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Mental Capacity Law and Practice (second edition)

Caroline Bielanska review's Mental Capacity Law and Practice
(second edition), by District Judge Gordon Ashton OBE.

Jordans is a leading legal publisher on mental capacity, with eight titles covering this growing area. However, before buying *Mental Capacity Law and Practice*, check your shelves; this book is largely an extract from the more comprehensive *Court of Protection Practice 2012*, which comes in hardback and costs GBP185. This book, by comparison, is more reasonably priced: the paperback costs GBP50 and the electronic version is GBP45 (STEP members can get a discount on this – see sidebar for details).

District Judge Gordon Ashton OBE, designated Court of Protection Judge, is both the General Editor and a contributor. The other contributors are distinguished mental capacity practitioners with experience of policy, health and welfare, and financial decision-making. Their depth and breath of knowledge is reflected throughout the book.

This new edition builds on *Mental Capacity: The New Law*, which was published in response to the *Mental Capacity Act 2005*. The title has been revised to cover the latest legislation, procedure and case law, and includes, in full, the *Mental Capacity Act 2005*, as amended by the introduction of the deprivation of liberty safeguards, and the supplementary Code of Practice that underpins the regime.

It contains a substantial chapter on the background to the legislation, which should be of particular interest to those who are new to this area of law or who (like me) have forgotten aspects of how we got to the current position, and how much has been achieved. It pulls together policy considerations behind the definitions of incapacity and best interests, and the legal debate on terminology used. This is useful, because if there is doubt as to the meaning of the legislation, policy considerations can help practitioners understand the desired outcome.

The chapter on lasting powers of attorney does not try to give a gilded view of the Act, but addresses its shortcomings, in particular with aspects of the intended built-in safeguards, with problems encountered in practice. There is good coverage of whether the attorney can maintain others under a property and financial affairs power and the extent of the limited power to make gifts under s12, with good reference to the growing case law.

Court practice is interestingly covered, addressing the wide range of cases the Court deals with, including residential care, contact disputes, adult protection, adult education and sexual relationships. Examples are provided of where civil and family cases have been transferred to a local judge who is also nominated to hear Court of Protection cases. It is encouraging evidence that, outside the Court of Protection, capacity as a distinct point is on the radar of the judiciary. There are also situations where it is helpful for a judge to sit in a dual capacity as a Court of Protection nominated judge and as a civil or family judge, for example where parents divorce and there is a contact dispute over an adult child with learning disabilities. The Court can deal with the contact dispute under the *Mental Capacity Act 2005*, and deal with the divorce proceedings at the same time. It also illustrates the growth of work in this area and how capacity can affect other fields of law.

The chapters on health and welfare decisions and the deprivation of liberty regime provide an overview of the law, and set the context in which these matters can arise. They are useful to

practitioners who mainly deal with property and affairs cases in the Court of Protection, but touch on health and welfare matters from time to time.

There is a new chapter dealing with the re-emergence of the inherent jurisdiction of the High Court, the crossover with administrative law and breaches of the European Convention on Human Rights. This is relevant in health and welfare cases, but is merely a snapshot of the current situation, which is likely to continue to evolve.

This book is fundamentally about law and practice rather than providing detail on how to make an application, but it nevertheless provides a good overview of this growing area of law. All private client lawyers need at least one book on the Act, and this is a good all-rounder.

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