



2022 Accredited Specialisation Assessment Guidelines

Commercial Litigation

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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 Litigation 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 Litigation 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 Monday 22 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 examination is divided in two parts:

PART A

- In Part A of the examination candidates are required to answer ALL ten questions, each worth six marks.
- These questions will cover a broad range of issues encountered in the area of commercial litigation.
- Questions will be of a general nature and will assess candidate's knowledge of procedural and ethical issues.
- In planning and time management, it is recommended candidates spend approximately six minutes answering each question and spend approximately one hour on this part of the examination.

PART B

- In Part B of the examination candidates are required to answer two of the six questions, each question will be worth 60 marks.
- These questions will relate to the topics listed in [SCHEDULE 4: TOPICS FOR ASSESSMENT](#) (Part 1: Written examination).
- Candidates will be asked to evaluate a fact situation, identify the key issues to be addressed and prepare an outline of appropriate advice for the selected topic.
- Candidates will be required to answer TWO questions.
- In planning and time management, it is recommended candidates spend approximately one hour per question on this part of the examination.

Please note: *this section of the written exam requires detailed answers which identify key issues and specifies the advice appropriate to the situation. Candidates answering a question in a particular area will be expected to have a working knowledge of other areas if applicable.*

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:

- Ability to identify relevant issues from a given fact situation
- Knowledge of relevant law, including any significant recent decisions
- Knowledge of the procedural rules
- Ability to provide practical, clear and comprehensive advice
- Awareness of practical considerations in dispute resolution
- 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](#): Recommended Computer Requirements for Assessments 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 or Microsoft teams, candidates must use a device with a working camera

Assessment overview

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 video recorded for assessment by examiners.
- 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 also be required.
- Candidates will be expected to provide preliminary advice during the interview. That advice should be of the high standard that is expected of a candidate wishing to hold themselves out as a specialist in this area.

The fact scenario of this assessment will be linked to [Part 3: Take-home Assignment](#). Candidates will be able to download further instructions from the student portal on completion of [Part 2: Simulated Interview](#).

Arrangements for the interview will be confirmed once the number of candidates is known. See the topics listed for assessment in [Schedule 4: Topics for Assessment \(Parts 2 and 3\)](#).

Assessment criteria

Candidates will be assessed on their ability to:

- Elicit relevant information and facts from the client
- Obtain and clarify instructions
- Identify relevant issues
- Assess facts and legal options
- Communicate preliminary advice in a clear and pragmatic manner
- Indicate procedural steps and timelines for response
- Discuss options, including costs, and develop a short-term plan
- Ability to identify and address any ethical issues

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:	Thursday 11 August
Assignment Due Date:	Monday 22 August
Assignment Submission:	Assignment to be submitted via the LIV Student Portal

Assessment overview

The Take Home Assignment will use the information from the material and instructions provided after Part 2: Simulated Interview. Candidates will be requested to prepare and submit a letter of advice arising out of [Part 2: Simulated Interview](#). The word limit for this assessment will be 4000 words.

That advice should reflect the high standard expected by a client of someone holding themselves out as being a specialist in this area of law.

Note: This component of the assessment process is linked to the simulated interview component. The candidate is not expected to include any written material relating to costs agreements or disclosure statements.

Assessment criteria

Candidates will be assessed on their:

- Ability to identify all significant issues from the materials
- Knowledge of relevant law, including significant recent decisions with appropriate citations
- Knowledge of relevant procedural rules and principles
- Awareness of practical considerations in dispute resolution (including strategy, timing and costs issues)
- Ability to provide practical, clear and comprehensive advice
- Drafting skills
- 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

Applicants will be expected to display a working knowledge of all the practice areas as well as to recognise typical problems, construct an advice to a client and to outline the steps that would be taken to prepare the matter for hearing. In addition, the applicant will be expected to demonstrate an in-depth knowledge of two of the practice areas and be able to address more complex issues specific to that field and cover the matters set out in these guidelines.

Any matter relevant to practice in **commercial litigation** may be examined, including the areas listed below. The following list gives an indication of other matters which candidates might be asked to address. Candidates may be asked questions arising under any legislation, related regulations and other materials listed in these guidelines. More importantly, it is expected that a 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. This is not intended to be an exhaustive list and is provided as a guide for your assessment preparation.

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.

Part 1: Written Examination (Part B Long Answer)

Selected areas of law and practice within commercial litigation. Under Part B (long answer section) of the written examination candidates will need to have an in-depth knowledge of two of the below topics.

TOPICS FOR ASSESSMENT	LEVEL OF UNDERSTANDING
1. Competition & Consumer Law	Advanced
2. Professional Liability & Insurance	Advanced
3. Obligations of company directors and rights of shareholders	Advanced
4. Contract Litigation	Advanced
5. Insolvency (corporate & personal)	Advanced

Part 2: Written Exam (Part A Short Answer), Simulated Interview and Part 3: Take-home Assignment

TOPICS FOR ASSESSMENT	LEVEL OF UNDERSTANDING
1. Jurisdictional Issues	Advanced
2. General contract principles and remedies	Advanced
3. Claims & remedies in tort, contract or equity & statutory claims	Advanced
4. Claims & remedies for misleading and deceptive conduct	Advanced
5. Equitable claims & remedies	Advanced
6. Time limitations (to commence proceedings)	Advanced
7. Rules of Procedure	Advanced
8. Professional conduct and ethics	Advanced
9. Contribution & proportionate liability	Intermediate
10. Liability of Directors & Officers	Intermediate
11. Concurrent liability in tort	Intermediate
12. Commercial Alternative Dispute Resolution	Intermediate

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.

Commonwealth

- *Bankruptcy Act 1966* (Cth)
- *Civil Dispute Resolution Act 2011* (Cth)
- *Competition and Consumer Act 2010* (Cth) – Parts I, IVB, VI, VIA, XI, XIAA and Schedule 2 only
- *Competition and Consumer Regulations 2010* (Cth) – Parts 1, 6 and 7 only
- *Competition and Consumer (Industry Codes–Franchising) Regulation 2014* (Cth)
- *Corporations Act 2001* (Cth)
- *Evidence Act 1995* (Cth)
- *Federal Circuit and Family Court of Australia Act 2021* (Cth) and Rules
- Federal Circuit and Family Court Practice Notes
- *Federal Court of Australia Act 1976* (Cth) and Rules
- Federal Court Practice Notes
- *Foreign Judgments Act 1991* (Cth)
- General Insurance Code of Practice
- *Insurance Contracts Act 1984* (Cth)
- *Jurisdiction of Courts (Cross-Vesting) Act 1987* (Cth)
- *Personal Property Securities Act 2009* (Cth)
- *Service & Execution of Process Act 1992* (Cth)

State

- *Australian Consumer Law and Fair Trading Act 2012* (Vic)
- *Civil Procedure Act 2010* (Vic)
- *Commercial Arbitration Act 2011* (Vic)
- *County Court Act 1958* (Vic) and Rules
- County Court of Victoria Practice Notes
- *Crimes Act 1958* (Vic) (Part I Division 5 only)
- *Evidence Act 2008* (Vic)
- *Foreign Judgments Act 1962* (Vic)
- *Goods Act 1958* (Vic)

State (cont.)

- *Instruments Act 1958 (Vic)*
- *Jurisdiction of Courts (Cross-Vesting) Act 1987 (Vic)*
- *Legal Profession Uniform Law Application Act 2014 (Vic)*
- Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015
- *Limitation of Actions Act 1958 (Vic)*
- *Magistrates' Court Act 1989 (Vic)* and Rules
- Magistrates' Court of Victoria Practice Notes
- *Oaths and Affirmations Act 2018 (Vic)*
- *Supreme Court Act 1986 (Vic)* and Rules
- Supreme Court of Victoria Practice Notes
- *Victorian Civil and Administrative Tribunal Act 1998 (Vic)*
- *Wrongs Act 1958 (Vic)*

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](#)