

## CASE STUDY MATERIALS

January 2012

Level 3

PRACTICE OF LAW FOR THE ELDERLY CLIENT

Subject Code L3-15

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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**

**ADVANCE INSTRUCTIONS TO STUDENTS**

You are employed by the firm of Kempstons of 101 High Street, Bedford MK42 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**          Memorandum from supervising solicitor, Thomas Andrews
- Document 2**          Attendance note of a meeting with Patricia Sinclair
- Document 3**          Email from Roland Sinclair
- Document 4**          Attendance note of a meeting with Maya Khan
- Document 5**          Attendance note of a meeting with George Sullivan



**DOCUMENT 1**

**MEMORANDUM**

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

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I would appreciate your assistance in dealing with several new matters upon which I have just taken instructions. These are as follows:

**Patricia Sinclair**

Patricia Sinclair is a long standing client. I would like you to consider the attendance note of a meeting I had with her this week (**Document 2**) and the subsequent email I received from her son, Roland Sinclair (**Document 3**). I would like you to consider the various issues arising from my meeting and the email so that I can then discuss them with you.

**Maya Khan**

I have had a meeting with Maya Khan who has sought my general advice with regard to her home. I would refer you to the attendance note of a meeting I have had with her this week (**Document 4**). I would like you to think about the points she has raised and then discuss them with me so that I can then advise her when she next contacts me.

**George Sullivan**

I have recently completed the administration of the estate of Mr Sullivan's wife, and he has now asked me to advise him upon what he should do by way of future personal planning. Please refer to my attendance note (**Document 5**) which refers to the issues which I want you to consider.

*Thomas Andrews*

## DOCUMENT 2

## ATTENDANCE NOTE

**Attending** : Patricia Sinclair  
**Fee Earner** : Thomas Andrews  
**Date** : (Yesterday's date)  
**Time Engaged** : 40 minutes  
**Reference** : TA/CB/2012/Sinclair

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As requested by her son Roland, I attended Mrs Patricia Sinclair at the Riverview Care Home, Cambridge Walk, Bedford MK12 3WF. Upon my arrival I was met by a nurse who took me to Mrs Sinclair's room on the first floor. As we walked into her room I immediately noticed that Mrs Sinclair was lying in bed, apparently asleep. The nurse spoke softly to her and told her that her solicitor had arrived to see her. It took quite a few moments for her to gather herself and the nurse helped her to sit up in her bed. I sat in the chair by her bedside.

As Mrs Sinclair did not appear to recognise me, I introduced myself to her and reminded her that I had dealt with the administration of her husband's estate about 10 years ago, and that I had subsequently prepared her will and an enduring power of attorney eight years ago. She smiled and nodded and replied that she now remembered me.

I said that I had been asked to see her by her son, but as I had not been given the reason, I had assumed that it was perhaps something to do with her will. Consequently, I had brought her will and enduring power of attorney with me.

Mrs Sinclair said that she knew that her son had asked me to come to see her, but she did not seem to know why. Therefore I tried to prompt her by suggesting that I read through her will. I took the will out of its envelope and slowly explained the contents and she nodded when I mentioned her son and daughter. When I mentioned the legacies that she had included in her will she said that she wanted to make some changes, but when I asked her what those changes were, she did not seem able to say.

After explaining her will I then took out her enduring power of attorney from its envelope and explained its contents, telling her that she had appointed her son Roland and her daughter Angela as her joint attorneys.

I then had some general conversation with Mrs Sinclair, asking her about her health and how she was finding it in the care home. She told me that she liked it very much and that she had been there for a few months now. She also said that she felt very tired today.

It was still unclear to me what changes she wished to make to her will but, at this stage, there was a knock on the door and the nurse came in with a man who immediately introduced himself to me as Mrs Sinclair's son Roland. After giving his mother a kiss and asking how she was, he turned to me and said that his mother wished to increase the legacies in her will to £10,000 each. He said that he was aware of the fact that he and his sister Angela were his mother's executors and made the comment that he presumed that either of them could act as the executor alone.

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Mr Sinclair explained that he was now dealing with his mother's financial affairs and, indeed, had been doing so since his mother came into the care home eighteen months ago. I immediately said that I thought his mother had only come into the care home fairly recently, but he said that was not the case. He then mentioned about his mother making a lasting power of attorney and I said that she had already made an enduring power of attorney in favour of himself and his sister. Mr Sinclair said that his mother wished him to deal with her affairs now and, turning to his mother he asked her if that was correct and she smiled. She suddenly mentioned her medication and appeared to me not to be following what we were discussing. I asked Mrs Sinclair if she had seen her doctor recently and she said that Dr Broadbent called in to see her from time to time. She also made the comment that she did not have many other visitors except her daughter and two close friends.

As Mrs Sinclair appeared to be falling asleep, her son said that he would contact me when he had spoken further with his mother. I then said goodbye and left the care home.

DOCUMENT 3

EMAIL

**From** : [rolandsinclair1@sbinternet.com](mailto:rolandsinclair1@sbinternet.com)  
**Sent** : (Today's date)  
**To** : [t.andrews@kempstons.co.uk](mailto:t.andrews@kempstons.co.uk)  
**Subject** : Mrs Patricia Sinclair

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Dear Mr Andrews

Thank you for seeing my mother yesterday.

My mother would like to add a codicil to her will increasing all of the existing legacies to £10,000, and giving legacies of £5,000 to each of my two children John Patrick Sinclair and Timothy Richard Sinclair.

My mother would also like to make a lasting power of attorney to replace her enduring power of attorney appointing me as her attorney without any restrictions or conditions, so that I can continue to deal with her financial affairs. If you require any additional information, please do not hesitate to contact me either by email or on my mobile (078926 334429).

Regards

Roland Sinclair

## DOCUMENT 4

## ATTENDANCE NOTE

**Attending** : Maya Khan  
**Fee Earner** : Thomas Andrews  
**Date** : (Yesterday's date)  
**Time Engaged** : 1 hour  
**Reference** : TA/CB/2012/Khan

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Attending Mrs Maya Khan. I had not seen Mrs Khan for some years, although I recalled that I had dealt with the administration of her late husband's estate five years ago and had subsequently seen her again when I prepared her will.

I recalled that when we had last spoken, she was wondering whether or not to continue living in the family home at 12 Cam Road Bedford MK12 7DW. She said that she had been agonising over what to do about her home when she had last spoken with me and she had not yet made any decisions, and that was primarily why she was coming to see me today. She took some handwritten notes out of her handbag and suggested that she explain her circumstances and the points which she now needed me to consider.

She explained that it is five years since her husband died, she is now 79 years of age, and although she is still quite well, she is finding that she needs some help because she is suffering increasingly from arthritis. Her daughter lives in Australia and therefore cannot help. Her son, Omar, lives locally with his wife Shefali and their two children.

She said that although her capital was quite significant, her income was relatively small. She has a small private pension, but her other income comes solely from her state benefits which comprise of state pension, attendance allowance, and pension credit. She does not have to pay any income tax at the present time.

She thinks that her property is worth at least £300,000 and it is free of mortgage. She has some shares worth approximately £1,000, premium bonds worth £100, and various cash savings worth no more than around £6,500. Perhaps sensing my surprise that she had so little in savings, she said she had spent quite a bit of money on her home during recent years and she pays for a carer to come to help her each day and also employs a gardener.

The family home means a great deal to her because she and her husband bought the property 50 years ago. She enjoys living there, and particularly enjoys the garden and the wildlife that it attracts. She also has a number of friends who live close by. However, she recognises that the house is too big for her and the roof and the central heating will soon need replacing. I commented that she would need to raise a considerable amount of money in order to pay for these and she said that she wanted my advice on this.

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She is also concerned about her son and daughter-in-law's position and reminded me that following her husband's death his will had been varied by means of a deed of variation whereby her son received £300,000 from the estate. I said I recalled preparing the deed of variation and she said that the money had been needed by her son to start up his business which, initially, had gone well, but had subsequently run into financial difficulties and had failed last year.

As his wife, Shefali, also worked in the business, they are in an increasingly difficult position and are again in need of her help. She wants to assist them in any way that she can financially. She has been giving thought to the situation that would arise were she to die. In particular, she would wish to mitigate any inheritance tax liability which would arise upon her death. Although she would like to benefit her daughter, she commented that her daughter's husband was a wealthy man and they had no children to provide for. Consequently, her primary objective will be to help her son and daughter-in-law. This prompted her to say that she did feel that her son and daughter-in-law's marriage might be under pressure because of what had happened with their business.

Mrs Khan then told me that her son had recently suggested that she go to live with him and his family. Although his house is quite small for a family home, it does have some land which could be used to extend the property to provide her with accommodation. This suggestion has taken her by surprise and she is not sure whether or not it would be a good idea, or what it would cost to provide her with her own separate living accommodation.

She has not yet made any decisions at all about her future or her financial planning and that is why she wanted to explain her present circumstances to me so that I could advise her. She said she would contact me again when she has spoken further with her son.

*Thomas Andrews*



## ATTENDANCE NOTE

**Attending** : George Sullivan  
**Fee Earner** : Thomas Andrews  
**Date** : (Yesterday's date)  
**Time Engaged** : 30 minutes  
**Reference** : TA/BC/2010/Sullivan

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Attending George Sullivan who came in to see me following the completion of the administration of his wife's estate. Upon entering my office he commented that it was almost 12 months ago to the day that his wife Amelia had died. I asked him how he was getting on and he said that he was managing alright. However, I could tell by his face that he looked subdued and anxious so I immediately went on to ask him how I could assist.

He said that although the death of his wife had been traumatic, it was the way in which she had died that was still troubling him.

Without prompting from me, he said that his wife had had a dreadful time during the two years prior to her death. Her health had declined rapidly and ultimately she had been in a vegetative state for the last three months of her life. She had only been kept alive by a life support machine. With emotion, he said that he knew she would not have wanted this, but neither he nor the doctors had been able to prevent this. His inability to do anything to help his wife had both angered and distressed him and at this stage, he became very emotional and he started to cry. I therefore took up the conversation while he composed himself and he then continued.

George told me that his two children, Laura and Connor, had been supportive, and they had also been very upset by the manner of their mother's death.

George said this was why he wanted to seek my advice because he did not want to find himself in the same position as his wife, and neither did he want his children to be placed in the same situation that he had found himself.

I asked him about his children and he said that they both lived locally and that he had complete trust in them to make decisions on his behalf. He added that if he became very ill he would want his children to make decisions about his treatment and care, although he would expect them to take appropriate advice from Dr Cooke, who had been his doctor for 20 years and in whom he had complete trust. George said that he was most concerned that his children should be able to ask the hospital to withdraw treatment if for example he was only being kept alive with the support of a machine. He commented that he had travelled to his appointment by car and had nearly been involved in an accident, and this had only highlighted his concern that an accident could leave him in a vegetative state.

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George also told me that he wanted me to review his will, but he had forgotten to bring it with him. He said he would drop it into the office within the next day or so. I said I would give thought to what he had told me and then contact him with a view to arranging to have a further discussion.

**End of Case Study Materials**

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