



2022 Accredited Specialisation Assessment Guidelines

Commercial Law

Contact

T 03 9607 9311

specialisation@liv.asn.au

www.liv.asn.au

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Assessment Guidelines Overview

Lawyers who are accredited as specialists are recognised as having enhanced skill levels, as well as substantial involvement in established legal specialty areas. The Law Institute of Victoria requires such specialists to demonstrate superior knowledge, experience and proficiency in a particular area of law to ensure that recognition as an accredited specialist is meaningful, credible and reliable.

These Assessment Guidelines should also be viewed in conjunction with the **Application Guidelines** and the **Accredited Specialisation Scheme Rules**.

Performance Outcomes

Specialist Accreditation is a structured assessment process which requires the candidate to draw on their existing knowledge and skills to demonstrate their competency and expertise in their chosen area of law.

Practitioners wishing to be accredited should be able to:

1. perform at a superior standard which is expected of practitioners wishing to hold themselves out as specialists in the area
2. display a superior standard of knowledge of the law and procedure which underpins the performance of tasks in this area of practice.

Specific assessment criteria and performance outcomes are listed under the details of individual assessments that follow.

Methods of Assessment

The LIV Accredited Specialisation assessments are all delivered in a digital environment. This provides equitable access for all candidates irrespective of location and is also aligned with the nature of legal practice in today's digital world. There is a base level of computer literacy required indicative of the skills required of a specialist lawyer. It is incumbent upon candidates to have access to suitable technology and infrastructure to perform in the most optimal way. Details of these requirements are outlined in [Schedule 6](#).

Three assessments make up the Accredited Specialisation program in **Commercial Law**.

1. [Written Exam](#)
2. [Simulated Interview](#)
3. [Take Home Assignment](#)

The three assessments are weighted equally, and candidates must achieve a satisfactory grade of at least 50% in all three assessments. Candidates who complete all three assessments to the performance standard are eligible for accreditation as a specialist in Commercial Law.

The below schedules include further details in relation to each of the three assessments along with details of topics for assessment and relevant legislation that you will need to know to undertake the program.

Candidates may, in any or all of the assessment program, be assessed on any or all of the Assessment Topics and Legislation listed in Schedules [4](#) and [5](#). Further details of the assessment program and procedures are contained in the schedules within.

Candidates will be examined on the law as it stands at the date of assessment.

Results

Results are only released after the completion of all three assessments and with all candidates results, regardless of area of law being issued on the same day.

As outlined in Rule [4.11.6 of the scheme rules](#), all assessments undergo a rigorous marking process. Any assessment that is deemed to have not achieved a satisfactory result will go through an independent second round of marking before a recommendation is made to grant or deny Accredited Specialisation.

It is important to note the following information about results:

- **You will not be provided with individual assessment marks**
- **Outcomes are delivered as either satisfactory or unsatisfactory for each assessment component with an overall satisfactory in all three resulting in being granted specialisation.**
- **Candidate Assessment Reports (CARs) will be provided to candidates on any assessment where an unsatisfactory grade is attained. The CAR will provide constructive feedback for improvement to the candidate. No further feedback or grades will be disclosed.**

Supplementary assessment

Candidates may be required to undertake additional assessment at the discretion of the Specialisation Board. The Specialisation Board will only consider a recommendation from an advisory committee for a proposal of a supplementary assessment being offered to a candidate due to exceptional circumstances. Candidates will be notified the decision of the Specialisation Board in their official notification of results.

Key Milestones & Program Timetable

Candidates are advised that Accredited Specialisation program requires a significant commitment in order to achieve a satisfactory outcome. Based on feedback from previous candidates the number of hours of study is in excess of 100.

We encourage you to dedicate and manage time in the lead up to and during the assessment period. Candidates need to plan their workload well in advance of the key assessment dates and are encouraged to seek support in the form of study leave from employers where possible to optimise performance across all assessment tasks.

ITEM	DATE
Applications Open	Mid-January 2022
Applications Close	25 March 2022
2022 Accredited Specialisation Program begins <ul style="list-style-type: none"> – Welcome Orientation Session – Access to the LIV Student Portal and resources 	03 May 2022
Candidate support sessions: <ul style="list-style-type: none"> – Study techniques series – Online exam platform familiarisation 	May-August
Candidate self-guided study: <ul style="list-style-type: none"> – Review assessment guidelines & make study notes – Form study groups – Work with mentors 	May-August
Practice Written Exam & Familiarisation Exam access available	July
Assessment Period <ul style="list-style-type: none"> Part 1: Written Examination (Schedule 1) Part 2: Simulated Interview (Schedule 2) Part 3: Take-home Assignment (Schedule 3) 	Saturday 6 August Thursday 11 August Friday 19 August
Results Released	Early November
Conferral Ceremony	Early December

Note: The above dates are correct at the time of publishing. Should any changes need to occur, they will be communicated directly to candidates throughout their assessment program as early as possible.

SCHEDULE 1: ASSESSMENT COMPONENT PART 1

Written Examination

Exam Date:	Saturday 6 August
Time:	Three hours and 30 minutes inclusive of reading, writing, and planning time
Venue:	LIV online exam platform (refer to application guidelines for full details)

Assessment overview

The written exam will consist of extended response and multiple-choice questions which will focus on the topics for assessment set out in [Schedule 4](#).

In planning and time management, it is recommended to use the mark allocation per question as a guide.

The written exam is divided into two parts:

PART A

- In Part A of the examination candidates are required to answer ALL questions
- This section of the exam is in the format of multiple-choice questions
- Candidates will be expected to demonstrate broad knowledge of matters relevant to practice in commercial law.

PART B

- In Part B of the examination candidates are required to answer three extended response questions.
- In the extended response questions, candidates will be expected to provide advice in sufficient depth to demonstrate a high level of competence in the topics raised, and the ability to identify and provide guidance on other related issues.

IMPORTANT: In order to pass the written examination, candidates will need to achieve a minimum of 50% in each part of the exam.

Assessment Criteria

Candidates will be assessed on their knowledge of the law as it stands on the date of the examination, including:

- Relevant legislation and procedures
- The common law and relevant cases

In addition, candidates will be assessed on their ability to:

- Identify relevant issues
- Interpret business documents
- Inform clients of their rights and obligations
- Provide practical, clear and comprehensive advice
- Demonstrate the practical application of the law
- Ability to identify and address any ethical issues

Examination Conditions

- Access to a computer with webcam and microphone
- Access to the exam is via the safe exam browser, once installed on your computer, this will be located on your desktop and called Exam Launch File, LIV Online Assessment Candidate App (the app)
- All questions must be answered within this digital environment
- All questions can be reviewed and updated prior to submitting the exam
- Once the exam is submitted, there is no opportunity to revisit or change your responses
- Access to any external sites including email is disabled for the duration of the exam.
- Once you submit the exam you will be automatically redirected to the confirmation of submission screen.
- You will need to logout of the safe exam browser once you have completed to your exam, candidates will not have access to their computers applications and programs until logging out of the site.
- Refer to [Schedule 6 for more information](#)

Access to Support Materials

- This examination is an open book exam.
- Prior to the exam, you will be asked to save your digital notes on the device on which you will be completing your examination. These can be saved in a drive that does not required access via the internet or document management system. You are also encouraged to have these available on a USB stick as a backup.
- The format of accessible files include word, excel and PDF.
- You may access your digital notes via the exam delivery system. There will be two windows within the browser – one for your notes, the other for your examination. These can be located on dual screens.

SCHEDULE 2: ASSESSMENT COMPONENT PART 2

Simulated Interview

Interview Date:	Thursday 11 August
Interview Time:	45 min scheduled by appointment closer to the date
Interview Venue:	Via Zoom, candidates must use a device with a working camera

Assessment overview

The simulated interview is designed to enable candidates to demonstrate skill in conducting a first interview with the client. A sound knowledge of the relevant law, rules and procedures will be required.

Using the information from the materials available for download following the written examination, via the student portal, candidates will conduct a simulated first interview with a person acting in the role of the client.

- The interview will take up to 45 minutes and will be recorded for assessment by examiners.
- At the conclusion of the interview, candidates will be given 15 minutes to record their observations, make file notes and submit.
- File notes will be used as part of the overall assessment in this examination component and may assist you in gaining accreditation.
- **Note:** *The use of detailed pre-prepared notes is not encouraged.*
- **Candidates will be expected to provide preliminary advice during the interview.**
- The time allocated for the interview and completion of the file notes will be strictly enforced.

Assessment criteria

Candidates will be assessed on their ability to:

- Elicit relevant information and facts from the client
- Obtain and clarify instructions
- Communicate clearly with the client
- Identify relevant issues
- Assess facts and legal options
- Provide preliminary advice
- Discuss options including costs, and develop a short-term plan
- Demonstrate a degree of commerciality in dealings with the client
- Ability to identify and address any ethical issues

Candidates will need to demonstrate a satisfactory level of ability on each of the following four key areas:

1. Knowledge of the law
2. Gathering of appropriate facts and instructions
3. Provision of advice
4. Communication

In order to achieve a satisfactory result, candidates must achieve no less than 50% in this assessment.

SCHEDULE 3: ASSESSMENT COMPONENT PART 3

Take Home Assignment

Assignment Release Date:	Friday 5 August
Assignment Due Date:	Friday 19 August, 4pm
Assignment Submission:	Assignment to be submitted via the LIV Student Portal

Assessment overview

Using the information from the materials available for download via the student portal, candidates will be expected to demonstrate the ability to provide advice on complex issues and to draft appropriate materials in the environment of their own workplaces.

Assessment criteria

Candidates will be assessed on their ability to:

- Identify relevant issues from the materials provided
- Apply the relevant law, including significant recent decisions
- Apply relevant procedural rules and principals
- Draft or amend original documents
- Inform their clients of their rights and obligations
- Provide practical, clear and comprehensive advice
- Demonstrate a degree of commerciality and an understanding of business considerations
- Ability to identify and address any ethical issues

Assessment Conditions

Candidates may use the resources of their offices in completing this exercise. However, consultation with any other person in completing the exercise is **not permitted** and the material submitted must be entirely your own work.

The assessment must be typed and submitted as a word or PDF document through the online student portal by no later than 4pm on the due date advised. Late submissions will not be accepted.

Further details are provided when the assessment is released.

In order to achieve a satisfactory mark candidates must achieve no less than 50% in this assessment.

SCHEDULE 4: TOPICS FOR ASSESSMENT

Candidates will be assessed on the law as it stands on the day of the examination.

Assessment for specialist accreditation in commercial law focuses on advice and guidance to business.

A person accredited as a commercial law specialist is expected to be able to provide sound preliminary advice on all of the topics listed in the topics for assessment. More importantly, it is expected that a commercial law specialist would be able to provide detailed advice on certain topics; these are the topics in respect of which 'Advanced Understanding' is prescribed in the following Table.

It is understood that commercial law specialists differ from each other because of a number of factors, including:

- the number and variety of their existing clients in terms of size, structure and fields of business activity
- individual preference for legal work of certain types
- referrals of new clients based on individual expertise
- opportunities available for diversification

It should be noted that some areas of practice relevant to commercial law specialists are assessed in depth in other specialties offered under the specialisation scheme, including taxation law, commercial tenancy law, commercial litigation, environment and planning law and workplace relations.

Topics for assessment are listed below and will be assessed only to the extent that they are relevant to business. The topics should not be regarded as mutually exclusive.

Basic Understanding

The applicant would be expected to have a general awareness or overview of the topic. For example, the applicant should be able to identify the names of relevant Acts and show awareness of general concepts and principles.

Intermediate Understanding

The applicant would be expected to have more than a general awareness or overview of the topics. For example, the applicant should be able to identify and explain the relevant sections in legislation and key cases.

Advanced Understanding

The applicant must have extensive knowledge of legislation and cases relevant to the topic. For example, the applicant would be expected to know:

- differences in the approaches (if any) adopted in the key cases relevant to the topic
- contending interpretations (if any) of relevant sections in legislation
- relevant government policies
- relevant bills introduced into the Parliament.

Important:

Any matter relevant to practice in commercial law may be examined. Candidates may also be asked questions arising under any legislation, related regulations and other materials listed in these guidelines. This is not intended to be an exhaustive list.

Topics for Assessment

TOPICS FOR ASSESSMENT	LEVEL OF UNDERSTANDING
1. Contract Law	
• Formation	Advanced
• Terms/construction	Advanced
• Avoidance and termination	Intermediate
• Remedies	Basic
TOPICS FOR ASSESSMENT	LEVEL OF UNDERSTANDING
2. Buying, selling and operating a business	
• Establishing a new business	Advanced
• Contractual principles	Advanced
• Statutory compliance	Advanced
• Section 52	Advanced
• Employee issues on transfer of business	Advanced
• Restraints	Advanced
• <i>Personal Property Securities Act 2009 (Cth)</i>	Advanced
• Planning, permits, regulatory compliance, registrations and licensing matters	Intermediate
• Insurance – buy/sell arrangements	Intermediate
TOPICS FOR ASSESSMENT	LEVEL OF UNDERSTANDING
3. Business Structuring	
• Corporations law	Intermediate
• Partnerships, trusts and sole proprietorship	Advanced
• Powers, rights, duties and obligations of owners, directors and managers	Advanced
• Succession planning	Intermediate
• Corporate governance and fiduciary duties	Intermediate
• Trust law and structures	Advanced
• Resolution of disputes	Intermediate
• Shareholder/unitholder agreements	Advanced

TOPICS FOR ASSESSMENT	LEVEL OF UNDERSTANDING
-----------------------	------------------------

4. Corporations Law

- | | |
|---|--------------|
| • Responsibilities and liabilities of directors | Intermediate |
| • Share allotments | Advanced |
| • ASIC requirements | Intermediate |
| • Constitutions | Advanced |
| • Insolvency | Basic |

TOPICS FOR ASSESSMENT	LEVEL OF UNDERSTANDING
-----------------------	------------------------

5. Taxation related to commercial law

- | | | |
|---|--|--------------|
| • Federal taxes: | | |
| – Income tax | | Basic |
| – Capital gains tax | | Intermediate |
| – GST | | Intermediate |
| – Fringe benefits tax | | Basic |
| ▪ State taxes: | | |
| – Dutiable transactions | | Advanced |
| – Land holder duty | | Intermediate |
| – Land tax | | Basic |
| – Payroll tax | | Basic |
| – State duties arising from business transactions and structuring | | Intermediate |

TOPICS FOR ASSESSMENT	LEVEL OF UNDERSTANDING
-----------------------	------------------------

6. Leases

- | | |
|--|----------|
| ▪ Terms of lease | Advanced |
| ▪ Transfer of leases | Advanced |
| ▪ Disclosure statements | Advanced |
| ▪ Enforcement of tenant or landlord rights | Advanced |
| ▪ Due diligence issues for landlords and tenants | Advanced |
| ▪ Insolvency regarding tenants and landlords | Advanced |

TOPICS FOR ASSESSMENT	LEVEL OF UNDERSTANDING
-----------------------	------------------------

7. Employment

- | | |
|--|----------|
| ▪ Equal opportunity and anti-discrimination | Basic |
| ▪ Employment agreements | Advanced |
| ▪ Termination, redundancy and unfair dismissal | Advanced |
| ▪ Restraints and confidential information | Advanced |

7. Employment (cont.)

- | | |
|----------------------------------|----------|
| ▪ Occupational health and safety | Basic |
| ▪ WorkCover | Basic |
| ▪ Independent contractors | Advanced |

TOPICS FOR ASSESSMENT

LEVEL OF UNDERSTANDING

8. Franchising

- | | |
|---|--------------|
| ▪ A working knowledge of the franchising code | Advanced |
| ▪ Franchises vs licences | Advanced |
| ▪ Information statements | Advanced |
| ▪ Enforcement of franchisor and franchisee rights | Intermediate |
| ▪ Good faith requirements | Basic |
| ▪ Dispute resolutions | Intermediate |

TOPICS FOR ASSESSMENT

LEVEL OF UNDERSTANDING

9. Competition and Consumer protection legislation

- | | |
|--|--------------|
| ▪ Misleading or deceptive conduct | Advanced |
| ▪ Anti-competitive conduct | Intermediate |
| ▪ Restraint of trade | Advanced |
| ▪ Unconscionability | Intermediate |
| ▪ Consumer guarantees, unfair terms and manufacturer's liability | Advanced |

TOPICS FOR ASSESSMENT

LEVEL OF UNDERSTANDING

10. Insolvency

- | | |
|--|--------------|
| ▪ Voluntary administration | Basic |
| ▪ Bankruptcy and arrangements without sequestration | Basic |
| ▪ Liquidation | Basic |
| ▪ Receivership | Basic |
| ▪ Preferences and fraudulent dispositions | Basic |
| ▪ Transfers of assets just before an event of insolvency | Intermediate |
| ▪ Undervalue transactions | Intermediate |

TOPICS FOR ASSESSMENT

LEVEL OF UNDERSTANDING

11. Intellectual property matters

- | | |
|------------------|--------------|
| ▪ Trademarks | Intermediate |
| ▪ Business names | Advanced |
| ▪ Domain names | Basic |
| ▪ Designs | Basic |
| ▪ Copyright | Intermediate |

TOPICS FOR ASSESSMENT	LEVEL OF UNDERSTANDING
12. <i>Personal Property Securities Act 2009 (Cth)</i>	
▪ Terms of trade	Advanced
▪ Equipment leases and licences	Advanced
▪ Registration of security interests	Advanced

SCHEDULE 5: RELATED LEGISLATION & OTHER MATERIALS

Related legislation:

This is not necessarily an exhaustive list. It does not list subordinate legislation and policy or regulations, guidelines or gazette notices which may also be relevant. Candidates will be examined on the law as it stands at the date of assessment.

- *Australian Consumer Law and Fair Trading Act 2012 (Vic)*
- *Bankruptcy Act 1996 (Cth)*
- *Building Energy Efficiency Disclosure Act 2010 (Cth)*
- *Business Names Registration Act 2011 (Cth)*
- *Chattel Securities Act 1987 (Vic)*
- *Commercial Arbitration Act 2011 (Vic)*
- *Commercial Tenancy Relief Scheme Act and Regulations 2021 (Vic)*
- *Competition and Consumer Act 2010 (Cth)*
- *Copyright Act 1968 (Cth)*
- *Corporations Act 2001 (Cth)*
- *Credit Act 1984 (Vic)*
- *Designs Act 2003 (Cth)*
- *Duties Act 2000 (Vic)*
- *Electronic Transactions Act 2000 (Vic)*
- *Equal Opportunity Act 2010 (Vic)*
- *Estate Agents Act 1980 (Vic)*
- *Fair Work Act 2009 (Cth)*
- *Food Act 1984 (Vic)*
- *Franchising Code of Conduct (Cth)*
- *Fringe Benefits Tax Assessment Act 1986 (Cth)*
- *Goods Act 1958 (Vic)*
- *Health Act 1958 (Vic)*
- *Income Tax Assessment Act 1936 (Cth)*
- *Income Tax Assessment Act 1997 (Cth)*
- *Independent Contractors Act 2006 (Cth)*
- *Instruments Act 1958 (Vic)*
- *Insurance Contracts Act 1984 (Cth)*
- *Labour Hire Licensing Act & Regulations 2018 (Vic)*
- *Land Tax Act 2005 (Vic)*
- *Landlord and Tenant Act 1958 (Vic)*
- *Legal Profession Act 2004 (Vic)*
- *Liquor Control Reform Act 1998 (Vic)*

- *National Consumer Credit Protection Act 2009 (Cth) (incorporating the Consumer Credit Code)*
- *Occupational Health and Safety Act 2004 (Vic)*
- *COVID-19 Omnibus (Emergency Measures) Act 2020 (Vic)*
- *COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020 (Vic)*
- *COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Amendment Regulations 2020 (Vic)*
- *Partnership Act 1958 (Vic)*
- *Payroll Tax Act 2007 (Vic)*
- *Personal Liability for Corporate Fault Reform Act 2012 (Cth)*
- *Personal Property Securities Act 2009 (Cth)*
- *Planning and Environment Act 1987 (Vic)*
- *Professional Conduct and Practice Rules 2005 (Vic)*
- *Property Law Act 1958 (Vic)*
- *Retail Leases Act 2003 (Vic)*
- *Retail Tenancies Reform Act 1998 (Vic)*
- *Statute Law Amendment (Director's Liability) Act 2013 (Vic)*
- *Superannuation Guarantee (Administration) Act 1992 (Cth)*
- *Superannuation Industry (Supervision) Act 1993 (Cth)*
- *Taxation Administration Act 1997 (Vic)*
- *Trade Marks Act 1995 (Cth)*
- *Trustee Act 1958 (Vic)*

Suggested Reading Materials:

Whilst there are many cases, on many topics, relevant to commercial law, the cases below are regarded as of foundational cases regarding statutory interpretation and contract interpretation, and will be worth candidates re-visiting as part of their preparation (as well as reviewing the case law in other areas).

Statutory Interpretation

- *Byrne v Australian Airlines Ltd* (1995) 185 CLR 410
- *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355
- *Thiess v Collector of Customs* (2014) 250 CLR 664
- *Federal Commissioner of Taxation v Consolidated Media Holdings Ltd* (2012) 250 CLR 503
- *Bare v Independent Broad-Based Anti-Corruption Commission* (2015) 326 ALR 198

Construction of Commercial Contracts

- *BP Refinery (Westernport) Pty Ltd v Hastings Shire Council* (1977) 180 CLR 266
- *Codelfa Construction Pty Ltd v State Rail Authority (NSW)* (1982) 149 CLR 337
- *Burger King Corporation v Hungry Jack's Pty Ltd* (2001) 69 NSWLR 558
- *Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd* (2004) 219 CLR 165
- *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27
- *Electricity Generation Corporation v Woodside Energy Ltd* (2014) 251 CLR 640
- *Mount Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd* (2015) 256 CLR 104

Other reading

- Legal Profession Uniform Law Australian Solicitors Conduct Rules 2015

SCHEDULE 6: RECOMMENDED COMPUTER REQUIREMENTS FOR ASSESSMENTS

All assessments are delivered in a digital format including via the LIV student portal for release and submission of assessments, the LIV online exam platform Assess App or Zoom/ for oral assessments. You are required to ensure you have all the required infrastructure, and access to the digital assessment platforms prior to the completion of your assessment. To ensure you are set up to succeed, here are some things to consider in advance to check that your computer meets the following recommended computer requirements of optimal performance of the platforms.

You will require access to a computer with a working a webcam and microphone to complete the assessment program.

Written Examination Devices Specification

Windows	
Processor	i5 2.2GHz /AMD A6 1.8Ghz
Operating system	Windows 10 64-bit
Memory	8GB
Hard drive	250GB SSD (solid state drive)
Display	14" screen with 1920 x 1080 screen resolution
Battery life	8 hours under normal use

The following devices cannot currently be used to access the LIV online exam platform:

- Mac (we anticipate having Mac compatible with the Safe Exam Browser by the time of the 2022 Written Examinations)
- iPads
- Chromebooks.
- Smartphones: this includes iPhones, Android devices, and any other mobile OS devices

Successful applicants will have access to one on one support from our exam provider to set up the applications and work through all requirements for exam setup.

Oral Assessments

Oral assessments will be conducted via Zoom. In addition to a working web camera and microphone, Zoom support recommends minimum internet speeds for clear and high-quality video and audio throughout. For more information on minimum internet speeds for video conferencing visit the below two useful websites.

- [Reviews.org - breaks down requirements in a simplistic way](#)
- [Zoom Support - System Requirements](#)