

Specialist Accreditation



2023

Commercial Litigation

Assessment Requirements

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Performance Standard

Standard of Accredited Specialist

The Standard of an Accredited Specialist in Commercial Litigation 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 2023 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.

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 | Mid - February 2023 |
| Applications for Specialist Accreditation close | Early Bird: Tuesday, 28 February 2023 Standard: Friday, 31 March 2023 |
| Candidature confirmed | Friday, 28 April 2023 |
| Take Home Assessment | Released: Wednesday, 10 May 2023 Due: Wednesday, 31 May 2023 |
| Formal Written Examination | Saturday, 8 July 2023 |
| Peer Interview | Sunday, 9 July 2023 |
| Results released to candidates | Mid-October 2023 |
| Reassessment and/or Appeal applications close | 14 days from notification of results |
| Reassessment results released | December 2023 |
| Appeal results released | December 2023 |

Core Skills and Knowledge Areas

Practitioners wishing to become an Accredited Specialist in Commercial Litigation should be able to:

- Display knowledge of the law and procedure which underpins the performance of tasks in the area of practice; and
- Perform the tasks below.

The tasks are neither exhaustive nor listed in strict number sequence.

Core Skills

1. Gathers facts and instructions

1.1 Elicits information

- Listens effectively to the client's description of the problem;
- Asks appropriate probing questions in order to identify each of the issues, whether factual or legal;
- Obtains the client's confirmation of the solicitor's comprehension of the problem;
- Ascertains the client's stated objectives and assists the client to formulate actual and achievable objectives; and
- Considers the resources the client and the solicitor are able and willing to allocate and discusses the method of costing any proposed action.

The process is guided by knowledge of the relevant areas of law and an understanding of other disciplines relevant to the client's problem. It is carried out in an objective manner.

1.2 Obtains information from other sources

- Knows what public information is available;
- Selectively institutes searches having regard to relevance and cost effectiveness, including searches of the records of the ASIC, the Australian Stock Exchange, Office of Fair Trading, Land and Property Information and court records;
- Promptly obtains all relevant documents and critically reads and analyses them;
- Pursues other identified sources for documents; and
- Refers client to other appropriately qualified experts such as accountants or financial advisors where applicable.

1.3 Interviews witnesses

- Objectively interviews thoroughly all potential witnesses by listening critically and effectively asks probing questions including by reference to relevant documents;
- Assists each witness to produce a structured and coherent statement; and
- Prepares statements which seek to include all relevant information in admissible form.

2. Conceives strategy

2.1 Develops options

- Considers and assesses the viability of litigation including:
 - Whether there is a prima facie cause of action or a defence;
 - Use of preliminary discovery to obtain information necessary to identify potential litigants and causes of action;
 - The prospects of success and recovery of damages and costs;
 - The solicitor's preparedness to certify to the Court that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim or the defence (as appropriate) has reasonable prospects of success for damages claims;
 - The appropriate forum;
 - The time that will be taken prior to a determination;
 - The commitment of the client;
 - The capacity to pay costs;
 - Any critical dates including whether any limitation periods have expired or are about to expire;
 - Whether there are any requirements for certifying that reasonable steps have been taken to attempt to settle the dispute; and
 - Whether there is the need for any urgent interlocutory relief, such as a freezing order or a search order.
- Considers and assesses the viability of non-litigious action including all methods of dispute resolution such as early neutral evaluation, mediation, direct negotiation or any requirement to do so.

2.2 Communicates options

- Provides the client with a meaningful costs disclosure which satisfies the requirements of the *Legal Profession Uniform Law Application Act 2014* (NSW) and provides updated costs disclosures at appropriate stages of the matter;
- Provides clearly all possible options to the client;
- Ensures the client understands the rights, obligations and risks for each option and the reasons why some options may not be viable;

- Explains the process required by each option; and
- When making recommendations, takes into account the client's objectives, priorities and resources and basic categories or potential tax implications.

2.3 Obtains instructions

- Obtains instructions as to whether or not the client accepts the recommendations; and
- Confirms the instructions in writing.

3. Implements the plan

3.1 Drafts pleadings

- Analyses the facts and their relevance;
- Prepares pleadings in accordance with the rules of court;
- Ensures the pleadings reflect the client's instructions;
- Ensures the pleadings identify all relevant parties;
- Ensures the pleadings disclose proper causes of action including heads of damage, defences or cross claims, and claims for interest;
- Considers whether the pleadings should be settled by counsel; and
- When receiving the opponent's pleadings, considers the need to seek further particulars of any issues.

3.2 Drafts affidavits and statements

- Considers the evidence of the witnesses, in light of its relevance to the case and its appropriateness;
- Ensures affidavits and statements are drafted in accordance with the rules of the court; and
- Ensures affidavits and statements are drafted in admissible form.

4. Manages interlocutory stages:

4.1 Considers strategy

- Considers what process will best advance the case (such as injunctions, search orders, other interlocutory applications, pleading issues, offers of compromise, Calderbank letters); and
- Is able to respond quickly when required.

4.2 Document management

- Understands the processes and timing for discovery/disclosure in different jurisdictions.
- Considers all the documents provided by the client in terms of their relevance to the cause of action;
- Considers questions of privilege;
- Advises the client on obligations imposed in respect to any discovery orders;
- Submits the documents of the other parties to the client for instructions; and
- Considers the relevance of any discovered documents to the likely outcome of the dispute.

4.3 Interrogates

- Assesses whether interrogatories are necessary; and
- Decides what can properly be asked by critically inspecting documents and considering their relevance.

4.4 Uses subpoenas and notices to produce

- Considers the information obtained by appropriate subpoenas and notices to produce;
- Drafts precisely and relevantly the appropriate documents.

4.5 Uses notices to admit

- Considers the need for notices to admit;
- Drafts the appropriate documents;
- Upon receipt, takes instructions, considers and prepares appropriate and timely responses; and
- When answering, considers the relevance of any admissions to the likely outcome of the dispute.

4.6 Obtains expert reports

- Considers what issues need to be proved by expert evidence;
- Obtains any directions required from the court in relation to proposed expert evidence;
- Chooses and fully briefs an appropriately qualified expert;
- Notifies and understands the Expert Code of Conduct;
- Consider the issues the expert is dealing with and the admissibility of the report (e.g. with regard to the expert's specialised field of knowledge);
- Considers the report, submits it to the client and advises on its effect including whether it should be served;
- On receipt of the opponent's expert report, submits the report to the client and the client's expert for comments;
- Considers its impact on the outcome and decides whether to serve a report in reply; and

- Considers whether a conference between experts is desirable to resolve issues in contention.

4.7 Privilege

- Identifies and makes any relevant claim for privilege;
- Considers and addresses any claim for privilege by any opposing party;
- Considers the implication or nature of privilege relating to communications; and
- Considers the implication or nature of privilege relating to communication with witnesses including experts.

4.8 Acts as advocate

- Has regard to the Bench Book and UCPR and any relevant practice notes in respect to appearances;
- Is well prepared and organised when appearing as an advocate;
- Employs a knowledge of procedural, evidentiary and substantive law to present the application or the case; and
- Abides by the advocacy rules.

4.9 Acts as instructing solicitor

- Selects appropriate counsel for the matter;
- Prepares a brief including incisive observations on procedural, evidentiary and substantive issues;
- Actively participates in the preparation of the case, including attending conferences and making decisions concerning the presentation of the case, e.g. mediation, arbitration or before the court;
- Provides good administration support, including managing witnesses and documentary material and arranges any transcripts required;
- Acts as an effective liaison between counsel, the client and witnesses;
- Critically examines counsel's opinion in light of solicitor's own qualifications, experience and expertise; and
- Considers the appropriateness of taking evidence from witnesses by video link.

5. Finalises matters

- Ensures all court documents, terms of settlement and forms of judgment are properly prepared and filed;
- Seeks court approval where necessary;



- Notifies the client of all obligations arising from the conclusion of the matters including money to be paid or acts to be performed or refrained from;
- Considers an appeal, a stay or a cost application, where appropriate; and
- Seeks to agree quantum of monies payable under outstanding costs orders with opposing solicitor based on knowledge of taxation and assessment costing principles.

Knowledge Areas

Generally, the core knowledge examination paper will seek to assess a candidates' knowledge of basic legal principle rather than of the details of any particular decided cases or statutes. (It is assumed that solicitors, who have a proper understanding of basic principles will, in an office setting, be able to make specific reference to particular cases and statutes when a need arises.)

There is no one textbook which covers all aspects of the program but perhaps the references, which are generally likely to prove more useful to candidates seeking to prepare for the core knowledge examination, would be the leading Australian text books on the law of contract. The examiner will not expect candidates to have any particular knowledge of sets of materials that may happen to be used in undergraduate or postgraduate courses in "litigation" in Australian Law Schools.

All candidates will be expected to demonstrate a general working knowledge of the following:

1. The identification of the contractual promise

- 1.1 The parole evidence rule: what it is; when it applies; and the exceptions to it; and
- 1.2 Whether evidence of post - contract conduct is admissible as an aid to the construction of the contract.

2. Implied terms and implied contracts

- 2.1 Terms implied as the inferred actual intention of the parties to particular contracts; the standard rules; their application to contracts which are wholly or partly oral; what terms should be implied; implied terms going to the cooperation of the parties;
- 2.2 Terms imputed to classes of contracts as a matter of law; the matters to be considered when a Court is first asked to impute such a term;
- 2.3 Terms implied from trade or usage; how such a term might be proved;
- 2.4 Implied contracts; and
- 2.5 Collateral contracts.

3. Disputes as to the existence of a concluded contract

- 3.1 Conditional contracts: the categorisation of conditional contracts, including contracts said to be void for uncertainty;
- 3.2 Letters of comfort;
- 3.3 Contracts exchanged, but not in identical form;
- 3.4 Conditions not satisfied; conditions as to contract, conditions as to performance, conditions precedent and conditions subsequent;
- 3.5 Privity and consideration;
- 3.6 Intention to enter into a binding contract; and
- 3.7 The effect of variations on the contract.

4. Mistake

- 4.1 The position at common law: mistakes as to the existence of the subject matter, its identity, its quality, or its title, the identity of a party, the document signed, the terms of the contract, mistakes of law; and
- 4.2 The position in equity: when a remedy is available; rescission; rectification; specific performance.

5. Misrepresentation

- 5.1 Not incorporated into the contract;
- 5.2 Fraud at common law;
- 5.3 Rescission in equity; and
- 5.4 Effect of entire agreement clauses in contract upon representation.

6. Duress:

- 6.1 Economic duress and the relationship between that concept and the rules relating to consideration; and
- 6.2 Public policy.

7. Undue influence

8. Penalties, including the forfeiture of money

9. Unconscionable contracts

10. Exemption, exclusion, limitation and similar clauses

11. Illegality and public policy

12. Statutes of general application permitting courts to change contractual provisions

- 12.1 *Contracts Review Act 1980* (NSW);
- 12.2 *Industrial Relations Act 1996* (NSW), s106;
- 12.3 *Competition and Consumer Act 2010* (Cth) / Australian Consumer Law;
- 12.4 *Building and Construction Industry Security of Payment Act 1999* (NSW);
- 12.5 *Australian Securities and Investments Commission Act 2001* (Cth); and
- 12.6 *National Consumer Credit Protection Act 2009* (Cth).

13. Waiver, election, estoppel and the *Anshun* principle

14. Unjust enrichment

15. *Competition and Consumer Act 2010* (Cth) / Australian Consumer Law

- 15.1 Misleading and deceptive conduct (including by silence) and other unfair practices;
- 15.2 Unconscionable conduct, unfair terms;
- 15.3 Damages;
- 15.4 Other relief.

16. Negligent misstatement (tort and contract)

- 16.1 Negligent statements in commercial and financial transactions;
- 16.2 Negligent advice from commercial advisers;
- 16.3 Contributory negligence.

17. Intentional interference with contractual relations

18. Breach of fiduciary duty

- 18.1 Fiduciary duties in a commercial context (e.g. joint ventures, advisory relationships);
- 18.2 Remedies (e.g. account of profits).

19. Damages

- 19.1 Contract
- 19.2 Tort
- 19.3 *Competition and Consumer Act 2010* (Cth) / Australian Consumer Law
- 19.4 Equitable compensation
- 19.5 Interest (simple and compound)

20. Limitations

- 20.1 Contract;
- 20.2 Tort;
- 20.3 *Competition and Consumer Act 2010* (Cth) / Australian Consumer Law;
- 20.4 Equitable remedies.

21. Legal professional privilege

22. Without prejudice communications



23. GST implications

24. *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*

25. *Legal Profession Uniform Law Application Act 2014 (NSW)* and the *Legal Profession Uniform Law (NSW)*

26. *Civil Liability Act 2002 (NSW)*

27. Representative Proceedings

Specified Areas of Knowledge

Candidates will be expected to demonstrate an in depth knowledge of relevant principles, legislation, case law and procedure in **one** of the following sub-specialty areas below:

1. Corporation Law (excluding external administration)

Each chapter or part referred to in points 1.1 to 1.10 relates to the Corporations Act 2001 (Cth)

- 1.1 Basic features of a company (e.g. legal capacity, company powers and how they are exercised, contracts before registration, replaceable rules and constitution, company names and changing company type) – Chapter 2B.
- 1.2. Shares and transactions affecting share capital - Chapters 2F.2, 2H and 2J.
- 1.3. Officers and employees - Chapter 2D.
- 1.4. Oppressive conduct of affairs - Part 2F.1 including proceedings on behalf of a company by members and others (the statutory derivative action) - Part 2F.1A.
- 1.5. Meetings - Chapter 2G.
- 1.6. Market misconduct and other prohibited conduct relating to financial products and financial services - Part 7.10.
- 1.7. Offences - Part 9.4.
- 1.8. Powers of courts - Part 9.5.
- 1.9. Proceedings - Part 9.6.
- 1.10 Jurisdiction and procedure of courts (including vesting and cross vesting of civil jurisdiction) - Part 9.6A.
- 1.11 Unconscionable conduct and consumer protection in relation to financial services – Part 2, Division 2 *Australian Securities and Investments Commission Act 2001* (Cth)
- 1.12 *Personal Property Securities Act 2009* (Cth)

2. Insurance Law

2.1 Formation of the contract

- 2.1.1 Contractual principles;
- 2.1.2 Non-disclosure and misrepresentation:
 - Common law;
 - Part IV - *Insurance Contracts Act 1984* (Cth);
 - Insurers remedies.
- 2.1.3 Consumer protection:
 - *Competition and Consumer Act 2010* (Cth) (from 1 January 2011);
 - *Fair Trading Act 1987* (NSW);
 - *Australian Securities and Investments Commission Act 2001* (Cth);
 - *Corporations Act 2001* (Cth);
 - Uniform Credit legislation.

2.2 Insurance intermediaries

- 2.2.1 Classification as agent or broker;
- 2.2.2 Agent of insurer or insured;
- 2.2.3 Duty of care to insured and insurer;
- 2.2.4 Insurers' liability for agent's acts;
- 2.2.5 Effect of the *Financial Services Reform Act 2001* (Cth).

2.3 Policy coverage

- 2.3.1 Principles of construction of insurance contracts including contra proferentum rule;
- 2.3.2 Effect of *Insurance Contracts Act 1984* (Cth).

2.4 Third Party Interests

2.5 Claims

- 2.5.1 Notification of claims ;
- 2.5.2 Effect of fraud:
 - s 56 *Insurance Contracts Act 1984* (Cth)
 - Co-insureds
- 2.5.3 Illegality;
- 2.5.4 Application of policy conditions;
- 2.5.5 Direct right of action against insurer;
- 2.5.6 Duty of Utmost Good Faith; s 13 *Insurance Contracts Act 1984* (Cth)

2.6 Measurement of loss

- 2.6.1 Under insurance;
- 2.6.2 Excess or "other insurance" clauses;
- 2.6.3 Double insurance and contribution;
- 2.6.4 Insurers' rights of subrogation:
 - Contractual.
 - Common law.
 - s 67 *Insurance Contracts Act 1984* (Cth).
- 2.6.5 "Refusal to pay claim and/or reduction for prejudice; s 54 *Insurance Contracts Act 1984*"(Cth)
- 2.6.6 Interest;
- 2.6.7 Damages.

3. Insolvency

3.1 Bankruptcy

- 3.1.1 Creditor's Petition.
- 3.1.2 Setting aside Bankruptcy Notices or extending time for compliance.
- 3.1.3 Disputes about errors or defects in Bankruptcy Notices.
- 3.1.4 Proofs of debt and ranking of creditor's claims.
- 3.1.5 Termination and annulment applications.
- 3.1.6 Interaction between *Family Law Act 1975* (Cth) issues and the *Bankruptcy Act 1996* (Cth)

3.2 Application pursuant to s 459G(1) *Corporations Act 2001* (Cth) to set aside a Statutory Demand including knowledge of all relevant current case law dealing with "genuine dispute".

3.3 Solvency tests and presumptions and winding up applications

3.4 Part 5.3A – Corporations Act 2001 – Administration

- 3.4.1 Convening period and how it is extended. Applications pursuant to Section 439A (6) *Corporations Act 2001* (Cth).
- 3.4.2 Position of chargee, owner or lessor under Division 7 *Corporations Act 2001* (Cth)
- 3.4.3 Liabilities and rights of Administrators.
- 3.4.4 Deeds of Company Arrangement.
- 3.4.5 Procedure for conducting meetings.
- 3.4.6 Termination of administration and/or deed and its ramifications.
- 3.4.7 Remuneration of administrators – fixing remuneration

3.5 Receivership

- 3.5.1 The difference between a private and a Court Appointed Receiver.
- 3.5.2 Appointment issues including challenging the appointment of a receiver by a secured creditor.
- 3.5.3 Duties of the receiver to:
 - The appointer;
 - The mortgagor / debtor;
 - Unsecured creditors.
- 3.5.4 *Corporations Act 2001 (Cth)* priorities under a Receivership

3.6 Winding up – Acting for a liquidator

- 3.6.1 Applications for directions where appropriate
- 3.6.2 Examinations Part 5.9 Division 1 *Corporations Act 2001 (Cth)*
- 3.6.3 Remuneration of liquidators – fixing remuneration

3.7 Actions against Directors

- 3.7.1 Chapter 2D (Part 2D.1) *Corporations Act 2001 (Cth)* – Duties of Officers and Employees.
- 3.7.2 Section 588G and 588M *Corporations Act 2001 (Cth)* – insolvent trading.
- 3.7.3 Where appropriate to consider proceedings pursuant to s 588R(1) *Corporations Act 2001 (Cth)* i.e. action by creditor with liquidator's consent against a director.

3.8 Voidable transaction litigation

- 3.8.1 Voidable transactions – Claim by Bankruptcy Trustees
- 3.8.2 Section 37A of the *Conveyancing Act 1919 (NSW)*

3.9 Voidable transactions

- 3.9.1 Corporations Act claim pursuant to Part 5.7B of the *Corporations Act 2001 (Cth)*
- 3.9.2 Section 37A of the *Conveyancing Act 1919 (NSW)*

3.10 Small Business Restructuring

- 3.10.1 Part 5.3B of the *Corporations Act 2001 (Cth)*

3.11 Safe Harbour

- 3.11.1 s 588GA of the *Corporations Act 2001 (Cth)*

3.12 Creditor Defeating Dispositions

- 3.12.1 s 588FE of the *Corporations Act 2001 (Cth)*

3.13 Personal Property Securities Act 2009 (Cth)

4. Building & Construction

4.1 Building contracts

- 4.1.1 Contracts and Sub-contracts;
- 4.1.2 Assignments;
- 4.1.3 Quantum meruit.

4.2 Indemnities and insurances

4.3 Defects and negligence

- 4.3.1 The distinction between design defect and construction defect by the contractor;
- 4.3.2 Liability;
- 4.3.3 Intra the contract;
- 4.3.4 Extra the contract.

4.4 Determination and default

- 4.4.1 Consequences of determination and default;
- 4.4.2 Knowledge of procedures including New South Wales Civil and Administrative Tribunal (NCAT), Court, alternative dispute resolution, negotiation, valuation, appraisal, assessment, conciliation, mediation, arbitration.

4.5 Claims and disputes

- 4.5.1 Establishing the contractual and legal merits of the dispute claim;
- 4.5.2 Establishing the appropriate basis of claims;
- 4.5.3 Consequences;
- 4.5.4 Procedures;
- 4.5.5 Scope;
- 4.5.6 Preparation, presentation and proof.

4.6 Matters generally

- 4.6.1 Supreme and District Court Technology and Construction Lists, and practice notes;
- 4.6.2 Relevant legislation including:
 - *Architects Act 2003* (NSW);
 - *Contractors Debts Act 1997* (NSW)
 - *Building and Construction Industry Security of Payment Act 1999* (NSW);
 - *Home Building Act 1989* (NSW) and *Home Building Regulations 2014* (NSW);
 - *Environment Planning and Assessment Act 1979* (NSW);
 - *Civil Procedure Act 2005* (NSW);
 - *Uniform Civil Procedure Rules 2005* (NSW)

5. General

Designed for Commercial Litigation Specialists who do not otherwise meet the 25% substantial involvement requirement in any of the sub-specialty areas of: Corporations Law, Insurance Law, Insolvency, Building and Construction.

5.1 Substantive Issues

The candidate will need to demonstrate a working knowledge of the core skills and knowledge areas previously referred including the variety of forms of relief available.

In addition the candidate will also need to demonstrate proficiency in the following areas:

- Negligence claims including professional negligence, proportionate liability and concurrent wrongdoing;
- Contractual disputes and enforcement;
- Representation and conduct based claims, including under the various forms of consumer protection;
- Finance facility enforcement, recoveries and defences; and
- Real Property claims including breaches of lease and enforcement, disputes concerning land, rights of way, easements and basic construction disputes.

Additionally, the candidate will need to demonstrate an ability to read and interpret legislation and regulations, and apply them to be used as a basis for causes of action and defences. The candidate will also need to demonstrate an ability to interpret specialist legislation, including but not limited to:

- *Trustee Act 1925* (NSW) and breaches of trust;
- *Corporations Act 2001* (Cth) and *Partnership Act 1892* (NSW) including claims arising from directors, shareholder or partnership disputes, and an ability to determine joint venture issues and rights; and
- *Personal Property and Securities Act 2009* (NSW) and Personal Property Security Register matters in respect to disputes and orders of priority in personal property disputes.

5.2 Procedural Issues

- Standing - including an understanding of representative actions, tutors, assignment of causes of action, class action criteria and standing in director or shareholder disputes and companies involving the appointment of a variety of external administrators, and dealing with issues of conflicts of interest.
- Procedural applications - demonstrate knowledge of procedural applications including, but not limited to:

- Security for costs, including where non-resident plaintiffs, where warranted and factors and timing;
- Stays and strike out applications;
- Pseudonym applications;
- Injunctive relief including undertaking as to damages and mareva orders and other forms of equitable relief, including account of profits or specific performance;
- Recovery steps including writs, garnishee and enforcement of orders and basic bankruptcy applications.
- The workings of the courts including:
 - An understanding of the national practice areas of the Federal Court, and the various divisions of the Supreme Court including practice notes;
 - The scope of the registrars' powers;
 - Duty judge applications;
 - Obligations on pleading fraud and dishonesty
 - Experts and Code of Conduct;
 - Use of agents;
- Cost orders and factors including indemnity costs, effect of Calderbank and Offers of Compromise, third party cost orders, personal cost orders together with recovery processes in Federal Court taxations and Supreme Court cost assessments.



Suggested Reading Materials

- Carter, J.W., *Contract Law in Australia* (LexisNexis, 6th ed, 2012)
- Heydon, J.D. and Leeming, M.J., *Cases & Materials on Equity & Trusts* (LexisNexis, 8th ed, 2011)
- Seddon, N., Bigwood, R. and Ellinghaus, M., *Cheshire & Fifoot Law of Contract* (LexisNexis, 10th ed, 2012)

Methods of Assessment

Candidates will be expected to display:

- A working knowledge of the core area of commercial litigation; and
- In depth knowledge of one specified sub-specialty area* of their choosing.

Note: The Commercial Litigation Advisory Committee reserves the right to not offer sub-specialties should there be no candidate applications for that specified area of law.

Mock File

Release date: Wednesday, 10 May 2023

Due date: Wednesday, 31 May 2023

Candidates will complete a mock file with several tasks for their chosen sub-specialty area (Corporations, Insurance, Insolvency, Building and Construction, General Commercial Litigation) by the due date.

The mock file will assess a variety of performance standards and the candidate's ability to deal with complex issues.

Assessment Criteria

In your mock file 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. Ability to identify relevant issues from a given fact situation;
- b. Ability to provide practical, clear and accurate advice;
- c. Depth of knowledge of the law and skill in applying that knowledge to the given fact situation;
- d. Knowledge of relevant procedural rules and practices; and
- e. Accurate practical advice set out in a logical manner.

Written Examination

Examination date: Saturday, 8 July 2023

Venue: TBC*

Candidates will sit a written examination which will focus on the legal principles essential to the Commercial Litigation specialist and the ability to identify problems in a range of areas. The examination is likely to take the form of problems and questions requiring short answers covering the core areas of knowledge and performance standards. The examination will be open book and three hours in duration with twenty minutes reading time.

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. Knowledge of the relevant law and procedure;
- b. Ability to identify relevant issues; and
- c. Ability to provide concise and clear answers.

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

Peer Interview

Interview date: Sunday, 9 July 2023

Venue: TBC*

Candidates will be interviewed by a panel of two assessors to discuss the handling of matters; in particular the mock file. The purpose is to assess performance standards, including identification of legal issues, devising and communicating options and developing and managing a litigation plan. Interviews are expected to run for 30-45 minutes.

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. Communication skills;
- b. Ability to discuss and clarify issues raised in mock file;
- c. Demonstrate an understanding of Professional Standards; and
- d. Demonstrate expertise in your chosen sub-specialty.

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