

The Legal Capacity Questionnaire

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Part I General Information

Read the Guidelines for Administration and Use, set out below in Part V before administering the questionnaire. The answers to questions in Part I provide useful background information about the client.

Person Interviewed: _____ Date: _____

Date and Time of Interview: _____

Administrator: _____

Location: _____

Others Present: _____

Notes: _____

Has the person interviewed been diagnosed with any major illness? Yes ___ No ___

If yes, describe condition(s): _____

Is person under the influence of medication at the time of the interview? Yes ___ No ___

If yes, what kind(s)? _____

Awareness: Estimate the subject's awareness level according to the descriptions below.

Alert ___ Drowsy ___ Stuporous ___ Comatose ___

Residence: Identify this person's living situation by circling the appropriate number.

- 1 personal residence
- 2 personal residence with assistance
- 3 apartment/condominium/townhouse
- 4 apartment/condominium/townhouse with assistance
- 5 retirement facility
- 6 retirement facility with assistance
- 7 skilled nursing facility
- 8 other

Part II Client Passage

Before administering the questionnaire, the following items should be read to the client, or the client can read them to himself or herself. This information is referred to as the "client passage."

1. You have the right to make a will or establish a trust that leaves your assets to anyone you wish after your death. You have the right to disinherit any of your family members except your current spouse, unless you and your spouse have agreed otherwise.
2. A will is a document that directs the person administering your estate as to how and when your property shall be distributed. If you do not have a will, the state you reside in provides an estate plan for you. Dying without having written a will is called dying "intestate." The Internal Revenue Service has a right to collect an estate tax on your estate if it is sufficiently large.
3. According to the terms of your will, you may distribute (1) personal property, including household effects, vehicles, stocks and bonds, and other personal items; and (2) real property- that is, land and the buildings on it.
4. If you die intestate, your assets will generally be distributed to your family. This type of estate plan will likely require a proceeding in the probate court. Even with a will your estate may have to be "probated" through a court.
5. The probate process does not involve those non-probate assets, such as life insurance proceeds or property titled in joint tenancy, that pass directly to third parties. Life insurance is distributed directly to your choice of beneficiary.
6. If any persons have a claim against your assets upon your death, they must file the claim in your probate estate proceeding. Their claim can be paid from your probate estate if it is valid.
7. You have the right to make a power of attorney. This is a legal document that enables another person to act or make decisions for you at a time when you cannot do this yourself.

Part III Questionnaire
Natural Objects of Bounty
Confirmed
 Score

1. Are you presently married? _____(2) If yes, what is his/her name? _____(2) If no, were you ever married? _____(1) If so, what is your previous spouse's name? _____(2)
 (Maximum score is 4 points. Score 2 points to question "Were you ever married?" above if no spouse exists and answer is correct.) Question Total: _____.

2. Do you have any children? _____(2) If yes, how many? _____ What are their names? _____(2) Where do they reside? _____(2) Do you have any living siblings? _____(2) Question Total: _____.

Or

Do you have any living relatives? _____(2) What are their names? _____(2) Where do they reside? _____(2) (Maximum score is 6 points.) Question Total: _____.

Kind and Character of Property
Choose the most appropriate answer.

3. If you wanted to deposit money in an account or take out a loan, you would go to the:

- Internal Revenue Service
 - post office
 - bank
 - department store
- Answer: _____

4. Which of the following would not be considered property?

- car
 - clothes
 - books
 - friendship
- Answer: _____

5. If you deposit your savings into a bank account, the bank will pay you additional money. This additional money is called:

- the lottery jackpot
 - a stock
 - interest
 - your debt
- Answer: _____

Listen to the following scenario and then answer the questions.

Suppose your hobby is coin collecting. In your collection you have three very old and rare \$5 gold coins. Last week a coin dealer, Mr. A, offered you \$20 for each coin. Today Mr. B offered you \$45 for all three coins in your collection.

6. Who will give you more money for your 3 coins? Mr. A _____ or Mr. B _____
(Score 2 points if correctly answered.)

7. Suppose now that you sold two of your coins to Mr. B for his \$45. How much more money did you make by selling those two coins to Mr. B instead of to Mr. A? \$ _____

Answer true or false.

8. T F Real estate is also known as land.

9. T F Personal property includes items such as clothes and vehicles, but not a house.

10. T F The proceeds of a life insurance policy, payable after death, should be sent to the Internal Revenue Service.

11. T F The place where you live and sleep is called church.

Nature and Effect of Estate Planning

Suppose that you have signed two legal documents: (1) a power of attorney, which names your close friend as your agent; (2) a will. Today you received a Social Security check in the mail for \$400. However, because of your illness, you cannot endorse the check or go to the bank, so you ask your friend to go for you.

12. Which document should your friend take to the bank?

13. If your friend deposits \$335 in the bank, how much cash is left over from the check? \$ _____

Choose the most appropriate answer.

14. A will is a document that:

- says if you like your relatives
- directs how your assets will be distributed after your death
- tells how much you owe in taxes
- says you promise to pay back a loan

Answer: _____

15. Which of the following could not be distributed in a will?

- religious beliefs
- condominium
- car
- stocks and bonds
- none of these

Answer: _____

Answer true or false.

16. T F If you die without a will, any vehicles you may own will be automatically given to the United States Postal Service.

17. T F It is legally permissible for you to disinherit your children from your will.

18. T F If you legally donate a gift to charity, you cannot get it back if you change your mind.

19. T F If you have a savings account at the bank when you die, the bank gets to keep the money in the account.

20. T F Before you die, you can choose how and to whom your property will be distributed after your death.

21. T F If you die without a will, generally your family will receive your property.

Total Points Scored _____

Part IV Answers and Scoring

The responses to the Natural Objects of Bounty section (questions 1-2) must be independently verified as correct. These answers can be verified through family members, acquaintances, or advisers of the individual tested.

3. To deposit money in an account or to take out a loan, you would go to the bank.

4. Friendship would not be considered property.

5. This additional money is called interest.

6. Mr. A would give you \$60 for 3 coins, \$15 more than Mr. B.

7. You made \$5 more by selling to Mr. B.
8. True
9. True
10. False
11. False
12. Your friend should take the power of attorney to the bank.
13. There is \$65 left over.
14. A will is a document that directs how your assets will be distributed after your death.
15. Religious beliefs could not be distributed in your will.
16. False
17. True
18. True
19. False
20. True
21. True

Scoring

Answers to questions 3 through 5 and 7 through 21 earn 1 point if correct, 0 if incorrect. Question 6 earns 2 points if correct, 0 if incorrect. Questions 1 and 2 have multiple parts, with maximum scores of 4 and 6, respectively; numbers appearing in parentheses indicate maximum score earned for correct answers to those parts.

Part V Guidelines for Administration and Use

1. After allowing the client to read the client passage, read the questions out loud to the client, speaking clearly and slowly, in a steady voice without inflection.
2. Read the instruction to each section where applicable and explain the concept, if necessary.
3. When the client must choose the correct answer, use language such as the following: "I'll read a statement, with word choices at the end, and I want you to choose from the word choices I give."
4. When the question involves a scenario, the client sometimes may respond that the scenario is not true. Explain to the client that this is a "pretend" or imaginary situation.
5. Encourage the client to listen to the entire question and answer to the best of his or her ability.

6. Repeat the question upon request.
7. Don't explain the content of the question or offer any analysis of the scenarios.
8. Provide only neutral responses to the client's questions until the client has answered a questionnaire question.
9. Note the client's abilities and attempts to answer.
10. Encourage the client to try to answer a question even if he or she appears unable to answer.
11. Give the client time to answer but continue on to the next question when:
 - a. The client has offered an answer (correct or incorrect).
 - b. The client firmly responds "I do not know."
 - c. It is clear that no answer is forthcoming.
12. The administrator should take notes on the questionnaire about any unusual situation(s), difficulties in answering, or the number of times a question had to be repeated. (Such details, while not calculated into the score, may be helpful in determining capacity, especially if the person is considered "borderline" or in need of further examination.)
13. If after answering a question the person asks if the answer is correct, use discretion; it may be wise to stop and explain the answer. Usually, however, answers should be discussed after the test is finished.
14. Much insight can be gained from the questioning process, especially into the client's attention span, working memory ability, language skills, and possible dementia.
15. You may be surprised at some of the answers given to the questions. As important as an incorrect answer a person gives is why the question was missed. Impulsive behavior and poor memory seem to contribute considerably to impaired scores. If a client indicates an ability to learn and discuss the concepts presented, testamentary capacity may be demonstrated. Notes documenting this occurrence should be taken.