

ASPEN CASEBOOK SERIES

ELDER LAW IN CONTEXT

REBECCA C. MORGAN

Stetson University College of Law

MARK D. BAUER

Stetson University College of Law

ROBERTA K. FLOWERS

Stetson University College of Law

JOSEPH F. MORRISSEY

Stetson University College of Law

THERESA J. PULLEY RADWAN

Stetson University College of Law



Wolters Kluwer

Contents

<i>Foreword</i>	xxvii
<i>Preface</i>	xxxix
<i>Acknowledgments</i>	xxxiii

CHAPTER 1

Introduction to the Practice of Elder Law and Elder Justice	1
A. Introduction	1
B. Meet Your Client, Gladys Smith	2
How to Use Gladys's Story	3
1. Gladys Needs Surgery	3
a. Consent	3
b. Post-Operation	4
i. An Uncertain Outcome	4
ii. A Better Outcome	4
2. Post-Hospital	4
a. Assume That the Physical Therapy Is Successful	4
i. Housing with Services	4
ii. Living at Home and Aging in Place	4
b. Assume That Physical Therapy Was Not Successful	5
c. Assume That Gladys Was Hurt While in the Nursing Home	5
3. What Caused Gladys to Fall at Her Home (The Precipitating Event)	5
4. How to Pay for the Cost of Care	5
5. Is Gladys Able to Handle Her Finances? Is She a Victim of Financial Exploitation?	5
C. What Is Elder Law? What Does It Mean to Practice Elder Law?	6
1. What Is Elder Law?	6
2. What Does It Mean to Practice Elder Law?	7
D. Elder Justice	8
1. Ageism	8
<i>Estate of Reed v. Grandelli</i>	13
NOTES AND COMMENTARY	21
2. Ageism and Language	22
3. Elder Justice and Issues of Discrimination	23
a. Americans with Disabilities Act	23
<i>Olmstead v. L.C.</i>	24
NOTES AND COMMENTARY	29

b. Discrimination Based on Sexual Orientation	29
Hovey, Nursing Wounds: Why LGBT Elders	
Need Protection from Discrimination and Abuse	
Based on Sexual Orientation and Gender Identity	29
NOTES AND COMMENTARY	31
<i>Obergefell v. Hodges</i>	31
NOTES AND COMMENTARY	33
c. Discrimination Based on Race	33
Yearby, Litigation, Integration, and Transformation:	
Using Medicaid to Address Racial Inequities in	
Health Care	34
NOTES AND COMMENTARY	35
E. Age-Friendly Thinking: Making Your Office and Your	
Communications Age-Friendly	35
F. Elder Law in Practice	37
 CHAPTER 2	
Professional Responsibility in Representing Elder Clients	39
A. Professional Responsibility	40
1. Competency	41
NOTES AND COMMENTARY	43
2. Client Identification	45
<i>Attorney Grievance Commission of Maryland v. Coppola</i>	46
<i>In re Disciplinary Proceedings Against Strasburg</i>	51
NOTES AND COMMENTARY	54
3. Communication	55
<i>In re Petition for Disciplinary Action Against Fett</i>	56
NOTES AND COMMENTARY	61
4. Confidentiality and Attorney-Client Privilege	62
a. Confidential Information Protected by the Rules of	
Professional Conduct	62
b. Information Protected Under the Attorney-Client Privilege	66
<i>Lynch v. Hamrick</i>	67
NOTES AND COMMENTARY	72
5. Conflict-Free	73
<i>In re Wyatt's Case</i>	74
NOTES AND COMMENTARY	88
New York State Bar Association Committee on Professional	
Ethics, Opinion 836	88
NOTES AND COMMENTARY	91
6. Credibility	91
<i>Attorney Grievance Commission of Maryland v. Coppola</i>	92
NOTES AND COMMENTARY	97
7. Capacity of Clients	97

a. Maintaining a Normal Attorney-Client Relationship	98
<i>Hawkins v. Principi</i>	99
b. Taking Protective Action	101
<i>Cheney v. Wells</i>	103
NOTES AND COMMENTARY	108
B. Elder Law in Practice	109

CHAPTER 3

Diminished Capacity and Contract Law 111

A. Review of Core Doctrine: Contracts	113
1. The Elements of a Contract	113
2. Interpretation	117
3. Mistake	120
B. Avoiding Enforcement	121
1. Incapacity	122
<i>Hernandez v. Banks</i>	123
NOTES AND COMMENTARY	130
2. Duress	132
3. Undue Influence	133
<i>Malone v. Malone</i>	135
NOTES AND COMMENTARY	138
<i>Kunz v. Sylvain</i>	139
NOTES AND COMMENTARY	146
4. Fraud and Misrepresentation	146
<i>Syester v. Banta</i>	147
NOTES AND COMMENTARY	153
5. Unconscionability	155
6. Public Policy	156
7. Statute of Frauds	159
C. Elder Law in Practice	161

CHAPTER 4

Diminished Capacity and Agency Law 163

A. Agency and Related Agency Law Issues	164
Review of Core Doctrine: Agency	164
B. Forming and Ending the Agency Relationship	165
1. Establishing an Agency Relationship	165
<i>Smith v. Wachovia Bank, N.A.</i>	166
NOTES AND COMMENTARY	171
2. Types of Authority	172
a. Actual Authority	172
<i>Flores v. Evergreen at San Diego, LLC</i>	174
<i>Blackmon v. LP Pigeon Forge, LLC</i>	177

<i>Kindred Nursing Centers East v. Jones</i>	187
NOTES AND COMMENTARY	193
b. Apparent Authority and Estoppel	195
<i>Walton v. Johnson</i>	196
c. Inherent Authority	202
NOTES AND COMMENTARY	202
d. Ratification	203
<i>Kindred Nursing Centers Limited Partnership v. Leffew</i>	204
NOTES AND COMMENTARY	206
3. Capacity	207
<i>Keyser v. Keyser</i>	208
NOTES AND COMMENTARY	213
4. Consequences of the Agency Relationship	213
a. Disclosed, Partially Disclosed, and Undisclosed Principals	213
<i>Connors v. Berlin</i>	215
NOTES AND COMMENTARY	217
b. Duties of Agent and Principal Within the Agency Relationship	218
<i>Praefke v. American Enterprise Life Insurance Co.</i>	218
NOTES AND COMMENTARY	223
c. Liability to Third Parties	224
5. Terminating the Agency Relationship	225

CHAPTER 5

Guardianship 227

A. Introduction and Overview	228
1. What Is a Guardianship and Why Is It Used?	228
a. Terminology	229
b. The Law	230
c. Guardianship Today	230
2. History and Overview of Guardianships	230
<i>In re Guardianship of Hedin</i>	231
Salzman, Rethinking Guardianship (Again)	233
B. The Guardianship Process	236
1. Determining the Need for Guardianship	236
<i>In re Schaefer</i>	237
NOTES AND COMMENTARY	240
<i>In re Guardianship of Roberts</i>	241
a. Less Restrictive Alternatives	244
<i>In re W.A.</i>	245
NOTES AND COMMENTARY	247
NOTES AND COMMENTARY	249
b. Limited vs. Plenary?	249
<i>In re Guardianship of Hedin</i>	250

c. Emergency or Temporary Guardianship?	253
<i>In re Klos</i>	254
2. Appointment of the Guardian	259
<i>In re Guardianship of the Person and Conservatorship</i>	
<i>of the Estate of B.K.J.</i>	259
NOTES AND COMMENTARY	263
Rights Retained by the Person Under Guardianship	265
<i>SunTrust Bank, Middle Georgia, N.A. v. Harper</i>	265
3. Duties and Obligations of the Guardian	270
<i>In re Clinesmith</i>	271
<i>Raven v. Department of Social and Health Services</i>	274
4. Reports, Accountings, and Fees	281
NOTES AND COMMENTARY	282
5. Removal or Resignation of the Guardian	283
<i>In re Guardianship of Smith</i>	284
NOTES AND COMMENTARY	287
6. Termination of the Guardianship	288
<i>In re Estate of Fallos</i>	289
<i>Sears v. Hampton</i>	294
C. Elder Law in Practice	299

CHAPTER 6

End of Life Decisions and Constitutional Law	301
A. The Right to Refuse Medical Treatment	304
1. The Liberty Interest in Refusing Treatment	304
<i>Cruzan v. Director, Missouri Department of Health</i>	307
NOTES AND COMMENTARY	315
2. Separation of Powers Concerns	320
B. Physician-Assisted Suicide	321
1. The Liberty Interest in Physician-Assisted Suicide	321
<i>Washington v. Glucksberg</i>	322
NOTES AND COMMENTARY	333
2. Equal Protection and Physician-Assisted Suicide	336
3. State Statutes Providing for Physician-Assisted Suicide	339
Oregon Death with Dignity Act	339
NOTES AND COMMENTARY	343
C. Planning for End of Life Decisions	345
Example Form of Living Will	346
Example Form of Designation of Health Care Surrogate	348
Example Form of DNR	351
Example Form of POLST	353
D. Elder Law in Practice	355

CHAPTER 7

**Entitlement Programs for Elders and the Social
Safety Net: Administrative Law**

	357
A. Introduction: Administrative Law and the Regulatory State	358
NOTES AND COMMENTARY	359
B. The Components of Administrative Law: An Overview	360
1. Rulemaking	361
2. Adjudication	362
3. Exhaustion of Administrative Remedies	363
4. Appellate Review	364
5. Due Process	365
6. The Freedom of Information Act	366
7. Practice Before an Administrative Agency	366
NOTES AND COMMENTARY	368
C. Rulemaking	370
1. What Is a Rule?	370
2. What Is Rulemaking?	371
NOTES AND COMMENTARY	372
3. Does Rulemaking Inhibit the Right to Be Heard?	373
<i>Heckler v. Campbell</i>	374
NOTES AND COMMENTARY	378
4. Rules That Are Not Rules: POMS and Other Guidance Documents	381
NOTES AND COMMENTARY	382
<i>Estate of Landers v. Leavitt</i>	383
NOTES AND COMMENTARY	387
5. Other Forms of Rulemaking	388
a. Formal Rulemaking	389
b. Hybrid Rulemaking	389
c. Negotiated Rulemaking	390
NOTES AND COMMENTARY	390
D. Adjudication	391
1. An Example: The Social Security Adjudication Process	391
a. Who Are ALJs and Are They Independent Decision Makers?	391
<i>Nash v. Bowen</i>	393
NOTES AND COMMENTARY	396
Mayes, Protecting the Administrative Judiciary from External Pressures: A Call for Vigilance	398
b. Adjudication of Events in the Past or Future?	400
<i>Bowen v. Georgetown University Hospital</i>	401
NOTES AND COMMENTARY	403

2. General Procedures and Evidence	404
a. Right to Counsel and Developing the Record	405
<i>Skinner v. Astrue</i>	405
NOTES AND COMMENTARY	408
b. Cross-Examinations and Subpoenas	409
<i>Solis v. Schweiker</i>	410
NOTES AND COMMENTARY	411
c. Administrative Notice	412
<i>Sykes v. Apfel</i>	412
NOTES AND COMMENTARY	414
3. Alleged Bias of ALJ	414
NOTES AND COMMENTARY	416
4. Ex Parte Communication with ALJ	417
NOTES AND COMMENTARY	417
E. Exhaustion of Administrative Remedies	419
<i>Heckler v. Ringer</i>	419
<i>Sims v. Apfel</i>	422
NOTES AND COMMENTARY	424
F. Due Process	426
<i>Mathews v. Eldridge</i>	427
NOTES AND COMMENTARY	434
G. Appellate Review	436
1. Appellate Review of Law	436
a. <i>Chevron</i>	436
b. <i>Skidmore</i>	437
NOTES AND COMMENTARY	438
2. Appellate Review of Findings of Fact and the Decision Itself:	
The Merits of the Case	439
<i>Capitano v. Secretary of Health and Human Services</i>	441
NOTES AND COMMENTARY	444
H. The Freedom of Information Act	445
NOTES AND COMMENTARY	446
I. Elder Law in Practice	448
 CHAPTER 8	
Retirement Security: Public and Private Benefits	451
A. Introduction	451
Importance of Retirement Financial Security	453
B. Social Security	454
1. A Brief History of Social Security	455
Martin & Weaver, Social Security: A Program and	
Policy History	455
2. Eligibility for Social Security	459

Social Security Administration, Retirement Benefits	460
A Brief Glossary of Terms	462
NOTES AND COMMENTARY	463
3. Retirement Benefits	463
a. Worker Eligibility for Social Security Retirement	463
b. Current Spouse Spousal Benefit	463
c. Former Spouse Spousal Benefit	464
4. Survivors Benefits When the Worker Has Died	465
a. Surviving Spouse Benefit	465
b. Surviving Former Spouse Benefit	465
c. Child Benefits	466
NOTES AND COMMENTARY	467
5. Amount of Benefits	468
NOTES AND COMMENTARY	469
6. Financing	471
7. Social Security Benefits Generally Protected from the Reach of Creditors	472
8. Representative Payee for Social Security Benefits	474
NOTES AND COMMENTARY	475
C. Supplemental Security Income (SSI)	477
Social Security Administration, SSI Annual Statistical Report, 2014	478
D. Veterans Benefits	483
1. Compensation	483
2. Pensions	484
Mall, The Future of Veterans' Benefits	485
NOTES AND COMMENTARY	488
E. Private Pensions	489
1. Defined Contribution Plans	489
2. Defined Benefit Plans	490
<i>Hughes Aircraft Co. v. Jacobson</i>	491
F. Age Discrimination in Employment	493
Implications of No Longer Working	495
G. Elder Law in Practice	495
 CHAPTER 9	
Health Care Security: Public and Private Benefits	497
A. Introduction	497
B. Medicare	499
1. A Brief History of Medicare	499
<i>Humana Medical Plan, Inc. v. Western Heritage Insurance Co.</i>	499
2. The Parts of Medicare	500
3. Eligibility	501

4. Part A	501
<i>Hall v. Sebelius</i>	502
NOTES AND COMMENTARY	505
5. Financing	506
6. Unique Issues with Part A	506
a. Observation Status vs. Hospital Admission	506
<i>Estate of Landers v. Leavitt</i>	507
NOTES AND COMMENTARY	509
b. Part A SNF Coverage	510
<i>Martinelli v. Burwell</i>	510
NOTES AND COMMENTARY	512
7. Medicare Part B	512
NOTES AND COMMENTARY	513
8. Medicare Supplemental Insurance (Medigap) for Original Medicare	514
<i>Vencor Inc. v. National States Insurance Co.</i>	514
NOTES AND COMMENTARY	517
9. Medicare Advantage	518
Reed, Medicare Advantage Misconceptions Abound	518
<i>Minnesota Senior Federation, Metropolitan Region v. United States</i>	520
NOTES AND COMMENTARY	522
10. Medicare Part D: D Is for Drugs	523
Medicare, Costs in the Coverage Gap	524
NOTES AND COMMENTARY	526
C. Medicaid	528
Paradise, Lyons & Rowland, Medicaid at 50	529
1. Medicaid Generally	530
Paradise, Lyons & Rowland, Medicaid at 50	531
<i>Maryland Department of Health and Mental Hygiene v. Centers for Medicare and Medicaid Services</i>	533
NOTES AND COMMENTARY	535
2. Eligibility for Medicaid	537
NOTES AND COMMENTARY	539
<i>Ramey v. Reinertson</i>	540
3. Spousal Protections Against Impoverishment	542
<i>Wisconsin Department of Health and Family Services v. Blumer</i>	542
NOTES AND COMMENTARY	550
4. Medicaid Liens and Recoveries	550
<i>West Virginia v. U.S. Department of Health and Human Services</i>	551
NOTES AND COMMENTARY	558

5. Medicaid Benefits	558
6. Medicaid Planning	560
<i>In re Sandoval</i>	561
Bleck, Isenhour & Miller, Preserving Wealth and Inheritance Through Medicaid Planning for Long-Term Care	563
Bleck, Isenhour & Miller, Preserving Wealth and Inheritance Through Medicaid Planning for Long-Term Care	566
<i>Morris v. Oklahoma Department of Human Services</i>	567
Use of Trusts in Medicaid Planning	577
Bleck, Isenhour & Miller, Preserving Wealth and Inheritance Through Medicaid Planning for Long-Term Care	577
NOTES AND COMMENTARY	580
D. Elder Law in Practice	580
 CHAPTER 10	
Property Law and Elder Housing	581
A. Introduction	582
1. Can Gladys Remain in Her Home and Is There Any Assistance Available to Help with Her Daily Needs (Cooking, Cleaning, Transportation, Etc.)?	584
2. Is There Any Available Program to Help Gladys Move into Housing That Can Better Support Her Needs?	585
NOTES AND COMMENTARY	588
B. Living with Others: Age-Restricted, Congregate, and Supportive Housing	588
1. Age-Restricted Communities: 55 and Older	588
a. Inconsistent Application of 55-Plus Rules	591
<i>Rogers v. Seibert</i>	591
NOTES AND COMMENTARY	597
2. Independent Living and Continuing Care Retirement Communities	597
a. Independent Living	597
<i>Leichter v. Cambridge Development, LLC</i>	598
NOTES AND COMMENTARY	598
b. Continuing Care Retirement Communities	599
Frolik, Burke & Kirtland, Housing Options for the Older Client	600
NOTES AND COMMENTARY	603
i. CCRCs and Eviction	603
<i>Seabrook Village v. Murphy</i>	604
NOTES AND COMMENTARY	608

ii. CCRCs and Refund of Entrance Fee	608
<i>Stewart v. Henry Ford Village, Inc.</i>	609
<i>Jackim v. CC-Lake, Inc.</i>	613
NOTES AND COMMENTARY	616
iii. CCRCs and Required Arbitration Agreements	618
3. Assisted Living	618
Fleming, The Blurred Line Between Nursing Homes and Assisted Living Facilities: How Limited Medicaid Funding of Assisted Living Facilities Can Save Tax Dollars While Improving the Quality of Life of the Elderly	620
NOTES AND COMMENTARY	624
4. Other Support for Housing	625
a. Manufactured and Mobile Homes	625
b. Subsidized Housing	626
i. HUD Section 202 Supportive Housing for the Elderly	627
ii. HUD Section 221 Multi-Family Housing for Moderate Income Families	628
iii. USDA Sections 504, 515, and 521 Housing for Elders in Rural Areas	628
iv. Public Housing	629
v. HUD Section 8 Housing and Vouchers	629
vi. HUD Section 811 Supportive Housing for Persons with Disabilities	630
vii. Local Programs	630
NOTES AND COMMENTARY	631
c. Single Room Occupancy Hotels	631
NOTES AND COMMENTARY	632
d. Group Housing Senior Living Homes	632
NOTES AND COMMENTARY	633
5. Age Discrimination in Housing	634
NOTES AND COMMENTARY	634
C. Living Independently: Aging in Place	634
Pynoos, Nishita, Cicero & Caraviello, Aging in Place, Housing, and the Law	635
Bauer, “Peter Pan” as Public Policy: Should Fifty-Five-Plus Age-Restricted Communities Continue to Be Exempt from Civil Rights Laws and Substantive Federal Regulation?	637
NOTES AND COMMENTARY	639
1. Family and Public Support to Live Independently	640
2. House Sharing	642
NOTES AND COMMENTARY	643
3. Social Engagement, Senior Center, and Adult Day Programs	644

D. Paying for It: Financing Elder Housing	644
1. Life Estate or Sale and Leaseback	646
NOTES AND COMMENTARY	649
<i>White v. Brown</i>	649
NOTES AND COMMENTARY	651
<i>Moore v. Phillips</i>	652
<i>Beach v. Beach</i>	656
NOTES AND COMMENTARY	660
2. Concurrent Ownership	663
<i>Esteves v. Esteves</i>	665
NOTES AND COMMENTARY	667
3. Viatical Settlements	667
NOTES AND COMMENTARY	669
4. Home Equity Conversion Mortgages (Reverse Mortgages)	669
<i>Wiseman v. First Mariner Bank</i>	672
NOTES AND COMMENTARY	680
<i>MetLife Home Loans v. Vereen</i>	681
NOTES AND COMMENTARY	684
5. Property Tax Relief	684
E. Land Use: Regulation of Housing and Elders	685
1. New Urbanism	686
NOTES AND COMMENTARY	687
2. Naturally Occurring Retirement Communities	687
Siegel & Rimsky, Residential Models for Today's and	
Tomorrow's Older Adults	688
NOTES AND COMMENTARY	689
3. Moving in with Family and Zoning Restrictions	689
<i>Rowatti v. Gonchar</i>	690
<i>Cherney v. Matawan Borough Zoning Board of Adjustment</i>	693
NOTES AND COMMENTARY	697
F. Elder Law in Practice	697

CHAPTER 11

Nursing Homes: Quality of Care	699
A. Introduction	699
B. Regulation of Quality of Care	701
1. History of Federal Oversight: The Nursing Home Reform Act of 1987	701
a. A Brief History of the NHRA	701
<i>Grammer v. John J. Kane Regional Centers-Glen Hazel</i>	701
b. More on the History of the NHRA	703
2. The Law	703
3. Administrative Oversight	704
NOTES AND COMMENTARY	704

4. Facility Oversight	705
<i>THI of Kansas at Highland Park v. Sebelius</i>	706
<i>Sunshine Haven Nursing Operations, LLC v. U.S.</i> <i>Department of Health and Human Services,</i> <i>Centers for Medicare and Medicaid Services</i>	708
<i>Blue v. Koren</i>	709
C. Resident Assessment, Care, and Rights	711
1. Resident Assessment and Care Plan	711
Developing the Care Plan	712
<i>Hazard Nursing Home Inc. v. Ambrose</i>	713
<i>Estate of Boulrier v. Presque Isle Nursing Home</i>	715
<i>Beverly Healthcare Kissimmee v. Agency for Health</i> <i>Care Administration</i>	719
2. Resident Rights	721
NOTES AND COMMENTARY	723
Transfer and Discharge Rights	724
NOTES AND COMMENTARY	724
<i>King v. Butler Rest Home Inc.</i>	725
<i>Grammer v. John J. Kane Regional Centers-Glen Hazel</i>	728
<i>Kalan v. Health Center Commission of Orange County, Virginia</i>	730
NOTES AND COMMENTARY	731
3. Admissions Contracts	732
Who Is the Responsible Party?	733
<i>Meadowbrook Center Inc. v. Buchman</i>	733
<i>Podolsky v. First Healthcare Corp.</i>	737
NOTES AND COMMENTARY	744
D. Long-Term Care Ombudsman	745
E. Elder Law in Practice	747
 CHAPTER 12	
Torts	749
A. Review of Core Doctrine of Torts	749
B. Negligence	750
<i>Telesis/Parkwood v. Anderson</i>	751
NOTES AND COMMENTARY	769
C. Statutory Remedies	770
<i>Dibrill v. Normandy Associates, Inc.</i>	771
<i>Diversicare General Partner, Inc. v. Rubio</i>	773
<i>Estate of Hicks v. Urban East, Inc.</i>	779
NOTES AND COMMENTARY	781
<i>Perdieu v. Blackstone Family Practice Center, Inc.</i>	782
D. Issues Concerning Damages	788
<i>Advocat, Inc. v. Sauer</i>	788
<i>Estate of Hoch v. Stifel</i>	797

E. Tort Reform	802
Bedell, The Next Frontier in Tort Reform: Promoting the Financial Solvency of Nursing Homes	802
NOTES AND COMMENTARY	805
F. Elder Law in Practice	807

CHAPTER 13

Dealing with Finances: Consumer Protection and Bankruptcy Law 809

A. Consumer Protection	810
1. Development of Consumer Protection Law	810
2. Development of Consumer Protection Statutes	810
3. Credit Reports	813
CFPB Bulletin 2013-08	813
NOTES AND COMMENTARY	817
4. Incurring and Collecting Debts	817
a. Truth in Lending Act	817
b. Fair Debt Collection Practices Act	818
<i>Consumer Solutions REO, LLC v. Hillery</i>	820
5. Identity Theft	823
a. Preventing Identity Theft	824
<i>Federal Trade Commission v. Sun Bright Ventures LLC</i>	824
b. Discovering Identity Theft	827
c. Recovering from Identity Theft	827
B. Bankruptcy Law	828
Radwan & Morgan, The Elderly in Bankruptcy and Health Reform	829
Pottow, The Rise in Elder Bankruptcy Filings and the Failure of U.S. Bankruptcy Law	832
NOTES AND COMMENTARY	836
1. Types of Bankruptcy Cases	837
2. The Means Test	838
3. Chapter 13 Eligibility Requirements	839
4. Property of the Estate	839
<i>In re Ericson</i>	840
NOTES AND COMMENTARY	843
5. The Automatic Stay—Protecting the Debtor and the Property of the Estate	844
6. Exemptions: The Debtor's Ability to Keep Pre-Petition Property	844
7. Claims Against the Estate	845
8. Chapter 13 Repayment Plans	846
<i>Drummond v. Welsh (In re Welsh)</i>	846
NOTES AND COMMENTARY	854

9. Discharge of Debt	857
10. Elders as Bankruptcy Creditors	858
<i>In re Flagship Franchises of Minnesota, LLC</i>	859
NOTES AND COMMENTARY	866
<i>Estate of Jackson v. General Electric Capital Corp.</i> <i>(In re Fundamental Long Term Care, Inc.)</i>	867
 CHAPTER 14	
Criminal Law and Elders	877
A. Introduction	877
B. An Overview of Elder Abuse	878
NOTES AND COMMENTARY	880
C. Applying Elder Law to the Core Elements of a Crime	881
1. Acts or Omissions	882
<i>West v. Commonwealth</i>	883
<i>Sieniarecki v. State</i>	887
NOTES AND COMMENTARY	893
2. Mental State	893
<i>People v. Owsley</i>	895
NOTES AND COMMENTARY	900
<i>Tarpeh v. United States</i>	900
3. Attendant Circumstances	905
<i>People v. Simpson</i>	906
NOTES AND COMMENTARY	912
4. Causation	912
<i>People v. Hudson</i>	913
NOTES AND COMMENTARY	917
D. Proof of the Crime	919
1. Proof Beyond a Reasonable Doubt	919
<i>McNarrin v. State</i>	919
NOTES AND COMMENTARY	922
2. Evidence	922
<i>People v. Pirwani</i>	923
NOTES AND COMMENTARY	932
E. Sentencing for the Crime	934
<i>United States v. Angiulo</i>	935
NOTES AND COMMENTARY	940
 <i>Table of Cases</i>	943
<i>Index</i>	947