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REVIEW

Financial and testamentary capacity evaluations: procedures and assessment instruments underneath a functional approach

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ABSTRACT

Background: Mental health professionals are frequently involved in mental capacity determinations. However, there is a lack of specific measures and well-defined procedures for these evaluations. The main purpose of this paper is to provide a review of financial and testamentary capacity evaluation procedures, including not only the traditional neuropsychological and functional assessment but also the more recently developed forensic assessment instruments (FAIs), which have been developed to provide a specialized answer to legal systems regarding civil competencies.

Methods: Here the main guidelines, papers, and other references are reviewed in order to achieve a complete and comprehensive selection of instruments used in the assessment of financial and testamentary capacity.

Results: Although some specific measures for financial abilities have been developed recently, the same is not true for testamentary capacity. Here are presented several instruments or methodologies for assessing financial and testamentary capacity, including neuropsychological assessment, functional assessment scales, performance based functional assessment instruments, and specific FAIs.

Conclusions: FAIs are the only specific instruments intended to provide a specific and direct answer to the assessment of financial capacity based on legal systems. Considering the need to move from a diagnostic to a functional approach in financial and testamentary capacity evaluations, it is essential to consider both general functional examination as well as cognitive functioning.

Keywords: financial and testamentary capacity, neuropsychological and functional assessment, forensic assessment instruments

Introduction

Active aging, as defined by World Health Organization (2002), is characterized by an optimization of opportunities for health, participation, and safety in order to increase quality of life during the aging process, at the same time it ensures the autonomy and independence of the older adult. Despite this, normal aging is associated with decline in several cognitive functions – problem-solving, memory, language, and spatial abilities (Anderson, 2008) – which are also linked with lower levels of functionality in performing the daily living activities (Millán-Calenti *et al.*, 2012). Moreover, the prevalence of chronic diseases (such as cardiovascular disease, stroke, diabetes, and cancer), neurodegenerative disorders (such as dementia), and mental health conditions (such as depression) has become higher in the aging population (World Health Organization, 2002) and this is commonly associated with generalized functional decline (Razani *et al.*, 2011).

One important aspect of individual autonomy in day-to-day life is *financial capacity*, which is considered an advanced activity of daily living (Marson *et al.*, 2000; Moye and Marson,

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2007). Impairment of financial abilities has legal consequences because of the need to protect the incapable person from exploitation or abusive situations (Moye *et al.*, 2005; Hebert and Marson, 2007). Although the need for financial capacity determination arises in all clinical and age groups, the most common groups in which decision-making capacity is questioned are dementia, depression, anxiety, psychotic disorders, hypomania (see Spar *et al.*, 1995; Pinsker *et al.*, 2010), as well as in the general elderly population because of the associated cognitive decline (Streisand and Spar, 2008). Challenges to testamentary capacity, somewhat related to, but distinct from financial tasks, also commonly arise in older age groups. While there is an abundance of instruments to assess financial capacity, there are no such tools to assess testamentary capacity (Peisah and Shulman, 2012).

In the following paper we aim to review financial and testamentary capacity evaluation instruments and general procedures, including not only the traditional neuropsychological and functional assessment but also the more recently developed forensic assessment instruments (FAIs), which have been developed in order to provide a specialized answer to legal systems regarding civil competencies.

Defining concepts

An interest in *civil competence* began in the 1980s by several disciplines, namely law, psychiatry, and psychology. The concept of *capacity* is used in clinical contexts and is usually assessed by a health professional, becoming an important contribution to the legal determination of competence by the judge (Marson and Hebert, 2005). *Competence* is a judicial term that characterizes the legal qualification of an individual to perform a certain activity and involves, as a consequence, the consideration of specific contexts (Slovenko, 2006). Because of this, competence cannot be assumed as a global or general state because questions regarding civil competence appear in distinct daily living domains, and there are several – competence in employment, competence of a professional, competence of a witness, competency to manage one's affairs, competence to make a will, or competence regarding medical care (Slovenko, 2006). The main and ultimate purpose of any capacity evaluation is to provide legal systems with useful information to identify the best protective measure for the person, maintaining autonomy in preserved functional areas (Moye *et al.*, 2005; Moye and Marson, 2007).

The term financial capacity has been defined in several ways, involving not only basic financial abilities, such as the knowledge of coins and currency, the ability to perform cash transactions, to use a checkbook, or to understand bank statements (Marson and Hebert, 2005), but also as the ability to understand the consequences of financial decision-making (Franzen, 2008), to manage one's own affairs independently, and to make decisions consistent with values and self-interests (American Bar Association Commission on Law and Aging and American Psychological Association, 2008). This is a multidimensional construct that represents a large spectrum of conceptual, pragmatic, and judgment abilities (Marson and Hebert, 2005). Kershaw and Webber (2001) identified a financial capacity model defined by the following six factors: everyday financial abilities, financial judgment, cognitive ability, estate management, debt management, and support resources. The conceptual model of Marson and colleagues (2000) also involves several domains of financial capacity – basic monetary skills, financial conceptual knowledge, cash transactions, checkbook management, bank statement management, and financial judgment (Marson *et al.*, 2000). Marson and colleagues (2000) added to the previous domains three more domains: bill payment, knowledge of personal assets/estate, and investment decision-making (see Griffith *et al.*, 2003).

Despite this broad conceptualization of financial capacity, it is important to note that it is distinct from others types of capacity relating to financial transactions, namely the capacity to make a contract and testamentary capacity. *Testamentary capacity* is the capacity to make a valid will and requires the ability to understand the nature of the act, the nature and extent of assets, an ability to comprehend and appreciate the claims of potential beneficiaries, understanding the impact of the distribution, and being free of a disorder of mind that influences the distribution (Slovenko, 2006; Shulman *et al.*, 2007, 2009). These components for testamentary capacity were developed in the legal arena, considering a specific case of an English testator (Banks v Goodfellow, 1870), who, although suffered from severe and chronic mental illness, was considered capable of making a will because his symptoms did not affect his distribution. The absence of one of these components can justify the will nullity (American Bar Association Commission on Law and Aging and American Psychological Association, 2008).

Mental capacity assessment

In competence and capacity determination, two approaches have been considered: diagnostic and

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functional approaches. The diagnostic approach was initially adopted by psychiatry and is based on inferences regarding the identification of the person as belonging to a specific clinical group (i.e. having a diagnosis of mental illness or intellectual disability; Moye and Marson, 2007). One of the major limitations of this approach is that a medical diagnosis does not provide any direct information about individual capacity in a certain daily life context. Although neurodegenerative conditions appear to be the main risk factor to incapacity (Moye and Marson, 2007; Fountoulakis and Despos, 2008), a diagnosis of dementia does not mean necessarily that the patient is incompetent, and it is necessary to consider, for example, the disease stage (Marson and Hebert, 2005) and the specific task (Peisah *et al.*, 2009b). Also, the individuals with intellectual disabilities have been found to be capable of making some personal financial decisions (Suto *et al.*, 2005). Facing this evidence, it became clearly understandable to consider a functional approach instead of a diagnostic one. In approaching assessment in this way mental health professionals can contribute more effectively to legal proceedings.

As competence is a specific term that refers to the capacity to perform or make decisions in a specific context, the evaluation procedures must be considered under a functional approach because different tasks and decisions require different abilities (Slovenko, 2006). This functional approach in determining competence establishes several specific functional abilities relevant to a specific legal context (Grisso, 2003). The functional approach emphasizes the interaction between the functional abilities and the specific context or decision to be made. The original model defines competence as the ability to understand, appreciate, reason, and express a choice. Under this model, the assessment of functional abilities includes the following five components: functional characteristics, contextual, causal, interactive, and judgmental/dispositional (Grisso, 2003).

Despite the functional approach being currently the widely accepted model in the determination of financial capacity, mental health professionals should continue to consider the presence and impact of any medical conditions or mental disorders (Sahadevan *et al.*, 2003; Moye *et al.*, 2005; Moberg and Rick, 2008). Additionally, it is necessary to consider past values and preferences (Sahadevan *et al.*, 2003; Moye *et al.*, 2005; Moberg and Rick, 2008), cognition and emotional functioning (Pinsker *et al.*, 2010), personality (Moberg and Rick, 2008), and financial, social, and cultural aspects (Pinsker *et al.*, 2010). In particular, the person's situational context is of prime importance and will influence the complexity of the decision to be made (Shulman *et al.*, 2007). Although the capacity determination ultimately depends on the actual abilities of the person, it is also necessary to document premorbid functioning regarding financial questions, and it can be important to interview family, friends, or work colleagues (Marson *et al.*, 2012) to determine whether the actual level of functioning represents a change regarding previous functioning. In this context, it is necessary to consider periodic clinical assessments (Moye *et al.*, 2005). The mental health professionals must keep in mind that some factors are more predictive of decision-making capacity (e.g. cognition, depressive symptoms) than others (e.g. age, gender), and take this into consideration when reporting evaluation results to the legal system (Menne and Whitlatch, 2007). It is also important that the mental health professional carefully documents the steps and methods used in the evaluation (Sahadevan *et al.*, 2003). These specifications have an important role in the communication of capacity assessment results in order to minimize differences between the opinion of mental health professionals and the ultimate legal decision (Spar *et al.*, 1995). Reference to some intervention and treatment recommendations should be considered by mental health professionals as well because it might imply a need for less restrictive legal protection measures (Moye *et al.*, 2005).

Regarding testamentary capacity, it requires a normal cognitive function (Franzen, 2008), and so the assessment should consider the evaluation of cognitive functioning (Streisand and Spar, 2008), even though it is important to understand that a cognitive functioning outside the normal range of functioning is not necessarily sufficient to warrant a judgment of incapacity. It is always necessary to consider the cognitive domain affected, the extent of the impairment, and the functional consequences of that impairment. The determination of the extent and nature of any medical condition that can affect cognition, judgment ability, or impulse control is also essential (Shulman *et al.*, 2007). Despite this, there are additional and specific aspects to take into consideration – personality, social (Streisand and Spar, 2008), physical, or situational environment (Shulman *et al.*, 2007; Streisand and Spar, 2008), the previous will-making pattern, and any deviation from such (O'Neill and Peisah, 2011). The possibility of undue influence (Peisah *et al.*, 2009a; Peisah and Shulman, 2012) is an important component of evaluation because it can justify the nullity of a will, but it is also a specific aspect that is difficult to prove in courts (Posener and Jacoby, 2002). There are some signs that the mental health professionals must consider – unnatural or forced provisions as

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well as inconsistencies regarding previous wishes, the presence of any medical condition or mental disorder (e.g. delirium, depression, psychosis, anxiety, dementia) producing some vulnerability in the testator, and social and environmental factors such as dependency or isolation (Frolik, 2001; O'Neill and Peisah, 2011). One important aspect in testamentary capacity determination is the time in which the evaluation is carried out – the longer the time between the assessment and the will elaboration, the higher the probability of changes in mental state of the testator, which renders any assessment results less valid (Streisand and Spar, 2008).

Neuropsychological assessment

Neuropsychological assessment in competence determination allows clinician to have information regarding current cognitive status, as well as make certain predictions about the person's future mental state (Moye, 1996) using empirically validated tests about neurocognitive functions involved in specific functional abilities (Moberg and Rick, 2008). The relationship between cognitive functioning and performance of daily living activities is difficult to establish for several reasons as some kind of daily living activities are more dependent on cognitive functioning, namely Instrumental Activities of Daily Living (IADL; Loewenstein and Acevedo, 2010); specific daily living tasks require specific cognitive functions and not general cognition (Marcotte *et al.*, 2010); the functional impairment in daily living activities is dependent not only on the degree of cognitive impairment (Marcotte *et al.*, 2010) but also on the time, cause, and specific patterns of cognitive deficits (Loewenstein and Acevedo, 2010); the functional performance is also dependent on a complex group of variables related to the person, task, and environment (Loewenstein and Acevedo, 2010).

It is of general agreement that neuropsychological assessment should consider several cognitive domains such as orientation, attention, executive functions, memory, language, motor skills, visuospatial skills, perception, and intelligence (Marcotte *et al.*, 2010). Despite this, the empirical studies regarding the cognitive predictors of financial abilities found that some cognitive functions are more associated with finance-related functional status such as attention, executive functions (Hoskin *et al.*, 2005; Okonkwo *et al.*, 2006; Moberg and Rick, 2008; Sherod *et al.*, 2009; Griffith *et al.*, 2010), memory (Moberg and Rick, 2008; Sherod *et al.*, 2009), working memory (Earnst *et al.*, 2001), verbal abstraction (Kershaw and Webber, 2008), and arithmetic skills (Sherod *et al.*, 2009). It is also of general agreement that the executive functions are one of the most important elements of decision-making processes (Sorger *et al.*, 2007; Loewenstein and Acevedo, 2010). Regarding testamentary capacity, several cognitive domains have been proposed as associated with the ability to make a will – memory, considering not only free recall but also recognition (Streisand and Spar, 2008), orientation, expressive and receptive language, and executive functions (Peisah and Shulman, 2012), although this has not been empirically tested.

Although the contribution of standardized neuropsychological tests to increase the reliability of the competence evaluation procedure is known, their ecological validity is not ensured (American Bar Association Commission on Law and Aging and American Psychological Association, 2008), i.e. they do not predict directly everyday functioning, and hence it is necessary to consider the functional assessment procedures (Streisand and Spar, 2008). So the neuropsychological assessment procedures must be considered with other evaluation procedures, such as global functional assessment and specific capacity evaluation procedures regarding specific legal question (Moye, 1996; Wood, 2007).

Functional assessment scales

The functional capacity assessment scales are important because they are able to provide a standardized assessment of functional status (Moye, 1996). Daily living tasks are usually defined in two main groups – Basic Activities of Daily Living (BADL) that are related to mobility and self-care tasks (e.g. feeding, dressing, bathing, and continence) and IADL that involve higher levels of cognitive functions, being the more complex tasks necessary for independent functioning in home and community (e.g. preparing meals, housekeeping, comprehension and communication, and ability to take medical or financial decisions; Loewenstein and Acevedo, 2010).

Although there are several functional assessment scales (using self-reports, reports by significant others, or clinicians' ratings), the mental health professionals must be aware of several distinct aspects that distinguish them. Some scales focus on the assessment of BADL, such as the Katz Index (Katz *et al.*, 1963) and the Barthel Index (Mahoney and Barthel, 1965), while others are developed for the IADL assessment, for example the Lawton and Brody Instrumental Activities of Daily Living Scale (Lawton and Brody, 1969). Also, there are some scales used to assess both BADL and IADL, such as the Functional Independence Measure (FIM; Keith *et al.*, 1987), the Functional Activities

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Questionnaire (FAQ; Pfeffer *et al.*, 1982), and the Bristol Activities of Daily Living Scale (Bucks *et al.*, 1996). Another aspect to consider is the specific medical condition, and some scales are specifically designed to test ADLs for a specific condition, such as the Disability Assessment for Dementia scale (DAD; Gélinas *et al.*, 1999) and the Instrumental Activities of Daily Living scale for Elderly People (IADL-E; Mathuranath *et al.*, 2005) for dementia; the Alzheimer's Disease Cooperative Study Scale for ADL in Mild Cognitive Impairment (ADCS-MCI-ADL; Galasko *et al.*, 1997) for mild cognitive impairment; and the World Health Organization Disability Assessment Schedule-II (WHODAS-II; World Health Organization, 2000) for mental diseases.

The functional assessment instruments may include items for the evaluation of financial abilities, specifically those concerning IADL evaluation: (i) the Lawton and Brody Instrumental Activities of Daily Living Scale has only one general item regarding the "ability to handle finances" with three functioning levels to consider (1 – manages financial matters independently [budgets, writes checks, pays rent and bills, go to bank], collects and keeps track of income; 2 – manages day-to-day purchases, but needs help with banking-major purchases; and 3 – incapable of handling finances); (ii) FAQ has also only one item related to "writing checks, paying bills, balancing checkbooks" in a four-level scale (0 – normal; 1 – has difficulty but does by self; 2 – requires assistance; 3 – dependent); (iii) ADCS-MCI-ADL includes one item about "balancing a checkbook or the credit card" (0 – with assistance/physical help; 1 – with supervision; 2 – without supervision and assistance); (iv) the Bristol Activities of Daily Living Scale also has one item regarding financial abilities, in which there are five options to choose the best one for each person (1 – responsible for own finances at previous level; 2 – unable to write checks but can sign name and recognizes money values; 3 – can sign name but unable to recognize money values; 4 – not applicable); (v) DAD has four dichotomist (yes/no) items regarding "finance and correspondence" (1 – shows an interest in personal affairs such as finances and written correspondence; 2 – organizes finances to pay bills; 3 – adequately organizes the correspondence with respect to stationery, address, stamps; and 4 – handles adequately with money [makes change]).

Performance-based functional assessment instruments

Although the self-report measures described previously are the most frequently used methods of functional assessment in clinical practice, direct observation or performance-based methods have been considered as having more benefits (Moore *et al.*, 2007). Self-report instruments may be problematic because the patient's awareness of their functional abilities may be compromised, and also because the informants may provide unreliable information about patient's functional skills, including those related to financial capacity (Pinsker *et al.*, 2010). Patients with mild cognitive impairment may be unaware of their impairment in financial abilities (due to both cognitive impairment and depression), and their informants may similarly misestimate the patients' financial capacity (Okonkwo *et al.*, 2008). Also, Alzheimer's disease patients overestimate their financial abilities. At the same time, caregivers have been shown to both under and overestimate the financial abilities of the Alzheimer's disease patients (Wadley *et al.*, 2003). Although Napier and colleagues (2007) found an agreement between self-report and performance-based financial abilities, they also concluded that in some financial tasks (e.g. balance a checkbook) the mentally ill patient's awareness of functional ability was compromised. Gender may be also an important variable. Bertrand and Willis (1999) found that women with Alzheimer's disease overestimated, while men underestimated IADL abilities when compared with their actual performance. The clinician must be careful about the validity and reliability of the information received from patients and their informants, and then recognizes the need to consider performance-based information. To accomplish this purpose, several performance-based instruments have been developed in order to improve the ecological validity of the assessments.

The Test of Everyday Functional Abilities (TEFA; Cullum *et al.*, 2001), originally named the Texas Functional Living Scale, is a performance-based instrument for IADL assessment in cognitively impaired persons. The items of the instrument are cognitive-based in order to be more sensitive to early stages of Alzheimer's disease. TEFA evaluates five domains of functioning – dressing (e.g. putting coat on), time (e.g. telling time), money (e.g. writing a check), communication (e.g. dialing a telephone), and memory (e.g. remembering to take medications). In the Money Scale, the instrument only assesses three financial abilities (count money, make change, and write a check), which is clearly insufficient.

The Direct Assessment of Functional Status (DAFS; Loewenstein *et al.*, 1989) was developed to assess both BADL and IADL in Alzheimer's disease and other dementias, covering the following seven domains: time orientation, communication,

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transportation, finance, shopping, grooming, and eating. The DAFS financial subscale measures five functional abilities (identifying currency, counting currency, writing a check, balancing a checkbook, and making change).

The Everyday Problems test for Cognitively Challenged Elderly (EPCCE; Willis, 1994) comprise tasks that were developed observing Alzheimer's disease patients (from mild to moderate range) in their everyday tasks performance, especially those requiring cognitive processes and higher order executive functions. The test evaluates the following six IADL domains: finances, medications, transportation, telephone use, household management, and meal preparation. There is one item with two questions regarding financial skills (membership application: how much is the cost of a membership for a ten-year period, and how much the partner would pay). EPCCE's main purpose is the IADL measure in low cognitively functioning elderly adults, providing an easier and shorter version of the Everyday Problems Test (EPT; Willis, 1990). The EPT was developed for a face validity assessment of everyday cognitive competence in older adults.

The Kohlman Evaluation of Living Skills (KELS; Kohlman, 1992) was developed to evaluate functional abilities in psychiatric populations, but it was subsequently applied to the geriatric populations. It evaluates both BADL and IADL in five domains: self-care, safety and health, money management, transportation and telephone use, work and leisure. The instrument considers both self-report (e.g. monthly income) and performance-based items (e.g. writing a check and balancing a checkbook, purchasing items and receiving correct change, and balancing a budget).

The Structured Assessment of Independent Living Skills (SAILS; Mahurin *et al.*, 1991) is a performance-based instrument for the assessment of functional abilities under four main groups, each one with specific functional domains: motor (fine motor skills, gross motor skills, dressing, eating), cognitive (expressive language, receptive language, time and orientation, money-related skills), instrumental activities (instrumental activity score), and social interaction (social interaction score). The money-related skills are evaluated by five items (counts money, makes change, understands monthly utility bill, writes check, and understands checkbook).

The Measure of Awareness of Financial Skills (MAFS; Cramer *et al.*, 2004) has three parts: participant questionnaire, informant questionnaire, and performance measure. It was designed to measure awareness in financial management domain. The development of MAFS was done through literature review and consultation with professionals having experience in financial capacity assessments. The participant questionnaire has questions about financial management concerning difficulty or need of help in performing certain financial tasks. The informant questionnaire consists, in an equivalent version, of the participant questionnaire. The performance measure has six financial tasks selected in order to be also equivalent to the questionnaires (e.g. identify and counting currency, cash transactions, writing checks, balancing checkbooks, and comprehension of statements/bills).

The functional assessment instruments (based on self-report and performance measures) that have financial items do not have enough items to cover all range of financial abilities. Only the MAFS is specifically developed for the financial skills evaluation regarding a specific aspect that is individual awareness. Additionally, they are not specifically developed to assess financial capacity to provide a specialized answer to legal system.

Forensic assessment instruments

The FAIs are psychological assessment instruments that provide a specific and direct answer to legal and clinical questions. The major advantage of these instruments is the minimum amount of inferences that need to be made from the traditional clinical assessment instruments in order to address a specific legal requirement (Grisso, 2003). Other advantages are the more reliable focus on legal norms and the development of normative data based on forensic populations so that the patient can be compared with mean results of a specific sample (Archer *et al.*, 2006). The use of these instruments has been highlighted in several chapters and scientific papers focusing on themes about forensic psychology (Heilbronner, 2004). Considering the main principle of mental health assessments in the forensic context (the assessment of legally relevant behaviors), the instruments validated to directly answer legal questions can become useful tools (Heilbrun *et al.*, 2003).

The Financial Capacity Instrument (FCI; Marson *et al.*, 2000) is a measure of financial capacity for older adults, including older adults with dementia. The conceptual model underlying the FCI defines financial capacity in three different levels – specific financial abilities (tasks), main financial abilities (domains), and global financial ability (total score). The FCI also evaluates three main aspects: (i) declarative knowledge (ability to describe facts, concepts, and situations related to financial activities); (ii) procedural knowledge

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(basic motor abilities involved in financial capacity, such as writing a check or making changes); and (iii) judgment (ability to make financial decisions consistent with proper interests in day-to-day life situations as well as in new contexts; Moye and Marson, 2007). The final FCI version comprises the following nine domains: basic monetary skills, financial conceptual knowledge, cash transactions, checkbook management, bank statement management, financial judgment, bill payment, knowledge of assets/estate, and investment decision-making (Griffith *et al.*, 2003). The several domains were selected considering their relevance for psychologists who treated and examined persons at risk for financial incapacity (e.g. older adults with dementia), as well as by their relevance to the legal norms for financial capacity. Each domain and related tasks were revised by doctors, gerontologists, a lawyer, and a judge. The FCI classifies the patient as capable, marginally capable, or incapable. Cut-off points have been established for normative samples in order to distinguish capable patients from incapable (standard deviation [SD] = 2.5) and marginally capable patients (SD = 1.5; Marson *et al.*, 2000).

Similarly, the Financial Competence Assessment Inventory (FCAI; Kershaw and Webber, 2006) was developed to provide a reliable and valid evaluation of financial capacity, measuring six domains: everyday financial abilities, financial judgment, estate management, cognitive functioning, debt management, and support resources. These domains are evaluated through observed performance tasks and self-report. Additionally, the FCAI is able to accomplish the four areas of competence by recoding the results in some items: understanding, appreciation, reasoning, and expressing a choice. The instrument was developed through literature review in order to collect the main financial skills that were judged by the ratings of university students and professionals (e.g. financial administrators, lawyers, medical staff, psychologists), and also by focus groups. The FCAI does not provide cut-off scores and is intended to be used as a guide to determine the strengths and/or weaknesses in particular areas, including some guidelines to intervention in areas of weakness. Notwithstanding this, norms are provided for distinct clinical conditions – dementia, schizophrenia, acquired brain injury, and intellectual disability – by scaled scores (total score [Mean = 100; SD = 15]; domain scores [M = 10; SD = 3]).

Another financial assessment instrument is the Financial Assessment and Capacity Test (FACT; Black *et al.*, 2007). FACT's main purpose is the development of intervention strategies tailored to the functional needs of the person by assessing several domains – memory/reading/writing ability, calculation, daily financial tasks, general financial knowledge, understanding assets, financial insight, financial confidence, rational beliefs about money. The four competence areas (understanding, appreciation, reasoning, and expressing a choice) were considered because they are present in the Ontario legislation, and were established by professionals of psychology, occupational therapy, and psychiatry. Cut-off points were established through the Receiver Operating Characteristic (ROC) analysis according to the performance of the *incompetent* and *competent* groups (which are defined by physicians' opinion and Independent Living Scales [ILS] – Money management scale). Scores above 85 are considered as "financially competent", scores under 75 as "financially incompetent," and scores between 75 and 85 as "marginal financial capacity" (Black *et al.*, 2007).

Other instruments include, but are not limited to, the assessment of financial capacity. The purpose of ILS (Loeb, 1996), originally named as the Community Competence Scales, is to provide an individualized assessment of IADL, providing a direct and objective evaluation of daily living functioning through five subscales – memory/orientation, managing money, home and transportation, health and safety, and social adjustment – and two main factors – problem-solving and performance/information. The managing money domain evaluates the ability to count money, do monetary calculations, pay bills, and take precautions with money. The ILS items have relevance to situations in independent living and require the examinee to solve problems, reveal knowledge, or perform tasks. The ILS items also include sensory motor tasks (screening items for vision, reading, hearing, speech, signature, writing, and walking), simple questions regarding general knowledge as well as more complex questions regarding reasoning and problem-solving. The ILS was developed by the study of judicial processes, investigation about the two main domains (ability to take care of oneself and one's property), and through semi-structured interviews of older adults and professionals such as judges, lawyers, psychiatrists, psychologists, and social workers to gather opinions regarding the critical aspects of this kind of evaluation. Standard scores, considering independent older adults, are provided not only for total score (M = 100; SD = 15) but also for the five subscales and two factors (*T* scores: M = 50; SD = 10). Additionally, there were defined cut-off scores considering the correct classification of persons in the dependent and independent groups – cut-off point of 45 to factors and domains, and 92 to the full scale (Loeb, 1996).

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The Assessment Capacity for Everyday Decision-Making tool (ACED; Lai and Karlawish, 2007) is a useful measure to evaluate the capacity to solve functional problems in older adults with mild to moderate cognitive impairment and Alzheimer's disease. Through ACED, the examiner can assess the specific abilities required for decision-making in three main domains: preparing meals, managing medications, and managing finances. Prior to the administration of ACED, the examiner is required to gather information about the patient's functional deficits by interviewing the caregiver. A structured interview using clinical vignettes is employed to assess the following four abilities of decision-making for each of the three daily living domains: understanding, appreciation, reasoning, and expressing a choice. Through this the instrument provides important information regarding the processes used by the examinee to solve their own functional problems previously identified (Lai and Karlawish, 2007).

The Hopemont Capacity Assessment Interview (HCAI; Edelstein, 1999) is a semi-structured interview, and its main purpose is the assessment of the decision-making capacity regarding medical and financial decisions. It was developed to assess these civil capacities regarding the four legal standards of competence: understanding, appreciation, reasoning, and expressing a choice. Normative data for the HCAI are not available and the lack of studies regarding financial matters with the instrument is evident. The only reference regarding psychometric studies is a Master's thesis and three validation studies (one about ILS and two about FCAI) in which the instrument is used as a criterion reference. The semi-structured interview regarding financial decision-making focuses on understanding concepts, but the skills involved in everyday functioning (e.g. counting currency, managing bank accounts) are not fully covered (Webber *et al.*, 2002).

The Decision-making Instrument for Guardianship (DIG; Anderer, 1997) includes the eight areas of daily living functioning that are commonly referred in guardianship proceedings: hygiene, nutrition, healthcare, residence, property acquisition, routine money management in property acquisition, major expenses in property acquisition, and property disposition. The DIG was developed considering the legal relevance of these concepts by conducting interviews with legal and social service professionals (in Grisso, 2003). Although norms (means and SD) are provided for 61 participants (from 61 to 90 years old), additional normative studies are clearly needed. Also, the DIG does not cover all the functional abilities and aspects legally relevant (e.g. care for home or personal safety).

Discussion and conclusions

Contributions to the assessment of mental capacity evaluations can be made by a diverse range of health professionals, such as psychiatrists, geriatricians, neurologists, psychologists, and social workers, in order to achieve the more appropriate evaluation (Hafemeister and Sales, 1984). Although this was recognized early on, medical professionals have been responsible for the majority of the mental capacity evaluations, including financial and testamentary capacity. More recently, psychologists and other health professionals have been considered in such evaluations because of the need for a more standardized and comprehensive assessment of these complex cases. This is particularly important considering the important role of neuropsychological assessment procedures in financial and testamentary capacity determination. Through neuropsychological evaluation, the psychologist is able to establish the cognitive profile of strengths and weaknesses, diagnosis and prognosis, helping the legal system in the definition of protection orders, and other legal determinations related to capacity (Wood, 2007). Considering the importance of functional assessment, the mental health professional must consider the multiple sources of information (Loewenstein and Acevedo, 2010; Marson *et al.*, 2012) trying to minimize errors in their clinical judgment. To do this, it is important to consider not only self-reports and reports by significant others but also the general and specific performance-based measures reviewed previously, always considering the current and the past functional abilities. Additionally, the mental health professional must be able to examine the relationship between cognitive and functional changes regarding financial and testamentary capacity (Hebert and Marson, 2007).

Despite the major importance of FAIs in providing a specific and direct answer to legal systems regarding financial capacity determinations, the paucity of empirical investigations regarding reliability and validity of these instruments is one of the main disadvantages. The FCI is the financial capacity instrument that has the more empirical studies published, followed by ILS, FCAI, and ACED. The HCAI only appears in other instruments' validation studies. We could not identify any FACT and DIG empirical studies, but the FACT has a manual with some analysis regarding psychometric properties. Also, several of these instruments have been reported only with preliminary data and in some cases there is no comprehensive manual for administration and scoring the test (Archer *et al.*, 2006). Additionally, it is essential to note that there is not a specific

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instrument to evaluate testamentary capacity, although the guidelines to do it are several (Spar and Garb, 1992; Shulman *et al.*, 2007; Shulman *et al.*, 2009; Kennedy, 2012).

Thus, in the context of the current scientific understanding of financial capacity and testamentary capacity, it is necessary to consider the useful contribution of both neuropsychological and general functional procedures. Although the FAIs are the only specific instruments intended to provide a specific and direct answer to legal systems, the more general functional examination is an important step in the evaluation. Also, the important role of neuropsychological assessment techniques in helping the legal systems is widely accepted. This global profile of functioning will help the mental health professionals in interpreting more accurately the results of the specific assessment of the legal question.

One of the major oversights in the literature is the failure to recognize the cultural, linguistic, and legal jurisdictional contexts of the assessment, often best captured by culturally and linguistically specific tools. In Portugal, the development of a new functional assessment instrument regarding both BADL and IADL – Adults and Older Adults Functional Assessment Inventory (IAFAI [*Inventário de Avaliação Funcional de Adultos e Idosos*]; Sousa *et al.*, 2008) – is an important advancement not only for general clinical practice but also for capacity determinations. The main advantage of this instrument when compared with several other functional assessment instruments is the wide range of daily living activities assessed. The items are representative of the Portuguese population's day-to-day life, whose validation and normalization studies are currently being done. A more specific FAI regarding financial capacity evaluations is also being developed – Financial Capacity Assessment Instrument (IACFin [*Instrumento de Avaliação da Capacidade Financeira*]; Sousa *et al.*, 2010). The development of this instrument was based on a careful revision of literature, other similar instruments, and procedures for the development of such instruments. In addition, it was developed after a qualitative study of focus groups (legal system professionals, mental health professionals, and older adults) in order to ensure the utility of IACFin regarding the specific legal questions emerging from the Portuguese legal system. This instrument is also currently being validated.

The current paper addresses the general topics regarding financial and testamentary evaluations, pointing to several available instruments that have appeared in international guidelines and research papers. A useful focus for future work would be an evaluation of the specific advantages and limitations of different assessment instruments. Specifically, it is important to carefully analyze the psychometric characteristics regarding reliability and validity of each of the instruments cited in this paper. Just by doing this, it would be possible to define an assessment protocol useful and valid to answer the legal questions regarding financial and testamentary capacity.

Conflict of interest

None.

Description of authors' roles

Liliana B. Sousa designed and wrote the paper. Mário R. Simões and Horácio Firmino supervised the research and revised the paper. Carmelle Peisah helped in writing and revising the paper.

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