

# Index

## **ANALYSIS OF CAPACITY**

- contractual capacity, **2:10**
- decisional capacity, **2:11**
- definition
  - legal capacity, **2:1**
- donative capacity, **2:9**
- informed consent capacity, **2:12**
- testamentary capacity, **2:2-2:8**
  - conclusions, **2:8**
  - distinguishing insane delusion, **2:7**
  - inordinate or unusual disposition, **2:5**
  - pending conservatorship/guardianship at time of execution, **2:6**
  - variations in requirements, **2:4**
  - will, specific vs. general competency, **2:3**
- trust capacity, **2:13**

## **ASSESSMENT OF CAPACITY**

- Generally, **5:1-5:6**
- legal capacity, **5:1**
- questionnaire, **5:2-5:6**

## **BRAIN, RELATIONSHIP OF STRUCTURE AND FUNCTION**

- Generally, **6:1-6:36**
- basal ganglia, **6:13**
- basic dynamics, **6:26**
- brain's blood supply, **6:28**
- cellular constituents, **6:2**
- central and peripheral nervous systems, **6:7**
- cerebellum, **6:12**
- cerebral cortex
  - basic topography, **6:17**
  - cell types and layers, **6:16**
  - localization of function, **6:18**
- corpus callosum/cerebral commissures, **6:27**
- cortical areas
  - executive functions, **6:23**
  - higher cognitive abilities, **6:24**
  - movements, **6:19**
  - physical sensation (somatosensory areas), **6:20**

## **BRAIN, RELATIONSHIP OF STRUCTURE AND FUNCTION**

### **—Cont'd**

- cortical areas—Cont'd
  - speech and language, **6:22**
  - vision, **6:21**
- diencephalon, **6:11**
- disorders resulting from injury to the brainstem, **6:10**
- hierarchical organization of biological systems, **6:29**
- human organism and its activity are processes, **6:34**
- limbic system, **6:14**
- meninges, **6:8**
- modularity of motor functioning, **6:36**
- neural plasticity and learning, **6:5**
- neurotransmitters, **6:4**
- organism and its context, **6:33**
- reductionism and materialism, **6:32**
- somatotopic representation in the brain mapping, **6:25**
- the brainstem and the cranial nerves, **6:9**
- the synapse, **6:3**
- topography, **6:6**
- ventricular system, **6:15**

## **CONSERVATORSHIP**

- mental capacity
  - the protected person, **1:13**
- testamentary capacity
  - pending conservatorship/guardianship at time of execution, **2:6**

## **CONTESTING CAPACITY**

- Generally, **3:1-3:15**
- burden of proof, **3:2**
- general analysis, the invalidation contest, **3:1**
- presumptions, **3:3**
- selected issues, **3:8**
  - disinterment to establish testamentary capacity, **3:9**
- theory of lack of capacity or undue influence, **3:1**

**CONTESTING CAPACITY—Cont'd**

- undue influence, **3:10-3:14**
  - distinguishing mental deficiency from mental incapacity, **3:11**
  - effect of a pending guardianship, conservatorship proceeding, **3:12**
  - independent correspondence or written materials, **3:14**
  - prior dispositive provisions, **3:13**
- witnesses, **3:4-3:7**
  - expert witnesses, **3:6**
  - lay witnesses, **3:5**
  - suggestions for the organization and presentation of expert testimony
  - proponent or contestant of the transaction, **3:7**

**DEFENDING CAPACITY**

- Generally, **3:1-3:15**
- burden of proof, **3:2**
- general analysis, the invalidation contest, **3:1**
- presumptions, **3:3**
- selected issues, **3:8**
  - disinterment to establish testamentary capacity, **3:9**
- theory of lack of capacity or undue influence, **3:1**
- undue influence, **3:10-3:14**
  - distinguishing mental deficiency from mental incapacity, **3:11**
  - effect of a pending guardianship, conservatorship proceeding, **3:12**
  - independent correspondence or written materials, **3:14**
  - prior dispositive provisions, **3:13**
- witnesses, **3:4-3:7**
  - expert witnesses, **3:6**
  - lay witnesses, **3:5**
  - suggestions for the organization and presentation of expert testimony
  - proponent or contestant of the transaction, **3:7**

**DISEASES AND DISORDERS AFFECTING THE BRAIN**

- Generally, **8:1-8:15**
- alcoholism, **8:11**
- alzheimer's disease and related disorders, **8:13**
- autoimmune disease, **8:8**
- brain disorders, **8:7**

**DISEASES AND DISORDERS AFFECTING THE BRAIN**

**—Cont'd**

- brain tumors, **8:10**
- cerebrovascular disease, **8:12**
- chronic obstructive pulmonary disease, **8:8**
- delirium and potentially reversible dementias, **8:14**
- diabetes mellitus, **8:8**
- endocrine disorders, **8:8**
- epilepsy, **8:3**
- head trauma, **8:1**
- hypertension, **8:8**
- iatrogenic disorders among the elderly, **8:9**
- infectious diseases, **8:4**
- normal aging, **8:5, 8:6**
- progressive neurologic diseases
  - young and middle adulthood, **8:2**
- psychiatric disorders, **8:15**

**INCAPACITY**

- generally, **4:1-4:16**
- advance directives, **4:2-4:6**
  - durable power of attorney, **4:5**
  - living will, **4:4**
  - statutory consensus decision making, **4:6**
  - timing on execution, **4:3**
- documentation, clients capacity, **4:7-4:16**
  - generally, **4:11**
  - consider audio or videotaping the contemplated act, **4:14**
  - going slow, **4:15**
  - one-on-one conferences with the client, **4:10**
  - referral to a physician trained in assessment of mental capacity, **4:9**
  - scheduling the time of transaction/execution, **4:8**
  - the educated and informed witness, **4:13**
  - the effect of medications on capacity, **4:12**
  - undue influence, safeguards to avoid allegations, **4:16**

**LEGAL MALPRACTICE**

- mental capacity, avoiding, **1:10**

## INDEX

### **MEDICAL ASSESSMENT OF MENTAL CAPACITY**

Generally, **7:1-7:14**  
angiography, **7:12**  
areas of cognitive assessment, **7:8**  
behavioral change, **7:3**  
clinical neurologic examination, **7:5**  
cognitive and neuropsychologic examination, **7:7**  
cognitive change, **7:3**  
electroencephalography, **7:11**  
emotional change, **7:3**  
focal vs. generalized signs and symptoms, **7:2**  
lumbar puncture, **7:13**  
mental status examination, **7:6**  
metabolic brain imaging  
    PET, SPECT, and functional MRI, **7:10**  
perceptual change, **7:3**  
personality change, **7:3**  
recovery, brain damage, **7:14**  
sequelae most likely to affect legal capacity, **7:4**  
structural brain imaging: CT and MRI, **7:9**

### **MENTAL CAPACITY**

See also Medical Assessment of Mental Capacity  
avoiding legal malpractice, **1:10**  
confused client, **1:2**  
conservatorship  
    the protected person, **1:13**  
demented client, **1:2**  
incapacitated person  
    definition, **1:11**  
    protection, guardianship, **1:12**  
incapacity  
    dementia and the common medical causes, **1:17**  
incompetent person  
    definition, **1:15**  
    judicial protection, **1:16**  
lawyer's assessment dilemma, **1:3**  
lawyer's duty to assess competency, **1:4-1:8**  
    ACTEC commentaries on model rules of professional conduct, **1:8**

### **MENTAL CAPACITY—Cont'd**

See also Medical Assessment of Mental Capacity—Cont'd  
lawyer's duty to assess competency, **1:4-1:8—Cont'd**  
    ethics rules adopted by the ABA and the ACTEC, **1:5**  
    the model code of professional responsibility, **1:6**  
    the model rules of professional conduct, **1:7**  
permanent vs. transient capacity or incapacity, **1:14**  
    definition, incompetent person, **1:15**  
    pros and cons of making an assessment, **1:9**

### **TESTAMENTARY CAPACITY**

Generally, **2:2-2:8**  
conclusions, **2:8**  
distinguishing insane delusion, **2:7**  
inordinate or unusual disposition, **2:5**  
pending conservatorship/guardianship at time of execution, **2:6**  
variations in requirements, **2:4**  
will, specific vs. general competency, **2:3**

### **TREATMENT OF ORGANIC BRAIN DAMAGE**

Generally, **9:1-9:11**  
anticoagulant therapy, **9:5**  
electroconvulsive therapy (ECT), **9:9**  
iatrogenic dementia, **9:10**  
newer drugs for alzheimer's disease, **9:8**  
oxygen, **9:7**  
psychiatric care, **9:6**  
psychoactive medications, **9:2**  
thyroid hormone, **9:3**  
Vitamin B12 (cobalamine), **9:4**

### **UNDUE INFLUENCE**

Generally, **3:10-3:14**  
distinguishing mental deficiency from mental incapacity, **3:11**  
effect of a pending guardianship, conservatorship proceeding, **3:12**  
independent correspondence or written materials, **3:14**  
prior dispositive provisions, **3:13**