

Specialist Accreditation Scheme



2021 Business Law Assessment Requirements



THE LAW SOCIETY
OF NEW SOUTH WALES



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Introduction

Undertaking Specialist Accreditation in Business Law is both challenging and fulfilling. It is important that applicants understand the core skills and knowledge areas required of them and the level of performance expected of candidates.

Included in this document are:

- The performance standard which is the benchmark for competent practice in this area;
- The performance criteria which form the basis for the assessment;
- A list of the core skills and areas of knowledge; and
- The methods and dates of assessment which candidates are required to undertake.

Timetable

The shaded area below shows the core assessment period including the dates associated with each assessment.

Candidates need to focus on this core assessment timeframe and plan their workload well in advance.

Based on feedback reports from previous years, candidates are encouraged to dedicate and manage their time during this period to optimise their performance across all assessment tasks.

Candidates are reminded that participating in the Specialist Accreditation program requires a considerable level of commitment if candidates are to be awarded Specialist Accreditation.

Activity	Date
Question & Answer sessions for potential candidates	February 2021
Applications for Specialist Accreditation close	End March 2021
Candidature confirmed	Week commencing 3 May 2021
Take Home Assessment	Released: Wednesday, 12 May 2021 Due: Wednesday, 2 June 2021
Formal Written Examination	Saturday, 24 July 2021
Simulated Client Conference	Sunday, 25 July 2021
Results released to candidates	Late October 2021
Reassessment and/or Appeal applications close	14 days from notification of results
Reassessment results released	December 2021
Appeal results released	December 2021



A. Performance Standard

Standard of Accredited Specialist

The Standard of an Accredited Specialist in Business Law is that of the ‘specially competent practitioner’ in the core skills and practical capabilities in the selected area of practice, as assessed against the spectrum of capability of all practitioners in that area of practice. This standard is to be distinguished from the idea that the Scheme requires the highest technical legal knowledge across all aspects of the selected area of practice.

Important

Candidates are advised to read and familiarise themselves with the 2021 Guide to Application and Assessment which contains important information regarding application, process, resources and special consideration etc. This document can be found at: lawsociety.com.au/specialists

B. Assessment Program

There are **three** components to the assessment program:

- A mock file;
- A written exam; and
- A simulated client conference.

Mock File

Release date: 10am, Wednesday 12 May 2021

Due date: 4pm, Wednesday 2 June 2021

Candidates will complete a take home assessment mock file that includes several tasks in the specified time frame. This component of assessment will assess a range of performance criteria, including the capacity to clearly communicate the scope of work, identify information to be collected from clients, document preparation, knowledge and application of legal principles and practical procedures, capacity to plan and implement transactions, use of external information and the ability to communicate effectively.

Candidates may use the resources of their offices in completing this exercise. However, all work submitted must be the result of the candidates own efforts and without the assistance of any other person.

Assessment Criteria

In your response you will be assessed on the following performance criteria. You will be required to perform each criterion to the level of the Performance Standard.

- a. Identification of all relevant parties and all key issues from a given fact situation;
- b. Accurate and detailed knowledge of the law and procedures;
- c. Skilled application of that knowledge to the given fact situation; and
- d. Provision of practical, clear, accurate and appropriate advice.



Formal Written Examination

Examination date: Saturday 24 July 2021

Venue: TBC*

Candidates will sit a written exam which focuses on the legal principles and knowledge essential to the Business Law Accredited Specialist and the ability to identify problems in a range of areas. The examination is likely to take the form of short-answer and problem-solving questions covering core knowledge areas. The examination will be open book and three hours in duration with twenty minutes reading time. All candidates will be required to answer **five** questions from a pool of questions.

Assessment Criteria

Your answers will be assessed on the following performance criteria and you will be required to perform each criterion to the level of the Performance Standard:

- a. Ability to identify relevant facts and legal issues across a wide range of core matters and core areas of law;
- b. Accurate understanding and application of the relevant law and in particular Core areas of law;
- c. Achieve a critical and evaluative approach to the issues;
- d. Content and structure is well organised in support of the argument; and
- e. Ability to provide clear, accurate and appropriate responses.

*All candidates will be notified of the examination time and venue in advance of the examination date.

Simulated Client Conference

Conference date: Sunday 25 July 2021

Venue: TBC*

Candidates will be required to conduct a simulated conference with a person acting the role of a client. Twenty minutes prior to the conference, candidates will be provided with a briefing note with background facts.

The conference will involve discussing a proposed business venture or transaction, eliciting information from the client and providing initial comments or advice. It will take up to 30 minutes. It is intended to be a preliminary 'high level' discussion, eliciting details necessary to understand the proposed venture or transaction and to provide preliminary advice and direction on key issues.

The conference will be recorded for assessment purposes. At the conclusion of the conference candidates will be given 10 minutes to prepare a file note which records, in point form, key issues discussed, advice given and steps to be taken in light of the information in the briefing note and the instructions and information received during the conference. This file note, along with the conference recording will be assessed against the Performance Standard. Candidates may take notes throughout the conference but are not permitted to submit these as part of their file note.

Candidates will be provided with a file note template which they may use for completion of this part of the assessment, but are not permitted to bring any reference materials into the conference room. Clean paper and pens are permitted only.

The client conference may also involve candidates being asked to answer one or two questions arising out of their Mock File.

The time allocated for the client conference and completion of the file note will be strictly enforced.

The assessment is intended to assess the knowledge component and skills relating to performance criteria, particularly Core Skills 1.1, 1.2, 1.3 and 2.1 and 2.2 listed on pages 11 – 12 of this document.

The conference with 'client' is expected to run for up to 30 minutes.



Assessment Criteria

Your simulated client conference and subsequent file note will be assessed on the following performance criteria and you will be required to perform each criterion to the level of the Performance Standard:

- a. Eliciting information and instructions from client;
- b. Demonstrating clear and appropriate oral expression in listening to and questioning the client;
- c. Ability to engage productively in dialogue with the client;
- d. Demonstrating knowledge of the relevant area of law or practice and an ability to use that knowledge in a dialogue in a meaningful and effective way, by responding to the instructions received and identifying and explaining appropriate actions or options to the client; and
- e. Ability to assist the client to choose a course of action.

**All candidates will be notified of the conference time and venue in advance of the conference date.*



C. Core Skills and Knowledge Areas

All candidates seeking to be accredited as a specialist in Business Law should be able to demonstrate, to the level of the Performance Standard:

- an in-depth knowledge of the relevant principles, law and procedures;
- that they have the Core Skills listed below; and
- their ability to perform of tasks in the wide range of areas which a Business Law Accredited Specialist can be expected to encounter in the ordinary course of a business law practice.

Core Skills

Candidates seeking to be accredited as a specialist in Business Law should be able to perform the following tasks in relation to core matters and core areas of law to the level of the Performance Standard. Candidates must be able to identify legal issues in both core and non-core areas.

1. In all matters the Business Law Specialist obtains full details by:

1.1 Eliciting details of agreement/transaction

The Business Law specialist elicits information from the client by employing a systematic and thorough approach, which is appropriate for the client and the matter. The Business Law Specialist displays an attitude of constructive scepticism to the information supplied.

1.2 Eliciting appropriate information about the client, other parties and transactions

The Business Law specialist obtains sufficient information to identify and understand the client, other parties and the particular requirements, objectives and issues regarding the tasks to be performed or the transaction being undertaken in order to advise on potential conflicts and the nature of the work to be performed.

1.3 Identifying the key issues

The Business Law specialist demonstrates breadth of knowledge of core areas of law to identify with precision the key legal issues and to advise on appropriate parties/ structures and issues.

1.4 Gathering data from external sources, including government bodies and accountants

The Business Law specialist identifies and uses the appropriate sources of information (including appropriate searches of companies, business names, titles, leases, securities and other relevant data bases), complies with the requirements of regulatory bodies and, where necessary, researches industry requirements. The Business Law specialist liaises with other professionals to access information and is able to interpret data. For example, the Business Law specialist uses company accounts and documents to confirm instructions and to identify gaps in the instructions, including obvious contradictions.

2. In all matters the Business Law specialist determines a plan and advises the client by:

2.1 Formulating a plan

The Business Law specialist demonstrates an ability to recognise the legal, commercial and personal consequences of the proposed transaction or work for the client and for any associated party and assists their client in formulating an appropriate plan to achieve the client's objectives.

The plan should address the questions of:

- The client's objectives;
- Liability as between the participants;
- Liability of the entity itself to third parties;
- Liability of the participants to third parties;
- Jurisdiction of various regulatory authorities;
- Administration and reporting to government authorities;
- Taxes, duties and fees, including State taxes (including stamp duty, land tax, & pay-roll tax, Commonwealth taxes (including income tax, CGT, GST & FBT) and specific tax consequences for the entity and the participants;
- Assessment of financial arrangements;
- Family law, succession planning and asset protection;
- Relevant superannuation issues for the entity and the participants;
- Commercial effectiveness;
- Complexity of structures having regard to the capacity of the client and their advisers;
- Cost/benefit analysis; and
- Certainty of outcome.

Where appropriate, the Business Law specialist researches or uses other specialists to fill in gaps in knowledge.

2.2 Communicating the position clearly to the client and confirming the client's instructions

The Business Law specialist offers practical alternatives, if necessary, that reflect the client's aims. The Business Law specialist communicates clearly the rights, obligations, risks and overall costs to the client and any associated third party. The communication is appropriate to the client's level of understanding, business experience and sophistication. The Business Law specialist assists the client to achieve a realistic understanding of the proposed transaction or work.

3. In transactional matters, the Business Law specialist implements the plan by:

3.1 Negotiating the terms of agreement

When negotiating, the Business Law Specialist displays familiarity with the facts and instructions and an awareness of the legal problems. The Business Law Specialist should display a perception of commercial solutions and likely acceptable alternatives and compromises. The Business Law Specialist uses constructive problem-solving while taking account of the client's commercial goals and cost constraints and has an awareness of the other parties' objectives and tactics.

3.2 Drafting or scrutinising documents

The Business Law Specialist ensures that all documents reflect any agreement and achieve the client's aims. The Business Law Specialist drafts appropriate documents and uses appropriate precedents when necessary tailored to fit the particular transaction. The Business Law Specialist is able to interpret documents prepared by another party and to recognise if any aspect of the agreement, as negotiated, is missing or if any element has not been adequately covered. All documents are dealt with promptly and thoroughly.

3.3 Communicating with the client throughout the transaction

The Business Law Specialist communicates effectively and appropriately with clients, keeping clients properly informed of steps in the transaction and progress and answering queries.

3.4 Finalising pre-settlement matters

The Business Law specialist conducts appropriate pre-settlement searches promptly and thoroughly, deals effectively with all parties to finalise transactions, including ensuring settlement figures and adjustments are accurately calculated. The Business Law Specialist advises the client before settlement of all relevant matters of which the client should be aware and, if necessary, obtains final instructions from the client to proceed.

3.5 Settling and notifying relevant bodies

The Business Law specialist completes matters with a due regard to time and cost requirements. The Business Law Specialist notifies the appropriate regulatory bodies in accordance with the proper procedures and deals with all post-settlement matters promptly and thoroughly. The Business Law Specialist reports to the client, immediately following settlement, full details of all relevant transactions and promptly accounts to the client for all trust transactions and bills the client for all costs and disbursements.

4. In non-transactional matters, the Business Law Specialist assists by:

4.1 Advising the client

The Business Law Specialist is able to advise and assist the client with management of obligations and risks of the business and its operating structure, including:

- Powers, rights, duties and liabilities associated with ownership and management;
- Internal business disputes;
- Regulatory compliance;
- Fair dealing by and within business entities;
- Directors' responsibilities; and
- Cost and financial implications.

4.2 Representing the client in disputes

The Business Law specialist recognises disputes as they arise and advises the client on appropriate options to resolve conflict. The Business Law Specialist advises clients on the best course of action to avoid disputes which may arise among parties in business or with other business entities and customers. The Business Law Specialist, guided by a knowledge of the remedies, advises on the documentation needed, the actions to be undertaken by the client and the business procedures which should be adopted. The Business Law Specialist will negotiate on the client's behalf, mindful of the need to protect the client's position if the matter is litigated in the future.

Where a dispute has arisen, the Business Law Specialist identifies remedies and courses of action available to the client in dealing with the dispute and advises the client in relation to:

- The remedies available;
- The practical and legal consequences of pursuing the available options;
- Ensuring that a commercially acceptable result is likely to be achieved;
- The preferred course of action;
- The cost, timing and action needed by both the client and the Business Law Specialist;
- The best method of negotiation and the tactics to be employed; and
- The choice of suitable representation in matters which proceed to dispute resolution or litigation.



4.3 Representing the client, e.g. before a regulatory body

When making representations on behalf of a client, the Business Law specialist identifies the appropriate body and understands its processes. The Business Law Specialist communicates the client's case clearly and persuasively.

Knowledge Areas

The distinguishing feature of an Accredited Specialist in Business Law is the ability to undertake commercial transactions and to advise in a wide variety of areas of business, including the commercial aspects of property law. Core matters and core areas of law have been identified as being the foundation of the practice of Business Law.

Note: For assessment purposes, areas of law will be based on current law as at 30 April 2021. Candidates may, but are not required to, have regard to changes to the law which take effect after that date.

1. Core matters

Purchase and sale of business interests and business entities:

- Commercial contracts;
- Forming and restructuring business entities;
- Business licensing;
- Business disputes; and
- Commercial aspects of property transactions.

Note: While the conveyancing aspects of property transactions are not core matters, candidates should be able to identify property related issues requiring consideration or further investigation.

2. Important adjuncts to core matters

- Asset protection and succession planning;
- Finance and securities, including PPSA;
- Business compliance;
- Intellectual property;
- Insolvency;
- Employment;
- Insurance;
- Franchising; and
- Privacy and confidentiality.

3. Core areas of law

Relevant laws relating to:

- Business structures (including sole trader, partnership, company, trusts superannuation fund, joint venture, licensing and contractual alliance);
- Trust Law applicable to trading trusts including:
 - Duties of Trustees, power and rights of Trustees, beneficiary rights and remedies and dealing with units in the unit trust.
- Revenue law (including stamp duty, land tax, pay-roll tax, income tax, CGT, GST and FBT), so far as it impacts on choice of structures and transactions;
- Contracts;
- Corporations Law as applicable to proprietary companies:
 - Duties of Directors, board functions, powers and procedures, shareholder rights and remedies, shareholder meetings (calling in procedures), dealing with company shares.
- Commercial law;
- Competition and Consumer law including:
 - Misleading and deceptive conduct, restraint of trade, exclusive dealing, cartel behaviour, unfair contracts, consumer guarantees, liability of manufactures, penalties and remedies.
- Remedies (injunctions, damages, specific performance, rescission);
- The commercial aspects of property law including the application of the *Retail Leases Act 1994* (NSW) and the *Duties Act 1997* (NSW);
- *Personal Property Securities Act 2009* (Cth);
- Succession Planning and Asset Protection;
- Shareholder Agreements, Unitholder Agreements and Partnership Agreements;
- Business licensing;
- Business Disputes including dispute resolution techniques, litigation processes alternative dispute avenues.

4. Ancillary/additional areas of law

Relevant laws relating to:

- Securities and Guarantees including:
 - Mortgages and general security agreements and impact of *Personal Properties Securities Act 2009* (Cth)
 - Preparing and/negotiating loan and debit facility agreements
 - *Contracts Review Act 1980* (NSW) and *National Consumer Credit Protection Act 2009* (Cth)
- Intellectual Property including:
 - Trademarks, passing off, business names and company names, copyright, domain names, IP licences and Confidentiality Agreements
- Insolvency including:
 - Voluntary administrations, bankruptcy, liquidation, receivership, preferences and uncommercial transactions.
- Employment including:
 - Employment agreements, termination, continuation on transfer of business, restraints and confidential information, occupation health and safety issues
- Insurance;
- Franchising including:
 - The Franchising Code
 - Disclosure Statements
 - Franchising Agreements
 - Assignment/Termination
 - Goodwill
- Privacy including:
 - The privacy principles contained in the Commonwealth legislation.