Course: Elder Law  
LAW 739.512

Instructor: Professor Katharine Van Tassel  
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Days/Time: Mondays, 6:15 p.m. to 9 p.m.

Location: Room assignments are available through MyUB.

Course Description:

This course is designed to provide you with a basic overview of the areas of law which typically impact the elderly. You will learn about the basic public benefit programs for seniors, the aging network, health care decision making, housing options for seniors, community based services and options, guardianship, asset management, planning for disability, end of life, and elder abuse. The course will also provide you with guidance as to how to obtain information from public agencies and the relationship between the agencies and the courts that review their actions. You will learn the sources of law in each of these areas and have the opportunity to apply the law to real life problems that elderly clients encounter.

Course Materials:


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 for asset management and asset protection.
6. General principles of guardianship of person and property and procedures for establishing a guardianship.

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

8. Housing options for seniors including community based support services which enable older adults to remain at home and other available options.

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

Grading

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

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) Final Examination: 100% (Failure to submit 1 or 2 above will reduce the final grade by a third of a letter grade (A to A-, A- to B+, etc.)

Drafting Assignment - Durable Power of Attorney and Advance Directive (Pass/Fail): Pair up into groups of two. Each student will interview a classmate using: (a).an intake form for a Durable Power of Attorney and master provisions distributed in class; and, an intake form for an Advance Directive and master provisions distributed in class. You will then draft a Durable Power of Attorney, an Advance Directive reflecting the wishes of your classmate. You will turn in the intake forms, the Durable Power of Attorney, and the Advance Directive to Professor Van Tassel.

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.

Note: Class Participation is worth up to 3 additional points toward the final course grade. 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 of 20% of class sessions for a total of 2 absences 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.
Computers:

Students may not 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 web site 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/.

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.

READING ASSIGNMENTS

First Assignment:

We will be using the first two class sessions (i.e. the first two Mondays) to familiarize everyone with basic private healthcare insurance concepts before we delve into government provision of healthcare, including Medicare and Medicaid.

For the first day of class, please read pp.1-11and pp. 245 to 275. For the second class session, please complete the problems on p. 250-51 and 254 and Exercise 6.1 on p. 255.

Readings for the Semester

Introduction to Elder Law

1. Introduction to aging and elder law practice (pp. 1-11)
Financing Health Care

2. Introduction and overview of Medicare benefits (pp. 245-266)
3. The Medicare home health benefit, Medicare’s future, and introduction to Medicaid (pp. 266-284)
4. Spousal impoverishment protections and estate recovery (pp. 284-303)
5. Medicaid planning ethics and part 1 of techniques (pp. 303-328)
6. Medicaid planning techniques part 2 and other sources of health coverage for health care (pp. 329-348)

Surrogate Decision-Making

7. Advance planning tools for finances (pp. 97-116)
8. Advance planning tools for health care & default surrogates (pp. 116-142)
9. The guardianship process (pp. 142-168, optional pp. 178-187)
10. Alternatives to guardianship, decision-making standards, and ethical challenges when working with surrogates (pp. 169-178, 187-194)

Income in Older Age

11. Introduction and eligibility for Social Security (pp. 195-206)
12. Timing Social Security benefits and key concerns related to benefits (pp. 206-221)
13. Other sources of income (pp. 221-244)

The Legal Status of Old Age & Age Discrimination

14. Age as a legal criterion (pp. 47-62, 89-95)
15. Age discrimination in employment (pp. 62-89)

Housing and Long-Term Care

16. Aging in place (pp. 349-376)
17. Nursing home admissions and resident rights (pp. 376-399)
18. Enforcing nursing home residents’ rights (pp. 399-425)
19. Mandatory arbitration contracts and assisted living (pp. 425-450)
20. CCRCs and housing discrimination (pp. 450-480)

Elder Abuse and Neglect

21. Introduction to elder abuse (pp. 481-506)
22. Neglect (pp. 506-525)

Death and Dying

23. Working with the terminally ill, right to refuse treatment, hospice care (pp. 527-544, 566-573)
24. Right to die and receive aid in dying (pp. 544-566)
Grandparenting and Grandparents’ Rights

25. Grandparents as visitors and supplemental care providers (pp. 575-596)
26. Grandparents as parents and care recipients (pp. 597-611)

Putting It All together

27. Ethical challenges of elder law practice (pp. 20-45)