

Specialist Accreditation Scheme



2021 Property Law Assessment Requirements



THE LAW SOCIETY
OF NEW SOUTH WALES



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Performance Standard

Standard of Accredited Specialist

The Standard of an Accredited Specialist in Property Law is that of a '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



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; accordingly.

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 achieve their desired outcome.

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
Mock File	Released: Wednesday, 12 May 2021 Due: Wednesday, 2 June 2021
Formal Written Examination	Saturday, 24 July 2021
Peer Interview	Sunday, 25 July 2021
Results released to candidates	Early October 2021
Reassessment and/or Appeal applications close	14 days from notification of results
Reassessment results released	December 2021
Appeal results released	December 2021



Core Skills and Knowledge Areas

Practitioners wishing to become an Accredited Specialist in Property Law are expected:

- To display knowledge of the law and procedure which underpins the performance of tasks in the area of Property Law; and
- To perform the following tasks to the level of the performance standards.

Core Skills

1. Gathering information by:

1.1 Taking initial instructions

- Establishing the identity and legal capacity of the client, the identity, location and type of the property and the client's intentions;
- Developing a full picture of the transaction or development;
- Assisting the client in thinking the problem through step by step to identify the client's goals and the best means of achieving them; and
- Discussing the question of costs and identifying the party who is responsible for the costs.

1.2 Gathering information from external sources

- Conducting searches to verify information obtained from the client and to define the extent of the client's risk in the transaction or development;
- Knowing the procedures for obtaining the information required and conducting the searches with attention to detail and a concern for accuracy;
- Liaising with other professionals to obtain information; and
- Interpreting all the responses and assessing the impact of the information obtained on the transaction or development and the client's position.

1.3 Verification of Identity and Client Authorisation

- Identifying when verification of identity and client authorisation is required; and
- Determining how this should be carried out.



2. Determining course of action by:

2.1 Considering legal and practical implications

- Analysing the information gathered in light of the relevant law including recent Federal and State case law, revenue law and procedural requirements;
- Developing possible courses of action which reflect the client's objectives; and
- Considering strategy, including whether to submit draft documents for negotiation or to contact the other party's representatives.

2.2 Canvassing options with client

- Explaining complex legal and statutory concepts in a way that is understandable to the client;
- Explaining the impact of the transaction on the client's financial position, the timetable and the cost involved and outlining the sequence of the actions to be undertaken by or on behalf of the client; and
- Checking the client's understanding and confirming the client's instructions to proceed, where necessary in writing.

3. Implementing instructions by (where appropriate):

3.1 Negotiating

- Managing the client's expectations; and
- Aiming to successfully achieve the client's reasonable aims.

3.2 Drafting and assessing documents

- Preparing documents which address the pertinent legal issues, reflecting any agreement between the parties and achieving the client's aims within the applicable legal requirements. The documents should be in plain English, be internally consistent and deal with the transaction in a logical sequence;
- Carefully adapting precedents to reflect the particular transaction;
- Scrutinising and interpreting documents prepared by each other party, assessing the impact on the client of the expressed rights and obligations, and ensuring that the documents adequately include all details of any agreement; and
- Dealing with all documents promptly with regard to time constraints and cost to the client.



3.3 Holding conferences

- Holding conferences with the client and, if necessary, with other professionals and with each other party's lawyers, to ensure the client is aware of all options and has a realistic understanding of the critical issues involved in the documents and the transaction prior to signing

3.4 Exchanging

- Assessing all approvals and materials required to be obtained prior to the client becoming bound by the transaction. When binding the client and the other party/parties, the solicitor demonstrates a knowledge of the rules of effective execution, is organised and able to handle last minute changes.

3.5 Finalising pre-settlement matters

- Carrying out further and final searches thoroughly, in a proper manner and at the appropriate time; and
- Dealing effectively with all parties to finalise financial arrangements.

4. Settling the matter by:

4.1 Preparing for settlement

- Reviewing all material previously prepared and considering whether, in the light of the information obtained, this material is adequate or further material is needed. The review, of necessity, must be based on a proper understanding of the instructions of the client and the relevant legal and commercial practice;
- Considering what steps need to be taken by each of the parties to the transaction to complete the transaction;
- Seeking agreement between the parties and their representatives as to the material and the steps and action to be taken by each party; and
- Ensuring that all material required on the client's part and all steps to be taken by or on behalf of the client are attended to.



4.2 Attending completion

- Attending completion and ensuring that all necessary material is tendered by the appropriate party;
- Understanding the importance of each document to the particular transaction and being able to judge whether to settle if the documentation is incomplete or imperfect; and
- Being innovative and mindful of the client's instructions and effecting completion when all material that the client needs has been received.

4.3 Finalising the matter

- Ensuring that all reporting requirements are completed and that registration occurs promptly;
- Fully accounting to the client and highlighting issues which may impact on future dealings with the land;
- Implementing procedures for dealing with essential forward dates; and
- Advising the client regarding storage of file and requisite documents.



Knowledge Areas

A. Core Knowledge

B. Legislation

Candidates will be expected to demonstrate knowledge of the following:

- Title;
- Types of Property;
- Transactions and titling structures and
- Legislation.

Core Areas, Important Areas and Relevant Areas

The expressions Core Areas, Important Areas and Relevant Areas are used in these assessment requirements to communicate areas for focus as to the required standard of knowledge by the candidate.

Required Standard of Knowledge

- An in-depth knowledge of all Core Areas;
- Knowledge of the Important Areas;
- Familiarity with Relevant Areas.

Note: It is recommended that candidates have ready access to a loose leaf or electronic service on property and conveyancing law.



A. Core Knowledge

Note: The legislation list is compiled as at November 2020. Candidates are expected to know the law as it applies at the time of assessments.

Subject	Core Areas	Important Areas	Relevant Areas
Title	<ul style="list-style-type: none"> - Torrens including qualified/limited - Strata Development (Freehold & Leasehold) - Strata Management - Community 	<ul style="list-style-type: none"> - Company title - Old System - Crown Lands - Native Title - Water Rights 	
Types of property	<ul style="list-style-type: none"> - Vacant Land - Residential - Commercial: <ul style="list-style-type: none"> - Office - Industrial - Retail - Rural Land 	<ul style="list-style-type: none"> - Licensed premises - Retirement Villages 	
Transactions	<ul style="list-style-type: none"> - Sale/Purchase - Lease - Licence - Development of land & title structuring - Mortgages and securities - GST - CGT Withholding - Stamp duty - Statutory rates and charges - Land tax - Restrictive/Positive covenants - Caveats - Easements - Options - Co-ownership - Guarantees - Electronic Conveyancing - Residential Withholding 	<ul style="list-style-type: none"> - Capital Gains Tax - Income Tax/depreciation - Environment (such as): <ul style="list-style-type: none"> ▪ Land use ▪ Contamination ▪ Noise ▪ Planning - FIRB - COVID Entitlements 	<ul style="list-style-type: none"> - Competition and Consumer Law/Fair Trading - Profits à prendre

B. Legislation

Note: The legislation list is compiled as at November 2020. Candidates are expected to know the law as it applies at the time of assessments.

Subject	Core Areas	Important Areas	Relevant Areas
Federal	<ul style="list-style-type: none"> - A New Tax System (Goods and Services Tax) Act - Taxation Administration Act - Schedule 1, Subdivision 14-D - Taxation Administration Act - Schedule 1, Subdivision 14-E 	<ul style="list-style-type: none"> - Building Energy Efficiency Disclosure Act - Telecommunications Act - Personal Property Securities Act - Foreign Acquisitions & Takeovers Act 	<ul style="list-style-type: none"> - Bankruptcy Act - Cheques Act - Competition and Consumer Act 2010 - Corporations Act - Environmental Reform (Consequential Provisions) Act - Family Law Act - Foreign Acquisitions & Takeovers Act - Income Tax Assessment Act 1936 - Income Tax Assessment Act 1997 - Lands Acquisition Act - Native Title Act - National Consumer Credit Protection Act - National Credit Code
New South Wales	<ul style="list-style-type: none"> - Community Land Development Act - Community Land Management Act - Conveyancing Act - Conveyancing (Sale of Land) Regulation - Duties Act - Electronic Conveyancing National Law. Including the NSW Participation Rules and the NSW Operating Requirements - The Conveyancing Rules - Environmental Planning and Assessment Act 	<ul style="list-style-type: none"> - Access to Neighbouring Land Act - Agricultural Tenancies Act - Contaminated Land Management Act - Crown Lands Management Act - Encroachment of Buildings Act - Home Building Act - Liquor Act - Property and Stock Agents Act - Taxation Administration Act - Trees (Disputes between Neighbours) Act 	<ul style="list-style-type: none"> - Aboriginal Land Rights Act - Associations Incorporation Act - Coastal Protection Act - Civil and Administrative Tribunal Act - Contracts Review Act - Conveyancing and Law of Property Act - Dividing Fences Act - Environmentally Hazardous Chemicals Act - Protection of the Environment Operations Act - Fair Trading Act - Farm Debt Mediation Act - Forestry Act - Health Administration Act - Heritage Act - Inclosed Lands Protection Act



Subject	Core Areas	Important Areas	Relevant Areas (cont.)
<p>New South Wales</p>	<ul style="list-style-type: none"> - Powers of Attorney Act - Real Property Act - Residential Tenancies Act - Retail Leases Act - Strata Schemes Development Act - Strata Schemes Management Act - Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 	<ul style="list-style-type: none"> - Local Government Act - Swimming Pools Act - Retail and Other Commercial Leases (COVID-19) Regulation 2 - Conveyancing (General) Regulation – Schedule 5 - Building and Development Certifiers Act - Design and Building Practitioners Act 	<ul style="list-style-type: none"> - Land Acquisition (Just Terms Compensation) Act - Land Development Contribution Management Act - Land and Environment Court Act - Land Sales Act - Land Tax Act - Land Tax Management Act - Landlord and Tenant Act - Legal Profession Uniform Law - Limitation Act - Minors (Property and Contracts) Act - Mine Subsidence Compensation Act - National Parks and Wildlife Act - Native Titles (New South Wales) Act - Noxious Weeds Act - Parking Space Levy Act - Perpetuities Act - Petroleum (Onshore) Act - Pipelines Act - Probate and Administration Act - NSW Trustee and Guardian Act - Public Works Act - Retirement Villages Act - Roads Act - Rural Fires Act - Rural Lands Protection Act - Rural Workers Accommodation Act - Soil Conservation Act - Stock (Chemical Residues) Act - Stock Diseases Act - Succession Act - Sydney Water Act - Trustee Act - Valuation of Land Act - Water Act - Water Management Act - Wilderness Act



Methods of Assessment

There are three components of assessment as follows:

- Take Home Written Assessment (Mock File);
- Written Exam; and
- Peer Interview.

Candidates must pass **all three** assessments in order to gain Specialist Accreditation.

Mock File

Release date: 10am, Wednesday 12 May 2021

Due date: 4pm, Wednesday 2 June 2021

Candidates will complete a mock file that includes several tasks over a period that includes three weekends. The mock file will assess knowledge in core, important and relevant areas as well as the the candidate's ability to deal with complex issues including a variety of performance criteria. The mock file is designed to assess the candidate's ability to consider, research and then advise on complex legal and factual problems and present them to the client in a comprehensible fashion.

Assessment Criteria

In the response candidates will be assessed on the following performance criteria. Candidates will be required to perform each criterion to the level of the performance standard.

- a. Ability to identify relevant issues from a given fact situation;
- b. Depth of knowledge of the law and its practice and skill in applying that knowledge to the given fact situation; and
- c. Ability to provide practical, clear and accurate advice, including advice on the appropriate solution.



Written Examination

Examination date: Saturday 24 July 2021

Venue: Online*

Candidates will sit a written examination assessing knowledge in Core Areas. The examination will focus on legal principles essential to the Property Law Accredited Specialist and the ability to identify problems in a range of areas. The examination is likely to include problem-solving questions related to core knowledge, and questions relating to recent legislation and case law.

The exam will be **open book** and three hours in duration with reading time of twenty minutes. Candidates will be permitted internet access during the exam.

Assessment Criteria

In the response candidates will be assessed on the following performance criteria. Candidates will be required to perform each criterion to the level of the performance standard.

- a. Ability to identify relevant legal issues from a given fact situation;
- b. Depth of knowledge of the law and its practice and skill in applying that knowledge to the given fact situation; and
- c. Knowledge of legal principles.

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



Peer Interview

Interview date: Sunday 25 July 2021

Venue: Online*

During the peer interview candidates may be asked questions about the mock file in addition to discussing a range of legal issues relating to the practice of Property Law.

The interview will be conducted by a panel of two assessors. A range of performance criteria, including an ability to identify legal issues, to offer options as solutions and to communicate rights and obligations will be assessed.

Assessment criteria

In the response candidates will be assessed on the following performance criteria. Candidates will be required to perform each criterion to the level of the performance standard.

- a. Demonstrate clear oral expression;
- b. Ability to think quickly and incisively under pressure;
- c. Ability to engage productively in dialogue with professional colleagues; and
- d. Ability to show that knowledge acquired of the area is correct and can be brought to immediate use in a coherent and meaningful way.

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



Suggested Reading Materials

Books

- A. Bradbrook, S MacCallum, *Bradbrook and Neave's Easements and Restrictive Covenants*, 3rd ed, LexisNexis, 2011
- Butt, P., *Second cumulative supplement to the standard contract for sale of land in New South Wales*, (Lawbook Co, 1989)
- C Croft, R Hay, L Virgona, *Commercial Tenancy Law*, 4th ed, LexisNexis, 2018
- W D Duncan, S Christensen, *Commercial Leases in Australia*, Thomson Reuters, 8th ed, 2017
- Edgeworth, B., *Butt's Land Law*, (Thomson Reuters, 7th ed, 2015)
- P. Lane, D. Coshott, S. Chapel, *Sale of Land in NSW: Commentary & Materials*, Thomson Reuters, 2018
- Skapinker, D. and Lane, P., *Sale of Land in NSW*, (Lawbook Co, 2009)
- Stilianou, G., *Land Titling Law and Practice in NSW*, (Thomson Reuters, 2013)
- *Annotated Conveyancing and Real Property Legislation*, G. Newton, LexisNexis, 2020 - 2021
- Zipfinger, F. and D'Angelo, N., *The Stamp Duty Book NSW*, (LexisNexis, 2nd ed, 1998)
Note: For development since the 1998s, please refer to Wolters Kluwer CCH, *New South Wales and ACT Duties Law & Practice*

Online and loose-leaf

- Thomson Reuters, *Land Titles Office Practice NSW*, (2001)

Online

- Law Society NSW Resources
<https://www.lawsociety.com.au>
- LexisNexis, *Practical Guidance Property*
<http://www.lexisnexis.com.au/practicalguidance/property>
- Wolters Kluwer CCH, *New South Wales Conveyancing Law and Practice*, Subscription
<http://www.wolterskluwer.cch.com.au>
- Wolters Kluwer CCH, *New South Wales and ACT Duties Law & Practice*, Subscription
<http://www.wolterskluwer.cch.com.au>