



4	Capacity and Competency	
	■ May be issues in many different court settings	
	■ Criminal	
	■ Civil	
	► Probate	
	May raise different issues related to court's function	
	 Criminal—serve as a witness, participate in one's defense, legal defense of insanity 	
	 Civil—file a legal action oneself, serve as a witness, execute certain documents (wills, contracts, POAs) 	
	■ Probate—needs protection, extent of retained rights	
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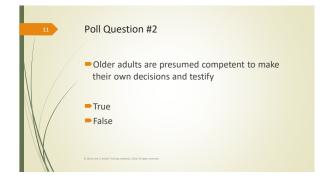
5	Competency and Capacity
	Capacity is a major component of neglect, financial abuse, and sexual abuse cases Critical to evaluation of many APS cases
	■ Defines prosecutor's case theory
	Victim had capacity and did not consentVictim lacked capacity
	Capacity unclear but defendant used deception, duress, or undue influence
1	■ Defense of consent hinges on V's capacity 4 Ones of Consell Transportation, 2023 Artifacts mercal.

6	Competency
	A court finding that a person has the ability to do or not do something - <i>legal determination</i> Ability of defendant to stand trial
	 Understand nature of charges and assist in defense Ability to understand and waive legal rights (e.g., Miranda warning; right to counsel; enter a guilty plea) Ability to testify as a witness
	Distinguish truth from fantasy Able to communicate information so as to be understood
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7 Two Aspects of Capacity	
Two Aspects of Capacity	
■ The ability to do = Executive Capacity	
■ The ability to decide = Decisional Capacity	
Referral for capacity evaluation must specify the specific actions or decisions to be assessed. (Falk, E.	
& Hoffman, N. (2014) "The Role of Capacity Assessments in Elder Abuse Investigations and Guardianship," Clinics in Geriatric	
Medicine, 30: 851-868)	
8 Case example	
 Mr. Jones is an 84-year-old gentleman being assessed for capacity related to a guardianship petition. He currently manages all IADL's 	
without assistance, believes he is doing well in this regard He has had multiple hospitalizations in recent months due to poor	
management of diabetes that have resulted in life threatening conditions (coma, head trauma, mainutrition)	
 Question #1: Does he retain the decisional capacity to make medical decisions? (Decide) 	
 Question #2: Does he retain the executive capacity to manage his daily activities including management of his medical conditions? (Do) 	
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9	Conscitu
	Capacity
	Focuses on person's abilities to do things and decide things handle finances (do)
	make medical decisions (decide)
	 take medications reliably (do) give informed consent (decide)
	→ drive a car (do)
	decline social services (decide)
	■ May have capacity to do/decide one thing, but not another
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Competency
Competence to testify requires a minimal ability to observe, recollect and communicate information and understand the duty to tell the truth
Determination of competency in many cases likely to require an expert's assessment of capacity
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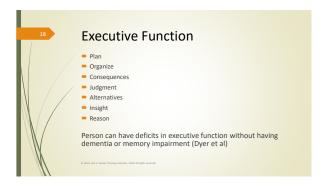
13	Language Intersection of Law & Medicine
	Competency vs Capacity Consent vs Decisional Capacity
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14	How Much is Enough Capacity?
	On a continuum vs. dichotomous
	Degree of complexity of decision/task
	Consequences to individual (risk)
	 Diagnosis (dementia, intellectual disability, psychosis) does not indicate/prove incapacity
	Capacity must be individually assessed
\W	May fluctuate (time of day, meds, situation, fatigue, pain)
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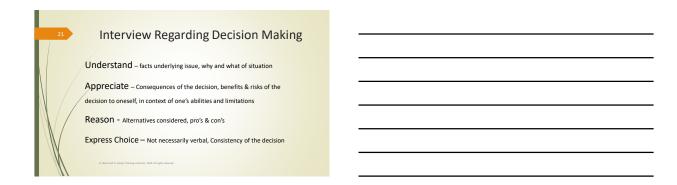


16	Components of Capacity Assessment
	Cognitive Functioning Psychiatric Symptoms Values, Preferences, Experience, Literacy, Education, Culture Interview regarding decision making Effort to enhance capacity

17	Case Components
	Capacity Assessment of Mr. Jones pertaining to guardianship and elder abuse criminal case
	 Cognitive assessment reveals mild to moderate dementia, likely 2nd to poorly controlled diabetes
	No significant psych symptoms but lack of insight into his care needs
	 Values autonomy and living in own home, has managed finances and other IADL's independently throughout his life, values relationships with neighbors
\\\/	Rejects offers for in home care, assistance with finances, other services
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Steps Taken to Enhance Capacity? Outcomes? Hired/family caregiver: affordable, accepted Discontinued driving Home delivered meals Bookkeeper/private fiduciary Blister packed medications Housekeeping services Adult Daycare Program	
Poll Question #3 Decision Making Capacity does <u>not</u> include: Understand the decision to be made Describe the pros and cons of various options	
 Make a decision that does not appear to be in their best interest Understand the benefits and risks of a decision 	
Express a choice A Class and C market Transag metalation, 2003 Ad rights mounted.	



22	Case Example Interview for Decisional Capacity
	Q: Tell me about the medical conditions you have and what you need to do to manage them. A: I have diabetes and need to take my medications and be careful about what I eat Q: What would happen if you didn't do this? A: I could get really sick and maybe die Q: Are there any reasons not to take the medication? Or foods that you shouldn't eat but eat any way?
	A: I ALWAYS take my medication, it's important and I make sure I do every day. Diet is harder because I really like ice cream and fast food so I only eat those once in a while for special occasions. It's not easy but I think I do a pretty good job.
	Q: What happened over the past few months that landed you in the hospital several times?
	A: I was only in the hospital one time and that was because a tripped and fell, nothing to do with diabetes.
///	Q: Would you show me how you take your medications?
1	A:_Sure, watch this 100 At rights reserved.

Conceptual Framework for Capacity Assessment



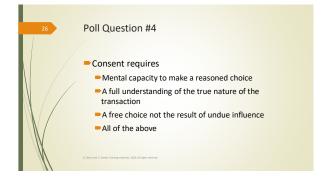
- Values and Preferences
- Risk Conside
- Steps to Enhance Capacity

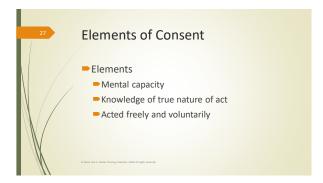
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Diagnosis

Capacity Capacity can fluctuate ■ Medical condition, illness Medication ■Time of day Events in a person's life, e.g., grief, loneliness Experience and education may be relevant Literacy and education may relate to ability to understand complex financial transactions Language capacity may be relevant to ability to understand







28	Undue Influence
	■ Psychological process, not one event
	Based on the nature of the relationship between influencer and victim
	 Most often seen in financial exploitation cases but can also be present in sexual abuse, emotional/psychological abuse and neglect
	Victim may be susceptible to undue influence due to cognitive impairment, grief, illness, loneliness, emotional dependence, inexperience handling finances, fear etc.
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Undue Influence

"Soundness of mind and body does not imply immunity from undue influence. It may require greater ingenuity to unduly influence a person of sound mind and body, and more evidence may be required to show that such a person was overcome than in the case of one weak of body and mind. But history and experience teach that minds of strong men and women have been overborne, and they have been by a master mind persuaded to consent to what in their sober and normal moments, and free from undue influence, they would not have done."

Estate of Olson, 19 Cal. App. 379, 386 (1912)

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Essential Elements of Undue Influence

- · Victim characteristics leading to vulnerability
- Influencer's Power: must be in a position of power or authority. Examine the dynamic interplay between the victim and the perpetrator
- Improper actions: affirmative steps/actions to persuade
- Unfair, unnatural or unethical transactions or outcomes

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