

THE EMOTIONAL LANDSCAPE OF MONEY MANAGEMENT AND COGNITIVE DECLINE: A THERAPEUTIC JURISPRUDENCE PERSPECTIVE

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ABSTRACT

The ability to manage one's finances is fundamental to independent living, personal autonomy, and overall well-being, particularly for older adults. However, cognitive decline poses a significant threat to this capacity, with profound emotional and psychosocial ramifications for older adults, their families, and the professionals who support them. While legal frameworks like the Mental Capacity Act 2005 (MCA) in England and Wales aim to address these challenges, this article argues that a therapeutic jurisprudence (TJ) perspective offers a crucial lens for understanding and improving outcomes. Drawing upon existing literature in gerontology, neuropsychology, law, and therapeutic jurisprudence, this article considers the complex interplay between cognitive decline, the legal concept of mental capacity in financial decision-making, and emotional well-being. It critiques the potential limitations of purely cognitive or legalistic approaches and advocates for the integration of TJ principles – focusing on psychological well-being, recognising the proactive role of legal actors, and adopting a systemic perspective – to create more humane, effective, and empowering support systems for older adults facing financial vulnerability due to cognitive decline.

Keywords: Cognitive Decline, Financial Capacity, Older Adults, Mental Capacity Act 2005, Therapeutic Jurisprudence, Emotions.

I. INTRODUCTION

For older adults, the autonomous management of financial affairs is crucial for independent living, personal autonomy, and overall well-being. This encompasses a wide array of financial activities, from routine tasks to complex planning, and is deeply entwined with an individual's sense of control, self-worth, and identity.¹ Preserving financial independence empowers older adults to maintain dignity, exercise choices, and actively participate in their communities, fostering social inclusion and upholding personal integrity.²

However, ageing often brings a gradual attenuation of cognitive functions, impacting crucial domains for effective financial management, including memory, sustained attention, executive functions (like planning and problem-solving), and information

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¹ Mental Capacity Act 2005; OECD, *Financial Literacy of Older Adults* (OECD 2023). Available at: https://www.oecd.org/en/publications/oecd-infe-2023-international-survey-of-adult-financial-literacy_56003a32-en.html. Accessed 12th May 2025. See also, Lusardi, A. and Mitchell, O.S., 'Financial literacy around the world: an overview' (2011) 10(4) *Journal of Pension Economics & Finance* 497-508; Rowe, J.W. and Kahn, R.L., 'Successful ageing' (1997) 37(4) *The Gerontologist* 433-440; Rowland, D.T., 'Successful Ageing' in *Population Ageing* (Springer 2012).

² Dworkin, R., 'Autonomy and the demented self' (1986) *The Milbank Quarterly* 4-16.



processing speed.³ For a significant proportion of older adults, this decline may develop into mild cognitive impairment or various forms of dementia, progressively eroding their capacity to manage financial affairs effectively and autonomously.⁴

As an individual experiences a decline in their financial mental capacity, they often experience a series of negative consequences that erode both their functional autonomy and their legal agency. Specifically, while the process begins with a diminishing cognitive ability to manage funds, the lived experience quickly translates into a loss of "legal capacity" as defined under Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD).⁵ As many jurisdictions still lack the robust supported decision-making regimes that the CRPD arguably mandates, this shift in mental acuity frequently triggers a formal or informal stripping of the individual's right to make legally binding decisions. This intersection of cognitive struggle and legal disenfranchisement increases susceptibility to financial wrongdoing, including fraudulent schemes and scams while gradually hindering the ability to meet basic daily needs. The ultimate result is a substantial loss of control over personal financial resources,⁶ a situation that not only harms the individual but also places significant emotional and practical burdens on family caregivers and social service providers who must navigate this increasingly complex landscape.⁷

The escalating prevalence of cognitive decline in ageing societies globally underscores the growing urgency of understanding and effectively addressing the many challenges

³ Parasuraman, R. (ed.), *The Attentive Brain* (MIT Press 2000); Parasuraman, R. and Haxby, J.V., 'Attention and brain function in Alzheimer's disease: A review' (1993) 7(3) *Neuropsychology* 242; Dempster, F.N., 'The rise and fall of the inhibitory mechanism: Toward a unified theory of cognitive development and ageing' (1992) 12(1) *Developmental Review* 45-75; Squire, L.R., 'Memory and brain systems: 1969-2009' (2009) 29(41) *Journal of Neuroscience* 12711-12716. Salthouse, T.A., 'What and when of cognitive ageing' (2004) 13(4) *Current Directions in Psychological Science* 140-144.

⁴ Petersen, R.C., 'Mild cognitive impairment' (2016) 22(2) *CONTINUUM: Lifelong Learning in Neurology* 404-418. Prince, M., Wimo, A., Guerchet, M., Ali, G.C., Wu, Y.T., and Prina, M., *World Alzheimer Report 2015. The Global Impact of Dementia: An analysis of prevalence, incidence, cost and trends* (Alzheimer's Disease International 2015).

⁵ Article 12 of the CRPD establishes that individuals with disabilities possess legal capacity on an equal basis with all other citizens across all spheres of life. This principle comprises two fundamental elements: legal standing, which is the recognition of the person as a holder of rights, and legal agency, which is the authority to exercise those rights and enter legally binding transactions.

⁶ Fealy, G., Donnelly, N., Bergin, A., Treacy, M.P., and Phelan, A., *Financial Abuse of Older People: A Review* (NCPOP, University College Dublin 2012); Han, S.D., Boyle, P.A., James, B.D., Yu, L., and Bennett, D.A., 'Mild cognitive impairment and susceptibility to scams in old age' (2015) 49(3) *Journal of Alzheimer's Disease* 845-851. See also, Weissberger, G.H., Han, S.D., Yu, L., Barnes, L.L., Bennett, D.A., and Boyle, P.A., 'Financial and health literacy discrepancies with cognition in older adults' (2019) 33(7) *Neuropsychology* 975. See also, Pinsker, D.M., Pachana, N.A., Wilson, J., Tilse, C., and Byrne, G.J., 'Financial capacity in older adults: A review of clinical assessment approaches and considerations' (2010) 33(4) *Clinical Gerontologist* 332-346. Spreng, R.N., Karlawish, J., and Marson, D.C., 'Cognitive, social, and neural determinants of diminished decision-making and financial exploitation risk in ageing and dementia: A review and new model' (2016) 28(4-5) *Journal of Elder Abuse & Neglect* 320-344.

⁷ Wittenberg, R., Hu, B., Barraza-Araiza, L., and Rehill, A., *Projections of older people living with dementia and costs of dementia care in the United Kingdom, 2019-2040* (Care Policy and Evaluation Centre, London School of Economics and Political Science 2019); Wittenberg, R., Hu, B., Jagger, C., Kingston, A., Knapp, M., Comas-Herrera, A., et al., 'Projections of care for older people with dementia in England: 2015 to 2040' (2020) 49(2) *Age and Ageing* 264-269.

associated with financial management in this context.⁸ The urgency of this challenge is further emphasised by global health statistics: the World Health Organization (WHO) reported that in 2021, an estimated 57 million people were living with dementia worldwide, with nearly 10 million new cases annually. These figures illustrate the profound human cost and growing societal burden, making the effective and humane application of legal principles an increasingly critical imperative.⁹ Ensuring the financial security and overall well-being of older adults experiencing cognitive decline necessitates a nuanced and holistic understanding of the intricate interplay between cognitive impairment, financial decision-making, and the significant emotional and psychosocial ramifications for all involved.¹⁰ The already complex area of mental capacity assessment becomes even more challenging due to a lack of shared understanding of what 'emotion' means, how it differs from 'feeling' and 'affect', and consequently, how these emotional aspects should be considered when judging someone's ability to make decisions.¹¹ This lack of clarity particularly impacts how we apply the legal test for mental capacity to manage finances, as financial decisions are frequently driven by complex emotional motivations, such as the desire to maintain social bonds or a fear of isolation, which may be overlooked by assessments focusing solely on cognitive data.

This article primarily focuses on the legal framework and practical implications within England and Wales, particularly the Mental Capacity Act 2005 (MCA). While rooted in this context, the core challenges highlighted in this article are likely to resonate across other high-income countries facing similar demographic shifts and legal considerations. Legal and policy frameworks need to adapt to protect this vulnerable group, balancing autonomy with safeguarding financial interests. This includes developing clear legal routes for supported decision-making, better use of the MCA and Court of Protection, and implementing stronger legal and practical measures to prevent financial abuse. A deeper, person-centred understanding of the human experience within these frameworks is also crucial, which is where Therapeutic Jurisprudence (TJ) offers a valuable, complementary lens. TJ systematically examines

⁸ World Health Organization, *Dementia: a public health priority* (2012); Oeppen, J. and Vaupel, J.W., 'Broken limits to life expectancy' (2002) 296(5570) *Science* 1029-1031; Brookmeyer, R., Johnson, E., Ziegler-Graham, K., and Arrighi, H.M., 'Forecasting the global burden of Alzheimer's disease' (2007) 3(3) *Alzheimer's & Dementia* 186-191; Prince, M., Wimo, A., Guerchet, M., Ali, G.C., Wu, Y.T., and Prina, M., *World Alzheimer Report 2015. The Global Impact of Dementia: An analysis of prevalence, incidence, cost and trends* (Alzheimer's Disease International 2015); Callahan, C., Hendrie, H., and Tierney, W., 'Documentation and evaluation of cognitive impairment in elderly primary care patients' (1995) 122(6) *Ann Intern Med* 422-429.

⁹ World Health Organization. 'WHO Fact Sheet on Dementia.' Available at: <https://www.who.int/en/news-room/fact-sheets/detail/dementia>. Accessed 12th May 2025.

¹⁰ Katz, S. and Leibing, A., 'Lost in time like tears in rain': *Critical perspectives on personhood and dementia* in *Critical dementia studies* (Routledge 2023) 57-71; Lichtenberg, P.A., Qualls, S.H., and Smyer, M.A., *Competency and decision-making capacity: Negotiating health and financial decision making* (American Psychological Association 2015).

¹¹ Stein, N.L., Hernandez, M.W., and Trabasso, T., 'Advances in modeling emotion and thought: The importance of developmental online, and multilevel analyses' in M. Lewis, J.M. Haviland-Jones, and L.F. Barrett (eds), *Handbook of Emotions* (3rd edn, Guilford Press 2008). See also, See Tim Dalgleish and Mick Power (eds), *Handbook of Cognition and Emotion* (John Wiley & Sons 1999); Martha Nussbaum, *Upheavals of Thought: The Intelligence of Emotions* (CUP 2001); Robert Solomon, *Not Passion's Slave: Emotions and Choice* (OUP 2006).

the profound psychological and emotional impacts that legal rules, procedures, and the roles of legal actors have on individuals, positing that the law is not merely a neutral arbiter but an active agent that can produce either therapeutic (positive) or anti-therapeutic (negative) consequences for well-being.¹²

This article seeks to examine how older adults, their families, and social care professionals experience the complex challenges of managing money in the context of cognitive decline, including specific difficulties, emotional responses, and coping mechanisms.¹³ Furthermore, it will explore how the MCA effectively addresses these complex challenges, including its strengths, limitations, and areas for improvement in safeguarding the financial well-being of individuals with diminished legal capacity. Therapeutic jurisprudence (TJ) will be explored as a lens to see how psychological harm can be minimised and decision-making empowered, fostering a more supportive legal framework.

II. TRUST, RELATIONSHIPS, AND FINANCIAL INCAPACITY

The conceptual underpinning of trust and relationships in the context of emotions and financial incapacity reveals a critical interplay between affective bonds, legal frameworks, and the practicalities of managing money. Trust, at its core, represents a reliance on the integrity and goodwill of another, an emotional investment that becomes particularly salient when an individual's cognitive abilities to handle finances diminish. Strong relationships, characterised by shared history, mutual understanding, and emotional closeness, provide a fertile ground for this trust to flourish.

However, the legal framework surrounding capacity seeks to formalise and, in some ways, regulate these trust-based relationships. The MCA, by requiring decision-makers to consider the person's past and present wishes and feelings¹⁴ and to consult with relevant others,¹⁵ implicitly acknowledges how emotional bonds often inform a person's preferences and best interests.

Conversely, the absence of such established trust, as seen in the apprehension towards unknown care professionals, generates emotional friction and highlights the inherent vulnerability felt when financial matters are entrusted to strangers. This is particularly relevant in situations where a person lacks legal capacity, and decisions are made by a court-appointed deputy or an attorney acting under a Lasting Power of Attorney (LPA).¹⁶ The MCA 2005 provides the legal authority for these arrangements, but the emotional reality is that the lack of pre-existing trust can make these legally sanctioned arrangements stressful.

¹² Wexler, D.B., 'Therapeutic jurisprudence: The law as a therapeutic agent' (1990) 3(2) *New York Law School Journal of Human Rights* 203-217; Winick, B.J., 'The jurisprudence of therapeutic jurisprudence' (1997) 3(1) *Psychology, Public Policy, and Law* 184-219.

¹³ Pearlin, L.I., Mullan, J.T., Semple, S.J., and Skaff, M.M., 'Caregiving and the stress process: An overview of concepts and their measures' (1990) 30(5) *The Gerontologist* 583-594.

¹⁴ MCA s 4(6).

¹⁵ MCA s 4(7).

¹⁶ MCA s 9.



Cognitive decline can also change the shape of a relationship over time. For example, a daughter initially appointed as her mother's attorney under an LPA may encounter increasing difficulties as her mother's cognitive impairment progresses, leading to suspicion and resistance. This highlights a potential tension between an LPA's legal validity and the donor's fluctuating emotional state. The MCA 2005 allows for the creation of LPAs, enabling individuals to appoint trusted persons to make financial decisions on their behalf should they lose capacity.¹⁷ However, the burden of responsibility on family members involved in managing the finances of someone who lacks capacity can be significant. This can include the stress of making major decisions, such as selling a house, and the emotional strain of dealing with a person's attachment to their possessions. It can also involve navigating complex interactions with financial organisations or social care providers on behalf of someone who can no longer speak for themselves.¹⁸ While the MCA recognises that capacity can be variable, attorneys must act in the donor's best interests. For some family members, this may cause conflict when the relative with cognitive decline is resistant. Cognitive decline can cause donors to resist prior agreements, creating complex legal and ethical dilemmas. These situations challenge the limits of substituted decision-making, the feasibility of supported decision-making in the face of disagreement, and the crucial balance between individual autonomy and necessary protection.¹⁹

The management of finances often extends beyond mere practicalities; it is deeply intertwined with an individual's sense of self-worth and identity. The ability to handle one's own money can represent independence and control.²⁰ Even when an individual cannot demonstrably manage their finances, there often remains a powerful emotional need to maintain a sense of financial agency. This need can significantly influence how capacity is assessed. The inherent dignity associated with financial control may lead professionals to approach assessments of financial capacity with caution; 'taking away' this control can have profound psychological consequences. While the MCA 2005 focuses on a functional test of legal capacity,²¹ its emphasis on the person's best interests²² and considering their wishes and feelings²³ indirectly acknowledges these emotional factors.

A reluctance to discuss finances can also arise from a fear of being accused of wrongdoing or a more general discomfort with financial matters. Some professionals may feel ill-equipped to address financial issues, despite being comfortable discussing other sensitive topics.²⁴ This highlights the need for training and guidance to equip

¹⁷ MCA, sch 1.

¹⁸ Bisdee, D., Price, D., and Daly, T., 'Coping with Age-related Threats to Role Identity: Older Couples and the Management of Household Money' (2013) 23(6) *Journal of Community & Applied Social Psychology* 505–518.

¹⁹ Donnelly, M., 'Best Interests in the Mental Capacity Act: Time to Say Goodbye?' (2016) 24(3) *Medical Law Review* 318–332.

²⁰ Lea, S.E. and Webley, P., 'Money as tool, money as drug: The biological psychology of a strong incentive' (2006) 29(2) *Behavioral and Brain Sciences* 161–176.

²¹ MCA ss 2 and 3.

²² MCA s 4. See also, *A Local Authority v JB* [2021] UKSC 5.

²³ MCA s 4(6).

²⁴ Hall, A., Straub, C., Price, D., and Glover-Thomas, N., *Managing money in later life: mental capacity assessment and support: Final report* (University of Manchester 2023).

individuals and professionals with the confidence and skills to navigate these conversations. The reluctance to provide practical, hands-on support, such as assisting with banking, often stems from a concern about potential accusations of financial abuse or mismanagement. This is particularly salient when dealing with vulnerable individuals, and professionals rightly emphasise the importance of transparency and accountability.

These emotional and practical challenges underscore the need for a holistic approach to financial incapacity that acknowledges the complex interplay of trust, relationships, emotions, and legal frameworks. Ultimately, the emotional fabric of trust and relationships acts as a crucial mediator in navigating the complexities of financial incapacity. It influences both the willingness to seek and accept help, and the emotional well-being of all parties involved.

III. THEORETICAL FRAMEWORK: UNPACKING THE INTERPLAY OF COGNITIVE DECLINE, FINANCIAL CAPACITY, AND THERAPEUTIC JURISPRUDENCE

A. Cognitive Decline and Financial Capacity

As a critical determinant of personal autonomy and overall well-being, financial capacity involves a complex and dynamic interplay of various cognitive abilities that collectively empower individuals to effectively and autonomously manage their financial affairs.²⁵ Financial capacity requires several intricate cognitive functions.²⁶ Equally, foundational numeracy skills, encompassing the ability to perform basic calculations, accurately interpret numerical data, and understand fundamental mathematical relationships, are also essential for a wide array of tasks, ranging from basic budgeting and timely bill payment to the comprehension of interest rates, financial statements, and investment returns.²⁷ Financial capacity relies on the ability to comprehend and reason with often abstract and intricate financial concepts, to accurately discern the potential implications and foreseeable consequences of various financial choices, and to consistently exercise sound judgment in monetary matters, thereby mitigating the risk of adverse financial outcomes.²⁸ Crucially, however, the threshold for financial capacity is not synonymous with the achievement of an "optimal" or expert-level financial decision. It does not require an individual to possess the technical mastery of a professional, but rather the functional ability to comprehend the fundamental nature, purpose, and core consequences of a specific transaction. Consequently, an individual may retain capacity even when making choices based on factors like brand trust or convenience, provided they grasp the essential weight and

²⁵ Townsend, P., *Poverty in the United Kingdom: a survey of household resources and standards of living* (University of California Press 1979).

²⁶ Squire, L.R., 'Memory and brain systems: 1969–2009' (2009) 29(41) *Journal of Neuroscience* 12711–12716; Parasuraman, R. and Haxby, J.V., 'Attention and brain function in Alzheimer's disease: A review' (1993) 7(3) *Neuropsychology* 242; Dempster, F.N., 'The rise and fall of the inhibitory mechanism: Toward a unified theory of cognitive development and ageing' (1992) 12(1) *Developmental Review* 45–75.

²⁷ Best, R., Carman, K.G., Parker, A.M., and Peters, E., 'Age declines in numeracy: An analysis of longitudinal data' (2022) 37(3) *Psychology and Ageing* 298.

²⁸ World Health Organization, *International Statistical Classification of Diseases and Related Health Problems* (11th edn, 2019).

effect of the commitment. These diverse cognitive abilities, operating in a coordinated and integrated manner, collectively empower individuals to undertake essential financial tasks such as managing bank accounts effectively and comprehending diverse financial products (e.g., mortgages, insurance policies, and various investment vehicles), making informed investment decisions that align with their personal financial goals and individual risk tolerance, and, significantly, safeguarding themselves from the ever-present and increasingly sophisticated threat of financial exploitation, a phenomenon of growing legal and societal concern.²⁹

The spectrum of cognitive decline, encompassing the normative, age-related changes in cognitive function that occur as part of the natural ageing process, as well as the more pronounced and clinically significant impairments that are characteristic of mild cognitive impairment³⁰ and various forms of dementia³¹ can progressively and insidiously erode these vital cognitive functions, negatively impacting an individual's financial capacity.³² The ways in which cognitive decline manifests and progresses vary considerably.³³ This variation depends on the underlying neurological disease and the many factors specific to everyone. These differences can have a significant impact on a person's ability to manage their financial affairs effectively³⁴ and independently.³⁵

Individuals experiencing mild cognitive impairment may present with subtle difficulties primarily affecting more complex and novel financial tasks, such as sophisticated investment management or the comprehension of intricate and unfamiliar financial products, while often retaining the capacity to manage more routine and familiar

²⁹ Jackson, S.L., 'Recognizing the trauma experienced by community-dwelling older victims of financial abuse perpetrated by trusted others' in *Handbook of Interpersonal Violence and Abuse Across the Lifespan: A project of the National Partnership to End Interpersonal Violence Across the Lifespan (NPEIV)* (Springer International Publishing 2021) 4499-4518.

³⁰ Petersen, R.C., 'Mild cognitive impairment' (2016) 22(2) *CONTINUUM: lifelong Learning in Neurology* 404-418.

³¹ Dubois, B., Picard, G., and Sarazin, M., 'Early detection of Alzheimer's disease: new diagnostic criteria' (2009) 11(2) *Dialogues in clinical neuroscience* 135-139; Roman, G.C., 'Defining dementia: clinical criteria for the diagnosis of vascular dementia' (2002) 106 *Acta Neurologica Scandinavica* 6-9; Rascovsky, K., Hodges, J.R., Knopman, D., Mendez, M.F., Kramer, J.H., Neuhaus, J., et al., 'Sensitivity of revised diagnostic criteria for the behavioural variant of frontotemporal dementia' (2011) 134(9) *Brain* 2456-2477.

³² Marson, D.C., Sawrie, S.M., Snyder, S., McInturff, B., Stalvey, T., Boothe, A., Aldridge, T., Chatterjee, A., and Harrell, L.E., 'Assessing financial capacity in patients with Alzheimer disease: A conceptual model and prototype instrument' (2000) 57(6) *Archives of Neurology* 877-884. Griffith, H.R., Belue, K., Sicola, A., Krzywanski, S., Zamrini, E., Harrell, L., and Marson, D.C., 'Impaired financial abilities in mild cognitive impairment: a direct assessment approach' (2003) 60(3) *Neurology* 449-457; Giannouli, V., 'Neuropsychological Assessment and Financial Capacity in Older Adults: A Review Based on Up-to-Date Knowledge' in L. Ribeiro and A. Ribeiro (eds), *Global Perspectives on Health Assessments for an Ageing Population* (IGI Global 2023) 21-47.

³³ Best, R., Carman, K.G., Parker, A.M., and Peters, E., 'Age declines in numeracy: An analysis of longitudinal data' (2022) 37(3) *Psychology and Ageing* 298.

³⁴ Allaire, J.C. and Marsiske, M., 'Well-and ill-defined measures of everyday cognition: relationship to older adults' intellectual ability and functional status' (2002) 17(1) *Psychology and Ageing* 101.

³⁵ Squire, L.R., 'Memory and brain systems: 1969-2009' (2009) 29(41) *Journal of Neuroscience* 12711-12716.

transactions, such as paying regular bills or using cash for everyday purchases.³⁶ In stark contrast, individuals with more advanced stages of dementia are likely to experience more significant and pervasive impairments across virtually all aspects of financial management, potentially requiring substantial support and assistance even with seemingly simple and routine financial tasks.³⁷

Existing models of financial capacity assessment represent a crucial and necessary step in systematically identifying and addressing these complex challenges. These assessments typically employ a comprehensive multi-method approach, obtaining information directly from the individual and, where ethically appropriate, supplementary information from knowledgeable caregivers or close family members.³⁸ Screening tools are used to provide an objective measure of an individual's cognitive function across various domains that are directly relevant to effective financial decision-making, such as memory, sustained attention, and executive functions.³⁹ These assessments aim to evaluate an individual's fundamental capacity to understand relevant financial information, to accurately appreciate the potential consequences and broader implications of their financial decisions.

While these models of financial capacity assessment seek to evaluate an individual's cognitive abilities relevant to financial management⁴⁰ emphasis remains on identifying cognitive deficits, potentially leading to an incomplete appraisal of the complex interplay of factors that significantly influence an individual's financial decision-making processes.⁴¹ Consequently, these predominantly cognitive models may not adequately capture the significant emotional and psychosocial factors that profoundly shape an individual's subjective experience of decline in mental capacity, their finances and their subsequent interaction with formal and informal support systems.⁴² Factors such as heightened anxiety levels, the presence of clinical depression, a diminished sense of self-esteem and personal worth, the pervasive apprehension of becoming an unwanted burden on close family members, and the powerful desire to preserve one's independence can exert a substantial and often underestimated influence on an individual's readiness to openly acknowledge their cognitive limitations, their overall willingness to actively seek or readily accept necessary support, and their overall

³⁶ Triebel, K.L., Gerstenecker, A., and Marson, D.C., 'Financial and medical decision-making capacity in mild cognitive impairment and dementia' (2018).

³⁷ Marson, D.C., Sawrie, S.M., Snyder, S., McInturff, B., Stalvey, T., Boothe, A., Aldridge, T., Chatterjee, A., and Harrell, L.E., 'Assessing financial capacity in patients with Alzheimer disease: A conceptual model and prototype instrument' (2000) 57(6) *Archives of Neurology* 877-884.

³⁸ Kane, R.A., 'The interprofessional team as a small group' (1975) 1(1) *Social Work in Health Care* 19-32.

³⁹ Lezak, M.D., *Neuropsychological Assessment* (4th edn, Oxford University Press 2004).

⁴⁰ Marson, D.C., Sawrie, S.M., Snyder, S., McInturff, B., Stalvey, T., Boothe, A., Aldridge, T., Chatterjee, A., and Harrell, L.E., 'Assessing financial capacity in patients with Alzheimer disease: A conceptual model and prototype instrument' (2000) 57(6) *Archives of Neurology* 877-884.

⁴¹ Xiao, J.J. and O'Neill, B., 'Disability type, financial capability, and risky asset holding' (2022) 32(4) *Journal of Disability Policy Studies* 269-279.

⁴² Pinsker, D.M., Pachana, N.A., Wilson, J., Tilse, C., and Byrne, G.J., 'Financial capacity in older adults: A review of clinical assessment approaches and considerations' (2010) 33(4) *Clinical Gerontologist* 332-346.

engagement with financial matters.⁴³ Therefore, a more holistic and comprehensive understanding of financial capacity in the complex context of cognitive decline necessitates the adoption of a broader and more integrated perspective that thoughtfully incorporates these crucial emotional and psychosocial dimensions alongside the traditional, and often narrowly defined, legal and cognitive evaluation of capacity.⁴⁴

B. The Mental Capacity Act 2005: Principles and Practice

The MCA constitutes a pivotal legislative framework in England and Wales, establishing a statutory basis for decision-making on behalf of adult individuals who lack the requisite legal capacity to make specific decisions for themselves.⁴⁵ Central to the MCA are five fundamental principles that underpin its application, aiming to both safeguard the rights and promote the well-being of vulnerable individuals, while concurrently striving to uphold their autonomy.⁴⁶

The presumption of capacity forms the bedrock of the Act, establishing a robust legal starting point wherein every adult is presumed to possess the capacity to make their own decisions unless and until it is demonstrated, on the balance of probabilities, that they lack such legal capacity in relation to a specific decision at a specific time.⁴⁷ This presumption places the legal burden of proof on those asserting a lack of capacity⁴⁸ and underscores the paramount importance of respecting individual autonomy.⁴⁹

Recognising the dynamic nature of capacity, which can fluctuate and be influenced by factors such as temporary impairments or the environmental context, the principle of supporting decision-making mandates that all practicable steps must be taken to assist an individual in making a decision before a conclusion of incapacity is reached.⁵⁰ This proactive legal obligation necessitates the exploration of diverse communication methods, the provision of accessible and comprehensible information tailored to the individual's needs,⁵¹ and the consideration of alternative ways of presenting choices to enable the individual's greatest participation in the decision-making process, aligning with the concept of supported decision-making.⁵²

The principle concerning unwise decisions draws a critical distinction between a lack of legal capacity, a legal determination of decision-making inability, and the making of a decision deemed unwise, imprudent, or not in the individual's perceived best

⁴³ World Health Organization, *International Statistical Classification of Diseases and Related Health Problems* (11th edn, 2019).

⁴⁴ Higgs, P. and Gilleard, C., 'Interrogating personhood and dementia' (2016) 20(8) *Ageing & Mental Health* 773-780.

⁴⁵ Braye, S. and Preston-Shoot, M., *Practising Social Work Law* (4th edn, Bloomsbury Publishing 2017).

⁴⁶ Herring, J., *Medical Law and Ethics* (7th edn, Oxford University Press 2022).

⁴⁷ MCA s 1(2).

⁴⁸ Brazier, M. and Miola, J., 'Releasing the kracken: The Mental Capacity Act 2005' (2004) 12(2) *Medical Law Review* 268-293.

⁴⁹ Dworkin, R., 'Autonomy and the demented self' (1986) 64(Supp 2) *The Milbank Quarterly* 4-16.

⁵⁰ MCA s 1(3).

⁵¹ Jackson, E., *Medical Law: Text, Cases, and Materials* (6th edn, Oxford University Press 2019).

⁵² Kohn, N.A., 'Legislating supported decision-making' (2021) 58 *Harv. J. on Legis.* 31.

interests.⁵³ An individual's right to make choices with which others may disagree is upheld and protected, provided they possess the legal capacity to understand the relevant information, appreciate the reasonably foreseeable consequences of their choice, and make that choice freely and without undue influence. This principle serves as a safeguard against paternalistic interventions predicated solely on a subjective evaluation of a decision's perceived wisdom.⁵⁴

Where an individual is legally determined to lack the legal capacity to make a specific decision at a specific time, the principle of best interests dictates that any act done, or decision made on their behalf must be in their best interests.⁵⁵ This principle necessitates a careful, holistic, and individualised assessment, considering a range of factors relevant to the specific decision, including the individual's past and present wishes and feelings, their beliefs and values, the views of relevant others (such as family, carers, and appointed representatives), and the potential consequences of the decision.⁵⁶ The Act provides a non-exhaustive checklist of factors to be considered in determining best interests, emphasising a person-centred approach⁵⁷ that prioritises the individual's unique needs, preferences, and perspectives.

Finally, the principle of the less restrictive option underscores the importance of proportionality and necessity in interventions, reflecting the broader legal principle of respect for individual liberty. Prior to any action or decision on behalf of someone lacking capacity, consideration must be given to whether the desired outcome can be as effectively achieved in a manner that is less restrictive of the individual's rights and freedom of action.⁵⁸ This principle promotes the adoption of the least intrusive options that are still effective in meeting the individual's needs and safeguarding their well-being, while minimising any unnecessary curtailment of their autonomy.⁵⁹

Beyond these core principles, the MCA establishes crucial legal mechanisms for supporting financial decision-making and facilitating planning for potential future incapacity. Lasting Powers of Attorney (LPAs), a key instrument under the Act, empower individuals with capacity to appoint trusted individuals (attorneys) to make financial decisions on their behalf should they subsequently lose capacity.⁶⁰ This mechanism promotes individual autonomy and self-determination by allowing individuals to choose who will manage their financial affairs if they become unable to do so themselves. In situations where individuals lack capacity and have not previously sought an LPA, the Court of Protection, holds the statutory authority to make decisions on their behalf and to appoint deputies to manage their property and affairs.⁶¹ These

⁵³ MCA s 1(4).

⁵⁴ Beauchamp, T.L. and Childress, J.F., *Principles of Biomedical Ethics* (8th edn, Oxford University Press 2019).

⁵⁵ MCA s 1(5).

⁵⁶ MCA s 4.

⁵⁷ Kitwood, T.M., *Dementia Reconsidered: The Person Comes First* (Open University Press 1997).

⁵⁸ MCA s 1(6).

⁵⁹ Szmukler, G. and Dawson, J., 'Reducing discrimination' in *Coercive Treatment in Psychiatry: Clinical, Legal and Ethical Aspects* (Cambridge University Press 2011) 97.

⁶⁰ MCA s 9; MCA, sch 1.

⁶¹ MCA s 16.

deputies are subject to the Court's ongoing oversight and are legally obligated to always act in the individual's best interests.⁶²

While the MCA represents a significant and progressive legal framework designed to protect vulnerable individuals and facilitate necessary financial management when legal capacity is lacking, its practical application, particularly in the complex and nuanced context of cognitive decline, is not without limitations and has been subject to critical analysis.⁶³ A primary concern raised by commentators centres on the potential for the capacity assessment process, as implemented in practice, to overemphasise cognitive deficits, sometimes at the expense of a more holistic and person-centred understanding of the individual's retained functional abilities and their broader preferences.⁶⁴ The standardised cognitive assessments frequently employed may not always fully capture the subtle nuances of an individual's preserved functional abilities or adequately account for the potentially significant impact of emotional and psychosocial factors on their engagement with financial matters.⁶⁵ For example, an individual experiencing acute anxiety or feeling overwhelmed by the assessment environment might perform sub-optimally on a cognitive test, potentially leading to an underestimation of their actual decision-making capacity in a more supportive and familiar setting.⁶⁶

Furthermore, the practical application of the best interests principle in financial contexts can be particularly challenging and ethically complex.⁶⁷ Balancing an individual's deeply ingrained wishes, values, and beliefs with their current and potentially conflicting needs and circumstances, which may be altered by cognitive decline, necessitates careful deliberation and often involves navigating sensitive dilemmas. Determining what truly aligns with an individual's best interests in such circumstances can be inherently subjective and may inevitably involve difficult value-based trade-offs, particularly when there is significant disagreement among relevant parties.

Moreover, the Act's provisions arguably do not allow space for the emotional and psychosocial impact on family members who often bear substantial responsibility for recognising declining financial capacity in a loved one, initiating difficult and emotionally charged conversations about financial management, and potentially

⁶² MCA s 4.

⁶³ Series, L., 'Relationships, autonomy and legal capacity: Mental capacity and support paradigms' (2015) 40 *International Journal of Law and Psychiatry* 80-91.

⁶⁴ Lichtenberg, P.A., Rorai, V., and Flores, E.V., 'A person-centered approach to financial capacity: early memory loss, financial management and decision-making' (2024) 28(10) *Ageing & Mental Health* 1383-1389.

⁶⁵ Pinsker, D.M., Pachana, N.A., Wilson, J., Tilse, C., and Byrne, G.J., 'Financial capacity in older adults: A review of clinical assessment approaches and considerations' (2010) 33(4) *Clinical Gerontologist* 332-346.

⁶⁶ Kahneman, D. and Tversky, A., 'Prospect theory: An analysis of decision under risk' in G.M. ¹ Constantinides, M. Harris, and R.M. Stulz (eds), *Handbook of the fundamentals of financial decision making: Part I* (Elsevier 2013) 99-127.

⁶⁷ Dresser, R., 'On legalizing physician-assisted death for dementia' (2017) 47(4) *Hastings Center Report* 5-6.

assuming formal or informal decision-making roles.⁶⁸ The emotional burden experienced by these caregivers, the potential for intrafamilial conflict arising from differing perspectives on financial management, and the complexities of navigating the often intricate legal processes under the MCA can be considerable and warrant greater attention. Similarly, professionals involved in assessing capacity and implementing support, such as social care workers, healthcare providers, and legal practitioners, may face ethical and practical challenges in effectively balancing the imperative to protect vulnerable individuals from financial harm with the equally important imperative to respect their autonomy and dignity, particularly when individuals express resistance or dissent to proposed interventions.

C. Therapeutic Jurisprudence: A Framework for Understanding and Enhancing Legal Interactions

Therapeutic Jurisprudence (TJ) has emerged as an established school of legal thought⁶⁹ that examines the impact of legal rules and procedures on the emotional and psychological well-being of individuals.⁷⁰ Since its inception, TJ has encouraged a shift in legal analysis beyond traditional lenses of rights and duties, suggesting that legal processes are not neutral;⁷¹ they inevitably produce consequences that can be characterised as either therapeutic or anti-therapeutic for those interacting with the legal system.

Consequently, TJ advocates for an evaluation of legal procedures and the roles of legal actors based on these human consequences. This approach urges a move towards practices and policies that are more consciously attuned to promoting well-being and minimising psychological harm.⁷² This necessitates moving beyond a purely legalistic or doctrinal approach, which often overlooks the lived experiences of those subject to the law.⁷³ In the context of financial capacity and the Mental Capacity Act, TJ provides a valuable framework for assessing how legal interventions might better support the dignity and autonomy of vulnerable individuals while navigating the complex interpersonal dynamics involved in caregiving and legal oversight.⁷⁴ The foundational principle of TJ explicitly places the emotional and psychological impact of legal

⁶⁸ Schulz, R. and Martire, L.M., 'Family caregiving of persons with dementia: prevalence, health effects, and support strategies' (2004) 12(3) *The American Journal of Geriatric Psychiatry* 240-249.

⁶⁹ Stobbs N, Bartels L and Vols M (eds), *The Methodology and Practice of Therapeutic Jurisprudence* (Carolina Academic Press 2019). See also, Wexler, D.B. and Winick, B.J. (eds), *Essays in Therapeutic Jurisprudence* (Carolina Academic Press 1991).

⁷⁰ Wexler DB, 'Moving Forward on Mainstreaming Therapeutic Jurisprudence: An International Perspective' (2014) 37(1) *International Journal of Law and Psychiatry* 5.

⁷¹ Brookbanks, W. (Ed.). *Therapeutic Jurisprudence: New Zealand Perspectives* (Thomson Reuters 2015).

⁷² Perlin, M., Ellis Cucolo, H., and Lynch, A., *Mental Disability Law: Cases and Materials* (3rd edn, Carolina Academic Press 2017). See also, Perlin, M.L. and Lynch, A.J., 'Therapeutic Jurisprudence' in *Sexuality, Disability, and the Law: Beyond the Last Frontier?* (Palgrave Macmillan US 2016) 145-157; David B Wexler, *Therapeutic Jurisprudence: The Law as a Therapeutic Agent* (Carolina Academic Press 1990).

⁷³ Winick, B.J., 'The jurisprudence of therapeutic jurisprudence' (1997) 3(1) *Psychology, Public Policy, and Law* 184.

⁷⁴ Stolle, D.P., Wexler, D.B., Winick, B.J., and Dauer, E.A., 'Integrating preventive law and therapeutic jurisprudence: A law and psychology-based approach to lawyering' (1997) 34 *Cal. WL Rev.* 15.

interventions at the forefront of legal inquiry and legal reform.⁷⁵ It challenges the traditional, and often idealised, view of judges, lawyers, and other legal professionals as detached arbiters or mere interpreters and appliers of abstract legal rules. Instead, it suggests that these legal actors have a proactive and ethical responsibility to be consciously mindful of the therapeutic implications of their actions, decisions, and communication styles.⁷⁶ This involves actively striving to minimise potential psychological harm to individuals involved in the legal system and, where ethically and legally permissible, to promote their psychological well-being.⁷⁷ This proactive stance requires the development of skills in empathetic communication, a nuanced understanding of the psychological vulnerabilities of individuals facing legal issues, and the adoption of problem-solving approaches that prioritise therapeutic outcomes alongside traditional legal objectives.

TJ acknowledges that the law operates within a complex and interconnected web of social, cultural, and economic factors that can significantly influence its therapeutic effects and overall impact on well-being.⁷⁸ It therefore encourages a systemic and contextualised analysis that considers how legal rules, procedures, and practices interact with these broader contextual elements to produce their ultimate impact on individual and community well-being. This systemic perspective highlights the critical importance of addressing systemic barriers, power imbalances, and social inequalities that may contribute to anti-therapeutic outcomes and of fostering a more supportive and therapeutic legal culture within the legal system and society.

This TJ perspective proves particularly valuable for analysing the challenges of assessing and supporting financial capacity in cognitive decline.⁷⁹ TJ compels a shift beyond purely cognitive or legalistic understandings, urging consideration of the multilayered emotional and psychological ramifications for older adults with cognitive decline, their families, and their support professionals. TJ encourages us to expand the scope of our inquiry beyond narrow legal questions, such as 'can this person legally make a financial decision?' or 'what does the law explicitly allow us to do in this specific situation?', and to incorporate more person-centred and ethically informed questions, such as 'how will this particular assessment process or support intervention impact this person's fundamental sense of dignity, self-worth, and overall psychological well-being?' and 'how can we proactively design legal and support systems that are more therapeutic in their effects, promoting positive outcomes and minimising potential harms?'

⁷⁵ Wexler, D.B., 'Therapeutic jurisprudence: The law as a therapeutic agent' (1990) 3(2) *New York Law School Journal of Human Rights* 203-217; Winick, B.J., 'The jurisprudence of therapeutic jurisprudence' (1997) 3(1) *Psychology, Public Policy, and Law* 184-219.

⁷⁶ Stolle, D.P., Wexler, D.B., Winick, B.J., and Dauer, E.A., 'Integrating preventive law and therapeutic jurisprudence: A law and psychology-based approach to lawyering' (1997) 34 *Cal. WL Rev.* 15.

⁷⁷ Perlin, M.L., 'Have You Seen Dignity?': The Story of the Development of Therapeutic Jurisprudence' (2017) *The Story of the Development of Therapeutic Jurisprudence* (March 13, 2017).

⁷⁸ Wexler, D.B. and Winick, B.J. (eds), *Essays in Therapeutic Jurisprudence* (Carolina Academic Press 1991).

⁷⁹ Stolle, D.P., 'Professional Responsibility in Elder Law: A Synthesis of Preventive Law and Therapeutic Jurisprudence' (1996) 14(4) *Behavioral Sciences & the Law* 459-478.

TJ stresses that any help provided – from assessing someone's decision-making ability to offering support or imposing deputyship – should limit their freedom as little as possible. It means actively seeking and carefully considering what the individual wants, prefers, and *can still do*, as much as is ethically and legally allowed.⁸⁰ This involves enabling people to genuinely participate in decisions about their lives and consciously avoiding actions or words that might make them feel like children, powerless, or like they no longer have control.⁸¹

Fostering open, empathetic, respectful, and collaborative communication between older adults, their family members, and all involved professionals is essential.⁸² It is important to recognise, acknowledge, and proactively respond to the complex and often profound emotional challenges faced by individuals as they experience a decline in their financial capacity and the associated loss of independence and control.⁸³ This approach moves beyond a purely protective or regulatory stance, which may inadvertently prioritise legal compliance over individual well-being, to actively promote emotional and psychological well-being, preserve dignity, and strengthen the vital social connections that are essential for the overall quality of life of individuals and their families navigating these difficult and often life-altering circumstances.⁸⁴

While TJ offers a valuable framework for analysing the law's impact on psychological well-being, it is important to acknowledge areas of challenge. One key concern revolves around the potential for TJ to prioritise therapeutic goals at the expense of other fundamental legal values, such as justice, fairness, and individual rights. As Fox notes, there is a risk that the pursuit of therapeutic outcomes could lead to coercive or paternalistic interventions that undermine individual autonomy and procedural justice.⁸⁵ Concerns have also been raised from the perspective of human rights, particularly disability rights, suggesting that TJ's focus, if not carefully balanced, could inadvertently lead to interventions that limit rather than enhance autonomy.⁸⁶ With TJ focusing on the psychological well-being of the legal actors, other important dimensions of human experience may be neglected, such as social, economic, and

⁸⁰ Herring, J., *Medical Law and Ethics* (7th edn, Oxford University Press 2022).

⁸¹ Weierich, M.R., Kensinger, E.A., Munnell, A.H., Sass, S.A., Dickerson, B.C., Wright, C.I., and Barrett, L.F., 'Older and wiser? An affective science perspective on age-related challenges in financial decision making' (2011) 6(2) *Social Cognitive and Affective Neuroscience* 195-206.

⁸² Petrucci, C.J., Winick, B.J., and Wexler, D.B., 'Therapeutic jurisprudence: An invitation to social scientists' in *Handbook of Psychology in Legal Contexts* (2nd edn, John Wiley & Sons 2003) 579-601.

⁸³ Hennelly, N., Cooney, A., Houghton, C., and O'Shea, E., 'Personhood and dementia care: A qualitative evidence synthesis of the perspectives of people with dementia' (2021) 61(3) *The Gerontologist* e85-e100.

⁸⁴ Winick, B.J., 'The jurisprudence of therapeutic jurisprudence' (1997) 3(1) *Psychology, Public Policy, and Law* 184.

⁸⁵ Fox, D.R., 'Psychological jurisprudence and radical social change' (1993) 48(3) *American Psychologist* 234. See also, Petrucci, C.J., Winick, B.J., and Wexler, D.B., 'Therapeutic jurisprudence: An invitation to social scientists' in N.K. Rattan and R.J.R. MacKay (eds), *Handbook of Psychology in Legal Contexts* (John Wiley & Sons 2003) 579-601.

⁸⁶ Arstein-Kerslake, A., and Black, J. 'Right to legal capacity in therapeutic jurisprudence: Insights from critical disability theory and the Convention on the Rights of Persons with Disabilities.' (2020) 68 *International Journal of Law and Psychiatry* 101538.

cultural factors.⁸⁷ Yet despite these criticisms, TJ remains a valuable and evolving framework for legal analysis and reform.

D. Critical Discussion of the Legal Framework through a Therapeutic Jurisprudence Lens

While the MCA provides a robust legal foundation, a critical examination through the lens of TJ reveals areas where its practical application can be enhanced to better serve the psychological well-being of individuals with cognitive decline and their families. TJ encourages a shift from a purely procedural adherence to the Act's principles to a more nuanced consideration of their therapeutic impact.

First, while the MCA mandates the presumption of capacity and the duty to support decision-making, TJ highlights the crucial importance of how these principles are implemented. A TJ-informed approach would push for a deeper inquiry into the psychological environment of assessment and support. For instance, an assessment conducted in an unfamiliar, clinical setting by a detached professional might inadvertently create anxiety or distress, hindering an individual's ability to demonstrate their true capacity. A TJ-informed approach would advocate for assessments to be conducted in a person-centred manner, in familiar surroundings, and by professionals trained in empathetic communication, thereby fostering a more therapeutic atmosphere that maximises the individual's ability to participate and retain a sense of agency. This perspective strongly aligns with and enhances the concept of supported decision-making, moving beyond mere provision of information to actively co-creating an environment where the individual feels empowered and understood, thus promoting their self-determination as much as possible. This aligns with the TJ principle of minimising anti-therapeutic outcomes.

Secondly, the MCA's central best interests principle, while crucial, often causes significant emotional distress and conflict in financial contexts. TJ would critically examine its application, ensuring active incorporation of the individual's subjective experiences, values, and wishes—even when imperfectly expressed due to cognitive decline. This extends beyond merely consulting family members (as per MCA s 4(7)) to genuinely seeking to understand the person's lifelong narrative and preferences, fostering continuity and identity respect. Where there are disagreements, a TJ approach would promote mediation and collaborative problem-solving, aiming to reduce the adversarial nature of disputes and mitigate psychological harm to all parties. This resonates with TJ's focus on promoting well-being and strengthening relationships within the legal process.

Thirdly, TJ illuminates the potential for the MCA's focus on functional capacity to inadvertently dehumanise or disempower individuals. By primarily identifying deficits, the legal framework, if applied too narrowly, risks overlooking an individual's retained strengths, emotional needs, and desire for continued financial agency. A TJ

⁸⁷ Perlin, M.L., 'A law of healing' (1999) 68 *University of Cincinnati Law Review* 407; Wexler, D.B., 'Therapeutic jurisprudence and the culture of critique' (2000) 23(5-6) *International Journal of Law and Psychiatry* 513-525.

perspective would advocate for a strengths-based approach, even within the legal assessment, seeking to identify and leverage remaining abilities and preferences to maximise autonomy. This could involve exploring creative supported decision-making arrangements that are not explicitly detailed but are permissible under the MCA's broad principles, rather than defaulting to more restrictive options like deputyship. This proactive stance aligns with TJ's emphasis on legal actors having a therapeutic responsibility.

Finally, TJ critiques the lack of explicit consideration for the emotional and psychosocial impact on family caregivers and professionals within the MCA. While the Act provides legal mechanisms, it does not directly address the emotional burden, moral distress, or potential for conflict that can arise. A TJ-informed legal system would acknowledge these human dimensions, advocating for support services, training, and processes that mitigate these negative impacts. This could include mandatory training on communication strategies for professionals dealing with families, or the provision of accessible legal and emotional support for family members navigating complex financial decisions on behalf of a loved one. Such an approach would embody TJ's systemic perspective, recognising that the well-being of all involved parties contributes to a more just and therapeutic outcome.

IV. THE EMOTIONAL AND PSYCHOSOCIAL DIMENSIONS OF DECLINING FINANCIAL CAPACITY

Beyond its cognitive aspects, the decline in financial capacity manifests as a profoundly emotional and psychosocial experience, deeply impacting older adults, their families, and care professionals.⁸⁸ The reduction of financial independence can precipitate a cascade of negative emotions, such as shame, anger, and grief, often accompanied by a loss of self-worth and a fundamental challenge to an individual's established identity.⁸⁹ Family members, in turn, often confront substantial emotional burdens, including anxiety, frustration, and moral distress, as well as complex ethical dilemmas in navigating the complexities of supporting their loved ones. Professionals, caught between the imperatives of protection and the preservation of autonomy, grapple with equally challenging issues, often experiencing role strain and moral injury.⁹⁰

The MCA, while undoubtedly a crucial legislative instrument, may not, in its current form, be able to address these emotional and psychosocial dimensions. Its primary focus on cognitive capacity, while essential, can sometimes overshadow the affective and social aspects of decision-making, potentially leading to interventions that, while legally sound, are experienced as disempowering and dehumanising.

⁸⁸ Pinsker, D.M., Pachana, N.A., Wilson, J., Tilse, C., and Byrne, G.J., 'Financial capacity in older adults: A review of clinical assessment approaches and considerations' (2010) 33(4) *Clinical Gerontologist* 332-346; Widera, E., Steenpass, V., Marson, D., and Sudore, R., 'Finances in the older patient with cognitive impairment: 'He didn't want me to take over'' (2011) 305(7) *JAMA* 698-706.

⁸⁹ Guberman, N., Gagnon, É., Lavoie, J.P., Belleau, H., Fournier, M., Grenier, L., and Vézina, A., 'Families' values and attitudes regarding responsibility for the frail elderly: Implications for ageing policy' (2006) 18(3-4) *Journal of Ageing & Social Policy* 59-78.

⁹⁰ Chan, A.C. and Stum, M.S., 'The state of theory in elder family financial exploitation: A systematic review' (2020) 12(4) *Journal of Family Theory & Review* 492-509.

A. Therapeutic Jurisprudential Framework: Core Implications

The application of a TJ lens to the assessment of financial capacity and the provision of support entails several key shifts in perspective and practice. A fundamental reorientation is required, one that centres on communication and empathy. The language employed must be person-centred, and the environment one that fosters a safe and supportive dialogue. A failure to acknowledge the emotional context of financial incapacity can lead to resistance, non-compliance, and a breakdown of trust,⁹¹ ultimately undermining the goals of the intervention.

Furthermore, a TJ approach mandates a focus on functional abilities and support. Traditional assessments, as operationalised under the MCA, often prioritise a cataloguing of deficits, thereby potentially overlooking an individual's residual strengths and capabilities. A more nuanced approach would entail a thorough evaluation of these remaining strengths, coupled with the exploration and implementation of strategies to support decision-making. This ensures that an individual's autonomy is maximised to the greatest extent possible, recognising that even with cognitive decline, individuals retain agency and the right to self-determination.

The legal and procedural framework itself, as shaped by the MCA, must be re-envisioned to create a less adversarial process. All too often, assessment processes are perceived as threatening and disempowering exacerbating anxiety. A TJ framework calls for a restructuring of these processes, emphasising collaboration and empowerment. This involves actively involving the individual in the decision-making process, respecting their perspective, and fostering a sense of partnership rather than paternalism, aligning with the MCA's emphasis on participation. This shift necessitates a move away from a purely legalistic and adversarial approach towards a more collaborative and therapeutic one, where the individual's voice is heard and their preferences are considered.

The overarching goal should be the promotion of autonomy and choice. Even in the context of cognitive decline, individuals retain a fundamental right to self-determination. Support systems should be designed to empower individuals to maintain control over their financial affairs for as long as possible. This may involve the utilisation of supported decision-making frameworks, which provide individuals with the assistance they need to make their own choices, rather than substituting the judgment of others, a concept that while present in the MCA, could be more robustly implemented. This approach recognises that autonomy is not an all-or-nothing concept, but rather a spectrum,⁹² and that even individuals with significant cognitive impairment can make meaningful choices with appropriate support. It also necessitates the development of tailored interventions that are responsive to the

⁹¹ Wexler, D.B., 'Therapeutic jurisprudence: The law as a therapeutic agent' (1989) 68 *Nebraska Law Review* 1.

⁹² Devi, N., 'Supported decision-making and personal autonomy for persons with intellectual disabilities: Article 12 of the UN Convention on the Rights of Persons with Disabilities' (2013) 41(4) *The Journal of Law, Medicine & Ethics* 792-806.

unique needs and circumstances of everyone, recognising that there is 'no one-size-fits-all' solution. Peer support programmes, for instance, could be a powerful tool for reducing isolation and promoting resilience among older adults. These programmes work by connecting individuals who share similar experiences of financial incapacity, whether they are directly affected or are supporting a relative.⁹³

B. Critical Considerations for Implementing a Therapeutic Jurisprudential Approach

The successful implementation of a TJ approach necessitates a fundamental shift in the way professionals and legal systems interact with individuals experiencing cognitive decline.⁹⁴ A cornerstone of this effort must be the development of better training for professionals.⁹⁵ These should go beyond knowledge sharing and should place a strong emphasis on the emotional and psychosocial aspects of financial capacity decline, equipping professionals with the essential skills in empathetic communication, supported decision-making, and conflict resolution. This training should also foster attitudinal changes, encouraging professionals to adopt a more person-centred and less paternalistic approach, aligning with the spirit, if not always the practice, of the MCA. A critical element of this training should involve experiential learning, allowing professionals to develop a deeper understanding of the lived experiences of individuals with cognitive decline and their families.⁹⁶

There is also a need for the development of new and specialised support services. Existing services are often fragmented and poorly integrated, making it difficult for individuals and families to access the help they need.⁹⁷ This fragmentation can lead to confusion, duplication of effort, and gaps in service provision.⁹⁸ New services should be designed to be integrated and holistic, offering a range of assistance, including emotional support, tailored financial education, and practical assistance. A key principle guiding the development of these services should be the maximisation of autonomy and the preservation of dignity, within the boundaries of legal frameworks such as the MCA. This should be reflected in the design and delivery of services, ensuring that individuals are at the centre of the decision-making process and that their preferences and values are given due weight.⁹⁹

⁹³ Hall, A., Straub, C., Price, D., and Glover-Thomas, N., *Managing money in later life: mental capacity assessment and support: Final report* (University of Manchester 2023).

⁹⁴ Winick, B.J., 'The Jurisprudence of Therapeutic Jurisprudence' (1997) 3 *Psychology, Public Policy and Law* 184.

⁹⁵ Yamada, D.C., 'Teaching therapeutic jurisprudence' (2020) 50 *U. Balt. L. Rev.* 425.

⁹⁶ Breakey, H., 'Building ethics regimes: Capabilities, obstacles and supports for professional ethical decision-making' (2017) 40(1) *University of New South Wales Law Journal* 322-352; Hall, A., Straub, C., Price, D., and Glover-Thomas, N., *Managing money in later life: mental capacity assessment and support: Final report* (University of Manchester 2023).

⁹⁷ Sabatino, C.P., 'The legal and functional status of the medical proxy: suggestions for statutory reform' (1999) 27(1) *Journal of Law, Medicine & Ethics* 52-68.

⁹⁸ Glover-Thomas, N. (2008). Joint working: Reality or rhetoric in housing the mentally vulnerable? *Journal of social welfare & family law*, 29(3-4), 217-231.

⁹⁹ Kohn, N.A., 'Legislating supported decision-making' (2021) 58 *Harv. J. on Legis.* 313.

V. CONCLUSION

Examining how emotions effect managing money when cognitive skills decline, especially through the perspective of TJ, highlights a crucial but often ignored aspect of ageing. The erosion of financial autonomy transcends mere functional impairment; it strikes at the heart of an individual's sense of self, dignity, and independence, often triggering a cascade of negative emotions, including anxiety, frustration, shame, and a palpable loss of control. For family caregivers, navigating the complexities of supporting a loved one's financial affairs while witnessing their cognitive decline engenders emotional burdens, ethical dilemmas, and the potential for interpersonal strain. Similarly, professionals operating within existing legal frameworks, face the delicate and ethically charged task of balancing the imperative to safeguard vulnerable individuals with the fundamental need to respect their autonomy and inherent dignity, a balance that purely legalistic approaches may struggle to fully achieve.

TJ offers a transformative perspective, advocating for a paradigm shift that prioritises the psychological well-being of all stakeholders involved. By explicitly acknowledging the law's inherent therapeutic or anti-therapeutic effects, TJ compels a critical re-evaluation of current legal frameworks, professional practices, and support systems. Building on the critique of purely cognitive assessments, TJ champions a holistic, person-centred approach that actively considers the individual's retained abilities, emotional experiences, and the broader psychosocial context. A TJ-informed approach necessitates a fundamental reorientation towards empathetic communication, the creation of less adversarial assessment processes, and the proactive integration of emotional support services. It champions the implementation of supported decision-making models that empower individuals to maintain maximum control over their financial lives, even in the face of cognitive impairment, thereby preserving their sense of agency and self-worth.

Ultimately, the integration of TJ principles into the fabric of legal frameworks, professional training, and the design of social support systems represents a crucial step towards cultivating a more humane, ethically sound, and demonstrably effective ecosystem for supporting older adults navigating the intricate challenges of financial management in the context of cognitive decline. This holistic perspective moves beyond a purely protective or regulatory stance, which risks inadvertently prioritising legal compliance over individual well-being, towards a more compassionate and empowering model that actively promotes emotional and psychological resilience, safeguards dignity, and strengthens the vital social connections that are indispensable for the overall quality of life of individuals and their families confronting these often-profound life transitions. Policy development should shift towards a more person-centred ethos, crafting legal and social care frameworks that are not only legally sound but also psychologically sensitive and genuinely supportive. By embracing TJ, society can move towards creating a more just, compassionate, and empowering environment for older adults facing the complexities of managing their financial lives in the face of cognitive change.

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