UNIVERSITY OF BALTIMORE SCHOOL OF LAW
SPRING 2018

Course: Elder Law in Maryland
        LAW 739
        Section 550

Instructor: Jason A. Frank, Esq.
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        1400 Front Avenue, Suite 200
        Lutherville, Maryland 21093
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        jfrank@frankelderlaw.com (email is the best way to contact me outside of class)

Days/Time: Thursdays 4:45 p.m. to 7:30 p.m.

Location: Room assignments are available through MyUB.

Course Description:
An important subset of estate planning involves an area of law that has been dubbed "elder law." Families confront a myriad of financial challenges when a loved one needs long term care. Students will be taken through case studies and a group project to expose them to the planning options that exist when advising families on protecting their life's savings from the costs of care. This course covers select laws and pertinent cases dealing with Medicaid, Medicare, guardianship, Social Security programs, investments, trusts, insurances, and taxation of income, gifts and estates. Legal documents typically indicated for elder law matters are also reviewed.

Course Materials:
Elder Law in Maryland by Jason A. Frank, 4th Edition, 5th Revision

Student Learning Outcomes:

1. The function of the Social Security Administration, Center for Medicare & Medicaid Services, and Veterans Administration, the benefits provided, and procedures for applying;

2. The function of federal, state, and local agencies serving elderly individuals through the aging network, the programs available, and eligibility criteria;

3. Sources of law protecting older adults who are abused, both in the community and in health care facilities, and knowledge of the role of adult protective services;
4. Residents’ rights in health care facilities and in assisted living;

5. The tools of asset management and asset protection;

6. The law governing probate in Maryland: knowledge of Last Wills and Testament, the estate process, estate taxes, and issues of undue influence in a Will;

7. The law governing health care decision making in Maryland: knowledge of advance directives, surrogate decision making, and guardianship;

8. General principles of guardianship of person and property and procedures for establishing a guardianship;

9. Housing options for seniors, including community based support services which enable older adults to remain at home;

10. Sources of law governing the Medical Assistance program, applying for benefits, resources for resolving problems, and maintaining eligibility.

Grades:
A student’s grade in this course will be calculated as follows:

Note: Class Participation (noted weekly by students) is worth up to 3 additional points toward the final course grade.

1) Assignment: Preparation of intake, drafting and review of an Advance Directive with partner: P/F
2) Assignment: Preparation of intake, drafting and review of a Durable Power of Attorney with partner: P/F
3) Field Trip presentation: P/F
4) Guardianship presentation: P/F
5) Final Examination: 100%

(Failure to submit 1 or 2 above, field trip presentation, or Guardianship presentation will reduce the final grade by a third of a letter grade (A to A-, A- to B+, etc.)

Course Expectations:
American Bar Association Standards for Law Schools establish guidelines for the amount of work students should expect to complete for each credit earned. Students should expect approximately one hour of classroom instruction and two hours of out-of-class work for each credit earned in a class, or an equivalent amount of work for other academic activities, such as simulations, externships, clinical supervision, co-curricular activities, and other academic work leading to the award of credit hours.
You are expected to complete all reading assignments before class and to participate consistently in class discussion to demonstrate that you have read and reflected on the issues raised in the assignment.

**Attendance:**
Class attendance is a primary obligation of each student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor. A student who exceeds the maximum allowed absences (generally 20% of class sessions) as illustrated below may be compelled to withdraw from the course, or may be barred from sitting for the final exam. Students who are forced to withdraw for exceeding the allowed absences may receive a grade of FA (failure due to excessive absence). This policy is consistent with American Bar Association Standards for Law Schools.

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<th>Regular Semester Hours</th>
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**Course Website:**
This course has a TWEN page that links to this syllabus, announcements, the class assignments, and other class materials. You are responsible for self-enrolling in the TWEN page and for checking it regularly for course information.

**Computers:**
Students may use laptop computers for class related purposes.

**Class Cancellation:**
If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore website or call the University's Snow Closing Line at (410) 837-4201. If the University is open, students should presume that classes are running on the normal schedule.

**Academic Integrity:**
Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or School of Law. Violations of academic integrity include, but are not limited to: cheating, plagiarism, misuse of materials, inappropriate communication about exams, use of unauthorized materials and technology, misrepresentation of any academic matter, including attendance, and impeding the Honor Code process. The School of Law Honor Code and information about the process is available at [http://law.ubalt.edu/academics/policiesandprocedures/honor_code/](http://law.ubalt.edu/academics/policiesandprocedures/honor_code/).
Title IX Sexual Misconduct and Nondiscrimination Policy:
The University of Baltimore's Sexual Misconduct and Nondiscrimination policy is compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB's nondiscrimination policies can be found at: http://www.ubalt.edu/titleix.

Disability Policy:
If you are a student with a documented disability who requires an academic accommodation, please contact Leslie Metzger, Director of Student Services, at 410-837-5623 or lmetzger@ubalt.edu.

EXAM FORMAT

The open book exam will consist of essay questions containing fact patterns on elder law issues. Students should be able to identify, where appropriate, who is the client, what public benefit programs are they eligible for now, or in the future, how can income and assets be accessed, how can medical decisions be made, what can be done to protect assets in the face of long-term care expenses, what the existing legal issues are, and what are potential courses of legal action.

ASSIGNMENT INSTRUCTIONS

Durable Power of Attorney
Pair up into groups of two. Each student will interview a classmate, using the Frank, Frank & Scherr, LLC intake form found in the appendix to Chapter 7, and the master provisions found in the appendix to Chapter 7 or use the provisions of Estates and Trusts § 17-101 et seq. You will then draft a Durable Power of Attorney, reflecting the wishes of your classmate and complying with Maryland law. Please turn in both the intake form and Durable Power of Attorney.

Advance Directive
Pair up into groups of two. Each student will interview a classmate, using the Frank, Frank & Scherr, LLC intake form and master provisions found in the appendix to Chapter 9 or use the forms at www.oag.state.md.us/healthpol/adirective.pdf. You will then draft an Advance Directive reflecting the wishes of your classmate and complying with Maryland law. Please turn in both the intake form and Advance Directive.

Class Presentation
The cases, statute and articles identified in the syllabus will be assigned to students for presentation in class. The case facts, legal issues, rules articulated and applied shall be the substance of the presentation. The statutes and articles assigned shall be presented to discuss the issues they address and their proposed resolution.
Field Trip & Presentation: Outside of regular class hours, every student will be required to complete “field trips” to observe institutions affecting seniors.

A. The first component is a group project. Students will be divided into seven groups as follows:

Group 1: Nursing Home

Group 2: Assisted Living

Group 3: Type A Continuing Care Retirement Community

Group 4: Type C Continuing Care Retirement Community
Groups 1-4 should check the Maryland Judiciary case records regarding lawsuits involving the facility and the physicians who work there.

Group 5: Medical Adult Daycare: Where does the money come from, Medicaid waiver? Private pay? Who is included?

Group 6: Senior Center and Senior Center PLUS/Center Connection Program: are there membership fees? If so, what is included? Does DAA allow these fees?

Group 7: Veterans Administration- Loch Raven, Greene Street, and Charlotte Hall

Each group will set a time to visit and observe their assigned facilities. Where applicable, student will also review any entrance agreement and reference the Office of Health Care Quality (OHCQ) complaint record, police complaint record, ombudsman complaint record, and Medicare quality rating for the assigned facility. For the group visiting the senior center and Senior Center PLUS/Center Connection, students will review the available programming and observe the seniors at a meal. The groups will then prepare a 20-30 minute class presentation that includes their observations and findings and receive a group grade of Pass or Fail (P/F)

B. In addition to the group visits, all students will observe a Circuit Court guardianship proceeding for a disabled adult. A 10-15 minute presentation is required for the guardianship proceeding with student giving the case name, case number, the issue (guardianship of person, property or both; reason for seeking guardianship), and the outcome (petition granted, denied, etc.). Students should contact the Baltimore County Trust Clerk, Jennifer Wheeler, at (410) 887-3469 or the Baltimore City Trust Clerk, Dana Allen, at (410) 333-1982 to obtain dates and times for guardianship proceedings. The Baltimore County Circuit Court only holds guardianship proceedings on Thursdays. The presenter order will be assigned during the first class meeting. Students can also contact Carolyn Malinowski, Esq. (MVLS), who is frequently the court approved counsel for alleged disabled, at 443-451-4077 or Deb Riley (Baltimore County Department of Aging) at 410-887-5793. Presentations will receive a grade of Pass or Fail (P/F)
CLASS ASSIGNMENT SCHEDULE

Class 1: Thursday, January 18, 2018
TOPIC: Introductions, Syllabus Review case study exam example, Overview of Elder Law, Social Security
READ: Elder Law in Maryland,
    Introduction Chapter and Appendix, including,
a) National Academy of Elder Law Attorneys (NAELA) Aspirational Standards;
b) Ethical obligation towards client with diminished capacity Maryland Rules of Professional Conduct 1.14;
Chapter 1: Social Security

Class 2: Thursday, January 25, 2018
TOPIC: Social Security, Medicare and Veterans’ Benefits
READ: Elder Law in Maryland,
    Chapters 2: Medicare
    Chapter 3: Veterans’ Benefits

Class 3: Thursday, February 1, 2018
TOPIC: Social Security, Disability and Appeals Process, Age Discrimination
READ: Material to be Distributed in Class
Guest Speaker: Richard Neuwirth, Esquire

Class 4: Thursday, February 8, 2018
TOPIC: The Aging Network
READ: Elder Law in Maryland, Chapter 4: The Public Aging Network in Maryland
Due: Group 1 Field Trip Presentation
      1st and 2nd Guardianship Presenters

Class 5: Thursday, February 15, 2018
TOPIC: Elder Abuse and Elder Rights
READ: Elder Law in Maryland,
    Chapter 5: Elder Abuse
    Appendix 5I – Addressing Financial Elder Abuse Article by Michael Gilfix
    Chapter 6: Elder Rights
Guest Speaker: Attorney at Baltimore City State's Attorney's Office, Janet Hankin
Due: Group 2 Field Trip Presentation
3rd and 4th Guardianship Presenters

**Assignment:** Durable Power of Attorney assignment given. Meet with client at the end of class to review intake. Draft document for homework. Due in two weeks.

**Class 6: Thursday, February 22, 2018**
**TOPIC:** Asset Management
**READ:** Elder Law in Maryland, Chapter 7: Asset Management
**Due:** Group 3 Field Trip Presentation
**5th and 6th Guardianship Presenters**

**Class 7: Thursday, March 1, 2018**
**TOPIC:** Probate
**READ:** Elder Law in Maryland, Chapter 8: Probate
**Due:** Durable Power of Attorney assignment
  - Group 4 Field Trip Presentation
  - 7th and 8th Guardianship Presenters

**Guest Speaker:** Alex Zarzecki, Esq.

**Class 8: Thursday, March 8, 2018**
**TOPIC:** Medical Decision Making
**READ:** Elder Law in Maryland, Chapter 9: Medical Decision Making in Maryland
**Due:** Group 5 Field Trip Presentation
  - 9th and 10th Guardianship Presenters

**Assignment:** Advance Directive assignment given. Meet with client at the end of class to review intake. Draft document for homework. Due in two weeks.
Class 9: Thursday, March 15, 2018
TOPIC: Guardianship
READ: Elder Law in Maryland, Chapter 10: Guardianship
Due: Group 6 Field Trip Presentation
      11th and 12th Guardianship Presenters
Guest Speaker: Debbie Riley, Baltimore County Department of Aging Public
Guardianship Program

Class 10: Thursday, March 29, 2018
Housing Options for Seniors
READ: Elder Law in Maryland, Chapter 11: Housing
Due: Advance Directive assignment
      Group 7 Field Trip Presentation
      13th Guardianship Presenter
Guest Speaker: Roger Weinberg, Esq.: Nursing Home Malpractice

Class 11: Thursday, April 5, 2018
TOPIC: Medical Assistance—Overview of the Law & Legal Issues in Asset Protection
READ: Elder Law in Maryland, Chapter 12: Medical Assistance

Class 12: Thursday, April 12, 2018
TOPIC: Community Based Support Services
READ: Elder Law in Maryland, Chapter 13: Community Based Support Services
      Statement of Interest of the United States, 2010 WL 2748333 (M.D. Fla.
      May 24, 2010) (Trial Filing for Haddad v. Arnold)
      Doe v. Kidd, 501 F.3d 348 (4th Cir. 2007);
      Pashby v. Delia, 709 F.3d 307 (4th Cir. 2013);
      Medicaid Long-Term Care, Community First Choice, and Community Personal
      Assistance Services handouts
Class 13: Thursday, April 19, 2018
TOPIC: Medical Assistance—Legal Issues in Asset Protection;
Ethical Issues Policy Question discussion; Alternative Methods to Pay for Long Term Care
READ: Jason Frank, W(h)ither Medicaid, NAELA Journal, Spring 2013

Class 14: Thursday, April 26, 2018
TOPIC: Review for exam
Due: Prepare at least two review questions