

There are many reasons to study elder law. First, elder law is one of the fastest growing legal specialties, and thus represents an expanding job market. Second, elder law attorneys report unusually high levels of job satisfaction, which they tend to attribute to the ability to directly help their clients and to the relationships they form with their clients and with other professionals. Third, elder law addresses a wide range of topics that are not only intellectually and morally interesting, but are also timely and politically charged. As the cases and problems you will consider in this text illustrate, the field is rich with human drama, compelling family sagas, and complex policy challenges. Finally—no matter who you are—you are aging, your family is aging, and your friends are aging (have you ever met anyone getting younger?). Even if you never practice elder law, a basic understanding of elder law is likely to be useful in your personal life.

But what is elder law? Unlike many other areas of the law, elder law is not defined by a particular set of legal doctrines or theories, but rather by the client population it seeks to serve. Elder law therefore includes a broad range of substantive legal topics of particular importance to older adults ranging from planning for the possibility of future disability, to obtaining benefits from programs such as Medicaid and Social Security, to avoiding and addressing elder abuse and exploitation. Elder law is also an unusually dynamic area of law as it is shaped by ever-changing state and federal policies surrounding old-age and old-age entitlement programs.

This text reflects the nature of the field by combining a client-focused approach with in-depth discussions of important elder law-related policy issues. Its aim is to provide students with the specific knowledge as well as the conceptual background that they need to understand the key legal issues facing older adults and those who represent them. The text is thus meant to be both practical and theoretical, both straightforward and intellectually rigorous.

To this end, the text weaves together narrative with cases, statutes, commentaries, and problems to create a comprehensive, tightly organized text that facilitates engaged teaching and active learning. A central feature of the text is that it is replete with opportunities for students to apply what they are learning. Specifically, it contains: (1) questions that ask students to critique specific policies or test students' formal legal reasoning skills; (2) problems that allow students to apply what they have read to hypothetical client situations; and (3) exercises that provide an opportunity for students

to engage in activities or outside research on the topics they are studying. The questions and problems are designed so that they can be used either during in-class discussions or outside of class by students studying independently. Likewise, most exercises can be used either as in-class activities or as writing assignments.

The substantive coverage of the book reflects those subjects that students could expect to encounter in an elder law practice. Special attention is paid to issues identified by elder law attorneys and professors as often underappreciated (e.g., ethics, changes associated with aging, and aging network services) as well as emerging areas of interest (e.g., supported decision-making and international dimensions of elder law). Since many of the laws and regulations that form the legal framework for elder law practice are subject to frequent political debate and legislative amendment, the text aims to ensure that readers understand the overarching structures of the systems they study, not just the current rules that apply to them.

Chapter 1 introduces the reader to elder law as a specialty and to the study of aging more broadly. Recognizing that most students will have little previous age-related training, it provides a “crash course” in gerontology. This includes an overview of the physical, psychological, and social changes associated with aging, a concise discussion of the demographic characteristics of the United States’ elderly population, and an introduction to the aging services network.

Chapter 2 focuses on the practice of elder law. It surveys different models of elder law practice and considers the practical and ethical challenges that elder law attorneys face in working with older clients and their families.

Chapter 3 explores the role that age plays in legal systems. The chapter is designed to facilitate a “big picture” discussion to which students and teachers can refer when discussing old-age entitlement programs and age-specific legislation in subsequent chapters. It begins with a discussion of intergenerational justice and the constitutionality and desirability of age-based classifications in the law. It then explores age discrimination in a variety of contexts including medical care, safety statutes, and employment. As part of the discussion, it considers the role of international law and the debate over a proposed Convention on the Rights of Older Persons.

Chapter 4 focuses on advance planning, surrogate decision-making, and alternatives to surrogate decision-making. It covers legal and practical issues surrounding techniques older adults can use to plan for future incapacity (such as durable powers of attorney and advance directives), and systems by which third parties can appoint someone to act for older adults deemed unable to do so for themselves (including guardianship and the representative payee system). It also explores the current debate over the ethics and desirability of surrogate decision-making, and potential ways to meet the needs of persons with cognitive disabilities without appointing surrogate decision-makers (including through the use of formal and

informal supported decision-making). In addition, the chapter highlights ethical issues involved when representing clients with appointed surrogates. Since advance planning is a key element of elder law practice, the chapter also contains multiple document drafting and review exercises.

Chapter 5 considers how older adults obtain and maintain income in older age, and especially after retirement. It covers Social Security benefits, strategies for maximizing them, and disputes over them. It also covers private pensions, savings, Supplemental Security Income benefits, and military retirement and veterans' pension benefits. In addition, it highlights the role of family support and duties under filial responsibility laws.

Chapter 6 focuses on financing health care in older age. It includes substantial discussions of both Medicare and Medicaid coverage. As Medicaid planning has historically been a very significant component of elder law practice, it includes discussions of both the ethics of Medicaid planning and of Medicaid planning techniques. In addition, Chapter 6 addresses long-term care insurance and employer-provided health care benefits.

Chapter 7 focuses on the housing options for older adults. Recognizing that most older adults wish to remain in their homes, it begins with a discussion of aging in place and the legal tools that can be employed to facilitate it. It then explores specialized housing arrangements (including nursing homes, assisted living facilities, and continuing care retirement communities) and the rights of those residing in them. The decision to separate a discussion of rights of those residing in long-term care settings from the financing of care in those settings (a topic covered in Chapter 6) recognizes that long-term care settings are the home of those who reside in them, and that the issues residents face extend far beyond how to pay for the care they are receiving. The chapter ends with a discussion of protections from disability discrimination in housing that can be used to protect the choices of older adults across housing settings. Notably, the integration of disability law throughout Chapter 7 recognizes the close relationship between elder law and disability law—a closeness that the practicing elder law bar is increasingly capitalizing upon by expanding elder law practices into “elder law and special needs” practices.

Chapter 8 addresses the important topic of elder abuse and neglect. It details the phenomenon of elder mistreatment, including warning signs for attorneys. It then explores legal strategies for addressing elder abuse. Finally, it explores the thorny legal and moral issues surrounding elder abuse, including how to determine who should be held responsible for caring for older adults and how the law should treat self-neglect.

Chapters 9 and 10 explore two topics that—although regularly encountered by elder law attorneys and of significant importance to older adults—are currently less central to most elder law practices. Thus, instructors offering a two-credit elder law course may wish to omit portions of Chapter 9 and Chapter 10, or assign them as optional reading.

Chapter 9 focuses on representing dying clients and end-of-life issues. It addresses the emotional and practical challenges associated with counseling terminally ill clients, explores the legal contours of the right to refuse life-sustaining care (including food and drink), discusses constitutional and statutory approaches to physician-assisted suicide, and highlights the role of hospice care and the Medicare hospice benefit.

Finally, Chapter 10 focuses on legal issues related to family relationships later in life. Specifically, it considers divorce and new family formation among older adults, the rights and obligations of family caregivers, and the rights of grandparents who are caring for grandchildren or who wish to do so.

Overall, the book represents a substantial revision from the second edition. It has been thoroughly updated to reflect demographic and policy changes, new court decisions, and new statutory and regulatory law. In addition, the third edition includes expanded discussion of certain topics and new sections on intergenerational justice, ageism, and family formation in later life. The new edition also features more short excerpts of scholarly articles addressing key legal, policy, and philosophical dilemmas; these are designed to help support robust classroom discussions of old age law and policy.

Throughout the book, omissions in edited materials are indicated using ellipses, with the exception that footnotes and endnotes, internal references, and parallel citations are deleted without any notation. In addition, the author has taken the liberty of making slight changes in the formatting of excerpted court opinions (e.g., adding italics to case names) in the interest of uniformity and readability.

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