it means

Please read the notes in the margin which follow and which are part of the form itself.

Donor's full name and address.

I DOROTHY HARDING

of 7 Cambridge Road Kempston Bedfordshire MK40 3XR

Donor's date of birth.

born on 26th April 1935

Attorney's full name and address.

appoint FRANK HARDING

of 7 Cambridge Road Kempston Bedfordshire MK40 3XR

See note 1 on the front of this form. If you are appointing only one attorney you should cross out everything between the square brackets. If appointing more than two attorneys please give the additional name(s) on an attached sheet.

• [and VALERIE HARDING

of 32 London Road, Bedford MK42 7RB

Cross out the one which does not apply (see note 1 on the front of this form).

- ~~• jointly~~
- jointly and severally]

to be my attorney(s) for the purpose of the Enduring Power of Attorney Act 1985

Cross out the one which does not apply (see note 2 on the front of this form). Add any additional powers.

- with general authority to act on my behalf
- ~~• with authority to do the following on my behalf:~~

If you don't want the attorney(s) to have general power, you must give details here of what authority you are giving the attorney(s).

in relation to

Cross out the one which does not apply.

- all my property and affairs
- ~~• the following property and affairs:~~

Part B: continued

Please read the notes in the margin which follow and which are part of the form itself.

If there are restrictions or conditions, insert them here; if not, cross out these words if you wish (see note 3 on the front of this form).

If this form is being signed at your direction:-

- The person signing must not be an attorney or any witness (to Parts B or C);
- You must add a statement that this form has been signed at your direction;
- A second witness is necessary (please see below).

Your signature or mark.

Date.

Someone must witness your signature.

Signature of witness.

Your attorney(s) cannot be your witness.

A second witness is only necessary if this form is not being signed by you personally but at your direction (for example, if a physical disability prevents you from signing).
Signature of second witness.

• ~~Subject to the following restrictions and conditions:~~

I intend that this power shall continue even if I become mentally incapable.

I have read or have had read to me the notes in Part A which are part of, and explain, this form.

I understand the purpose and effect of this document and the nature and extent of the powers I am granting my attorney(s).

Signed by me as a deed B Harding
and delivered

on 12th August 1996

in the presence of M Bolton

Full name of witness Michael Bolton

Address of witness
41 Green Street
Bedford
MK42 5PT

in the presence of _____

Full name of witness _____

Address of witness _____

YOUR ATTORNEY MUST NOW COMPLETE PART C

Part C: To be completed by the attorney(s)

Note: 1. This form may be adapted to provide for execution by a corporation.
 2. If there is more than one attorney additional sheets in the form as shown below must be added to this Part C.

Please read the notes in the margin which follow and which are part of the form itself.

Don't sign this form before the donor has signed Part B or if, in your opinion, the donor was already mentally incapable at the time of signing Part B.

If this form is being signed at your direction:-

- The person signing must not be an attorney or any witness (to Parts B or C);
- You must add a statement that this form has been signed at your direction;
- A second witness is necessary (please see below).

Signature (or mark) of attorney.

Date.

Signature of witness.

The attorney must sign the form and his signature must be witnessed. The donor may not be the witness and one attorney may not witness the signature of another.

A second witness is only necessary if this form is not being signed by you personally but at your direction (for example, if a physical disability prevents you from signing).

Signature of second witness.

I understand that I have a duty to apply to the Court for the registration of this form under the Enduring Powers of Attorney Act 1985 when the donor is or is becoming mentally incapable.

I understand that I am able to use the donor's money to make gifts, but only on specified occasions and for reasonable amounts in relation to the donor's money and property.

I also understand that I have a duty to keep proper accounts and records and produce them to the Court when requested.

I am not a minor.

Signed by me as a deed F Harding
and delivered

on 12th August 1996

in the presence of M. Bolton

Full name of witness Michael Bolton

Address of witness 41 Green Street
Bedford
MK 42 5PT

in the presence of _____

Full name of witness _____

Address of witness _____

Part C: To be completed by the attorney(s)

- Note: 1. This form may be adapted to provide for execution by a corporation.
 2. If there is more than one attorney additional sheets in the form as shown below must be added to this Part C.

Please read the notes in the margin which follow and which are part of the form itself.

Don't sign this form before the donor has signed Part B or if, in your opinion, the donor was already mentally incapable at the time of signing Part B.

If this form is being signed at your direction:-

- The person signing must not be an attorney or any witness (to Parts B or C);
- You must add a statement that this form has been signed at your direction;
- A second witness is necessary (please see below).

Signature (or mark) of attorney.

Date.

Signature of witness.

The attorney must sign the form and his signature must be witnessed. The donor may not be the witness and one attorney may not witness the signature of another.

A second witness is only necessary if this form is not being signed by you personally but at your direction (for example, if a physical disability prevents you from signing).

Signature of second witness.

I understand that I have a duty to apply to the Court for the registration of this form under the Enduring Powers of Attorney Act 1985 when the donor is or is becoming mentally incapable.

I understand that I am able to use the donor's money to make gifts, but only on specified occasions and for reasonable amounts in relation to the donor's money and property.

I also understand that I have a duty to keep proper accounts and records and produce them to the Court when requested.

I am not a minor.

Signed by me as a deed Valerie Harding
and delivered

on 12th August 1996

in the presence of M. Bolton

Full name of witness Michael Bolton

Address of witness 41 Green Street
Bedford
MK42 5PT

in the presence of _____

Full name of witness _____

Address of witness _____

Attendance Note

Attending : Mr and Mrs A Mani
Fee Earner : Thomas Andrews
Date : (yesterday's date)
Time Engaged : 1 hour
Reference : TA/PF/2010/Mani

Attending Mr Ajay Mani and his wife Kasu Mani at their home 36 Gravel Lane Bedford Bedfordshire MK42 2LG. Our firm had dealt with their motor accident claim many years ago. They told me that they now wanted my advice on a rather different matter.

Ajay told me that he was 82 years of age and Kasu told me that she was 78 years of age. They have two adult children and five grandchildren. They have both been retired for many years, but health considerations are now having a significant bearing upon their future planning. They explained to me that they wanted my advice upon a number of matters about which they had been thinking and which were causing them concern.

Ajay then told me that he had been struggling physically for the past few years and the stage had now been reached whereby he was unable to wash and dress himself without assistance. He said that he had had a hip replacement 12 months ago and various other medical procedures, with the result that his mobility was greatly restricted. Indeed, he rarely left home unless one of their children came to take them out. He became a little emotional as he told me that he was having to rely more and more upon Kasu and he did not think that was fair. Kasu then interrupted to say that she could help Ajay, but the difficulty was lifting him because he weighed considerably more than she did. Ajay then said quite firmly that he was not prepared to place such a strain upon his wife and, for that reason, he had been enquiring about possible placements at local care homes.

After over 50 years of marriage they clearly were finding it difficult to have to face the prospect of moving into other accommodation. I pointed out to them that there might be a possibility of them finding a suitable care home in which they could both live. Ajay said that no firm decisions had yet been taken about where they were going to live or whether his wife was going to remain at 36 Gravel Lane Bedford.

Ajay told me that he recognised the fact that his health was not going to improve and, indeed, was only going to worsen with time. Although he has been having the assistance of a carer in the mornings to help him bathe and dress since his hip replacement operation, he thought he would soon have to have assistance in getting to bed as well. He told me that a nurse also had to come to see him twice per week in order to give him medical treatment. Kasu told me that she had no particular health problems at present and she was only too happy to assist her husband as best she could.

They said that one of their main concerns was the fact that what money they had would be spent on their care and health requirements and that they would have very little left to pass on to their children. They commented that a number of their friends had already had to go into care for various reasons and they had

CASE STUDY MATERIALS

been very concerned to learn from their friends what they had to pay for residential care fees. Basically, they want to try to retain as much of their capital for their family as they can.

I asked about the value of their assets and they told me that their home was jointly owned and they thought it was worth in the region of £375,000. As to their savings, they had about £20,000 in joint accounts. They also have investments in their own names, Ajay having investments of about £10,000 and Kasu of about £6,000. They both have their state pensions, but no private or employer pensions. Their only other source of income is the interest they earn on their investments and they both commented that that did not amount to a great deal at the present time. Ajay commented that they had bought their house 40 years ago and that had been by far their best investment. It was mortgage free and, with some pride, he said that they had no debts or other outstanding liabilities.

Finally, they said they intended to discuss matters with their children and make further enquiries about local care homes. I said I would consider their circumstances and we would make a further appointment in one month's time.

End of Case Study Materials

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