Course Description

This course will focus on the legal problems of the elderly and the disabled. This course will approach the Elder Law practice with an interdisciplinary perspective. Topics such as planning with Government benefits, including Medicare, Medicaid, Social Security Disability and SSI benefits; long term care insurance; estate planning and the utilization of trusts to protect and preserve assets. Additional topics will include Guardianship proceedings under Article 81 of the Mental Hygiene Law as well as the Health Care Decisions Act, and advance directives such as health care proxies, living wills and MOLST forms.

Course Materials

We will be reading selections from Practicing Law Institute, New York Practice Series, New York Elder Law by the Samuel Sadin Institute, Edited by Jean Calihan, 2016 Edition. ISBN 978-0-87224-086-5. Through a special arrangement with the publisher I will furnish a PDF of all chapters that are required reading. There will be a limited number of copies available in the bookstore for those who want to purchase the volume.

In addition to assigned readings from the text, I will assign cases, statutory, and regulatory reading from the following framework:

- Administrative Directives (96-ADM-8)
- 2005 Deficit Reduction Act (“DRA”)
- New York State Medicaid Reference Guide (“MRG”)
- Omnibus Budget Reconciliation Act of 1993 (“OBRA ‘93”)
- Mental Hygiene Law (“MHL”)
- Social Security Law (“SSL”) 46 USC §401 et seq./ 20 C.F.R. pts. 404 et seq.
- Medicare Law 42 USC §1395 et seq./ 20 C.F.R. §400 et seq.
- New York Surrogate Court Procedure Act (“SCPA”)
- New York Estate, Powers and Trusts Law (“EPTL”)
- New York Mental Hygiene Law Art 81. et seq. and Art. 83 et seq.
- New York Public Health Art 29 B, C, CC, CCC
Attendance Policy

The rules of the New York State Court of Appeals, the American Bar Association, and the Law School all require law students to be in good and regular attendance in the courses for which they are registered. To comply with these rules, you must attend at least 85% of your regularly scheduled classes. A student enrolled in a two-credit course may thus miss no more than two 100-minute class sessions (in other words, two regularly scheduled classes).

Sign-in sheets will be provided for each regularly scheduled class, which shall be the dispositive evidence regarding your absence from a given class. Each student is responsible for signing in. Falsification of sign-in sheets is a violation of the Code of Academic Conduct.

If you exceed the permitted absences by failing to sign in, you may be administratively withdrawn from the course. No prior notice may be given, and you will receive notification from the Office of Academic Records indicating the withdrawal. Any such withdrawal may have serious ramifications for your financial aid, as well as academic standing, and date of graduation. If you are excessively absent from other classes. You may face additional sanctions, including but not limited to denial of certification of good and regular attendance to the New York State Board of Law Examiners, or other state bar examiners.

If you believe you must be absent from class for more than the permitted number of classes, you should contact the Office of Student Affairs as soon as possible. Accommodations will be made for students who must be absent for religious reasons and in cases of truly compelling hardship. Any request for an exception made to the Office of Student Affairs must be accompanied by appropriate documentation.

Students are expected to be on time to class. However, it is better to come to class late than not at all. You may walk in late if you have a good reason, as long as you don’t abuse this privilege.

Learning Outcome

This course will offer an overview of the relevant case-law, statutes, regulations and practices of Elder Law, including surrogate decision-making, estate planning, public benefits and Guardianship matters. The objective is to have students end the course with a broad overview of the substantive laws relevant to the Elder Law attorney. Emphasis will be on applying statutory law, case law and regulations to fact patterns to provide an understanding of the everyday decisions and practices. Students will identify who their clients are, the capacity issues and ethical concerns in three major areas:

- Advance planning for aging population
- Guardianship procedure and issues
- Medicaid- including eligibility and planning alternatives
Grading

The final grade for the course will be determined by a closed-book final exam. The final exam will be composed of a combination of multiple choice questions and short answer questions. I will provide more information about the final later in the semester.

Computer Policy

Computers are to be used during class for taking notes and no other purpose. They are not to be used to “surf the net” or send email or instant messages. Violations of this rule may lead to you being prohibited from using a laptop during class.

Schedule of Topics

Class 1 Aug. 23-
Introduction to the Course
Review Syllabus
Elder Law Defined
History of Elder Law
Elder Law Practice

Class 2 Aug. 30-
Ethical Considerations- Who’s the client?
New York Rules of Professional Conduct
Conflicts of Interest between Spouses, Clients, Children
Capacity Issues
Reading: RPC 1.0(e), RPC 1.0(h), RPC 1.14, RPC 1.6, RPC 1.7, RPC 1.8, RPC 1.9; Cheney v. Wells, 23 Misc. 3d 161 (N.Y. Sur. Ct. 2008)

Class 3 Sept. 6-
Surrogate Decision Making
Constitutional Questions on Patients’ Rights
Advanced Directives and Related Issues
Text Book: Chapter 11 (Entirely), Chapter 8, Sections 8:2-8:2.1(A-F), Appendices 8B and 8C.
Cases: Schlendorff v. Society of New York Hospital, 211 NY 125 (1913); In Re Storar, In Re Eichner, 52 N.Y.2d 363 (1981); cert. denied, 454 U.S. 858, 102 S.Ct. 309 (1981); In re Westchester Medical Center (O’Connor) 72 N.Y.2d 517 (1988).

Class 4 Sept. 13-
Elder Abuse
Mental Hygiene Law Article 81- History
Distinguish 17A Guardianships
Guardianship Statutes
Current Trends & Issues

**Text Book:** Chapter 8, Sections 8:4 and 8:5.


**Class 5  Sept. 27**

- Article 81 - Continued
- Public Benefits
- Overview of the programs that seniors depend on such as: Social Security Retirement Benefits, Social Security Disability Benefit, Supplemental Security Income Benefits, Medicare.

**Text Book:** Chapter 1, Sections 1:1-1:3.2, 1:3.9, 2:1-2:2, 3:1, 3:4, 4:1, 4:3.1, 4:6-4:6.1


**Class 6  Oct. 4**

- The Rights of Medical Patients
- Health Insurance Portability and Accountability Act (HIPAA)
- Rights of Hospital Patients including Hospital Discharge Planning
- Rights of Nursing Home Residents

**Reading:** Selected sections of 42 U.S. Code § 1320d (the Consumer perspective), Nursing Home Reform Act 42 U.S.C. §1395i 3 and 42 U.S.C. §1396r will be assigned.

- Review parallel Federal and New York State Laws
- 42 CFR § 482 and 10 NYCRR § 405

**Class 7  Oct. 11**

- Medicaid-
- Ethical & Tax issues in Medicaid Planning,
- Medicaid Eligibility Rules, Income & Resource Tests, Transfer Penalty Rules,
- Spousal Protections & Liability, changes made by Deficit Reduction Act of 2005.

**Text Book:** Chapter 6, Sections 6:1, 6:2, 6:4-6:4.3, 6:5.1, 6:6.10, 6:7-6:9

**Cases:** In Re Shah, 95 N.Y.2d 148 (2000); In Re Shah, 257 A.D.2d 275, (N.Y. App. Div. 1999)


Class 8  Oct. 18-
Medicaid (continued)
Planning Strategies
Medicaid Planning & Guardianships (case studies)
Community vs. Chronic Care Medicaid
**Reading:** Review last week’s reading

Class 9  Oct. 25-
Medicaid Planning and Advising (continued)
Irrevocable Trusts in Medicaid planning Grantor trust Rules
Estate Recovery

Class 10  Nov. 1-
Medicaid Fair Hearings
Article 78- Elder Law Attorneys pushing the envelope.

Class 11  Nov. 8-
Estate Planning- PTA (Probate, Taxes and Asset Protection)
Probate and Non-Probate Arrangements
Important provisions for Elder Law Clients
Durable Powers of Attorney
**Reading:** *Schneider v. Finmann*, 2010 N.Y. Slip Op 05281; *In Re Estate of Ferrara*, 7 N.Y.3d 244 (2006); *Gallenstein v. U.S.*, 975 F.2d 286, 92-2 U.S. Tax Cas. (CH) 60114 (6th Cir. 1992)

Class 12  Nov. 15-
Estate Planning Continued

Class 13  Nov. 22-
Planning for Disabled Individuals
Supplemental Needs Trusts
**Reading:** *Escher’s Will*, 75 A.D.2d 531 (1st Dept. 1980)

Class 14  Nov. 29-
Review for Final Exam