

Accredited Specialisation Application Guidelines 2018

BUSINESS LAW



What is an Accredited Specialist?

A lawyer who is accredited as a specialist is recognised as having an enhanced skill level, 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 and reliable.

Eligibility for Accreditation

- Membership of the Law Institute of Victoria
- A current practising certificate
- At least five years' experience in practice
- Substantial involvement in this area of practice over the past three years
- Three references in support of the application
- Successful completion of the prescribed assessment program

Candidates who do not meet the eligibility criteria may apply for an exemption from criteria in accordance with the *Specialisation Scheme Rules*. Such applications for exemptions must be lodged no later than **4pm on Friday 6 April 2018**.

IMPORTANT: Details of the conditions for gaining specialist accreditation are contained in the Specialisation Scheme Rules which can be found at:

https://www.liv.asn.au/LIVPublicWebSite/media/150th-Anniversary-2009/LIV%20Documents/20180420_Master_SpecialisationSchemeRules_April16.pdf

Specialisation candidates are particularly advised to read the *Specialisation Scheme Rules* and familiarise themselves with the requirements for any applications for exemption or special consideration. The Rules are located under the Scheme Administration tab of the *Specialisation Scheme* link.

Assessment

The assessment program for Accredited Specialisation in business law is in three parts. To gain accreditation candidates must obtain a satisfactory mark in each of the three parts of the program. Candidates may, in any or all of the assessment program, be assessed on any or all of the **Assessment Topics** listed in **Schedule 4**.

Part 1: Written Examination – See **Schedule 1**

Part 2: Simulated Interview – See **Schedule 2**

Part 3: Take-Home Assignment – See **Schedule 3**

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

Supplementary assessment

Candidates may be required to undertake additional assessment at the discretion of the Specialisation Board.

Exemption from Written Examination

Candidates may apply in advance for an exemption from the written examination if they have recently studied subjects relating to business law in a postgraduate course at a tertiary institution. Any such exemption is entirely at the discretion of the Specialisation Board and will be assessed on a case by case basis.

Eligibility for the exemption is subject to the following conditions. The completed post graduate course units **must:**

- have been completed within the preceding five years of the date of application
- assess knowledge that is equivalent in range to the knowledge assessed in the specialist accreditation exam
- be at a level of complexity and standard of knowledge that is equivalent to that assessed in the specialist accreditation exam
- contain knowledge that is of equivalent relevance to practice in the specialist accreditation exam.

Any application for an exemption should be made at the time of lodging the application form, which is to be lodged no later than **4pm on Friday, 6 April 2018**.

Timetable

| | |
|-------------------------|---|
| Monday 26 February 2018 | Accredited Specialisation information evening |
| Friday 6 April 2018 | Applications requesting Board discretion (for those who do not meet eligibility criteria) or exemption from the Written Examination close, at 4pm |
| Friday 20 April 2018 | All other Applications close at 4pm |
| Monday 28 May 2018 | Accredited Specialisation Exam Techniques evening |
| Saturday 28 July 2018 | Part 1: Written Examination |
| Wednesday 1 August 2018 | Part 2: Simulated Interview |
| Wednesday 8 August 2018 | Part 3: Take-Home Assignment due |
| Late October 2018 | Results sent to candidates |
| TBC Late November 2018 | Accredited Specialisation Conferral Ceremony |

IMPORTANT: Candidates who wish to apply for special consideration in relation to their assessment tasks must do so in accordance with the Rules https://www.liv.asn.au/LIVPublicWebSite/media/150th-Anniversary-2009/LIV%20Documents/20180420_Master_SpecialisationSchemeRules_April16.pdf

Performance Standards

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.

General Recommendations

Candidates may find it of assistance in preparing for the assessment tasks to:

- form a study group – to register your interest in forming a study group please contact **special@liv.asn.au**
- attend appropriate LIV CPD events in the area of specialisation
- review previous examination papers and videos of simulated interviews - these are available at **http://www.liv.asn.au/PDF/Professional-Development/Accredited-Specialisation/AS_AssessmentMaterials.aspx**
- read some or all of the Suggested Reading Material listed in **Schedule 5**

Legislation and Other Provisions

Candidates should be familiar with the relevant parts of legislation relating to the selected topics for assessment, and the legislation listed in **Schedule 5**.

Applications

Applications must be made on the prescribed application form.

Resume of Practice

As evidence of substantial involvement, applicants must submit a resume of their professional activities relevant to practice in business law. The resume should give the Board an overall picture of the applicant's experience and expertise in business law, with an emphasis on involvement over the past three (3) years. It is not expected that a comprehensive curriculum vitae will be submitted.

No standard format is prescribed. However, applicants might find it helpful to use some or all of the following headings:

- broad description of current practice activities
- experience in specific areas of activity in business law
- involvement with relevant professional organisations

- relevant publications and presentations
- academic qualifications
- other.

It is not necessary to repeat details provided on the application form.

Please forward to the Law Institute of Victoria:

1. The completed application form
2. Three references
3. Resume of practice
4. Application fee of \$1,100.00 (including GST) payable to the Law Institute of Victoria.

Applications close

4pm Friday, 6 April 2018 for applicants wishing to apply for Board discretion because they do not meet the eligibility criteria or for applicants wishing to apply for exemption from the Written Examination.

4pm Friday, 20 April 2018 for all other applications.

The address for applications is:

Accredited Specialisation

Law Institute of Victoria
GPO Box 263, MELBOURNE 3001
or DX 350, MELBOURNE

Inquiries:

Telephone: 9607 9461
Facsimile: 9607 9404
Email: special@liv.asn.au

SCHEDULE 1:

EXAMINATION ASSESSMENT COMPONENT PART 1

WRITTEN EXAMINATION

Exam Date: Saturday 28 July 2018

Exam Time: Three hours plus 30 minutes for reading and planning. Time to be confirmed

Exam Venue: Saxons Training Centre, 500 Collins Street, Melbourne

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 the Table in Schedule 4. This Table also prescribes the level of understanding expected in relation to each topic.

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.

In the multiple choice questions candidates will be expected to demonstrate broad knowledge of matters relevant to practice in business law.

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

Examination Conditions

Typed Exams

Candidates in this area of specialisation have the option to elect whether they would like to submit a handwritten or typewritten examination. All candidates who elect to type their examination will use a computer supplied by the Law Institute of Victoria, and will only have access to a word processor on this computer.

General Conditions

- The written examination is an **open book exam**.
- Candidates may take into the examination room any books, notes or other written material.
- Portable computers may be used for reference purposes on a read-only basis so long as their use does not disturb other candidates. Access to the internet is strictly prohibited.
- Mobile telephones are not permitted.
- Questions must be answered in the script book provided for candidates electing to submit a handwritten examination, or in the word processor provided for those electing to type responses.
- Handwriting must be legible for candidates electing to submit a handwritten examination.
- Each candidate will be issued with an examination number which must be clearly written on all material submitted for assessment
- The names of candidates must not appear on any material submitted for assessment.

After the examination

Immediately following the conclusion of the written examination, candidates will be able to download the following information through www.accreditedspecialisation.liv.asn.au:

1. Materials pertaining to the simulated interview in Part 2 of the assessment program
2. Materials pertaining to the take-home assignment for the purposes of completing Part 3 of the assessment program.

SCHEDULE 2: EXAMINATION ASSESSMENT COMPONENT PART 2

SIMULATED INTERVIEW

Interview Date: Wednesday 1 August 2018

Interview Time: By appointment

Interview Venue: Law Institute of Victoria

Assessment Overview

Using the information from the materials available for download on www.accreditedspecialisation.liv.asn.au following the written exam, 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 45 minute interview, candidates will be given 15 minutes to record their observations and make file notes.

Candidates are reminded that the 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.

The time allocated for the interview and completion of the file notes will be strictly enforced.

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.

Arrangements for the interview will be confirmed once the number of candidates is known.

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

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

SCHEDULE 3: EXAMINATION ASSESSMENT COMPONENT PART 3

TAKE-HOME ASSIGNMENT

Assignment Available: Saturday 28 July 2018 after the written exam

Assignment Due: Wednesday 8 August 2018 by 4pm

Assessment Overview

Using the information from the materials available for download on www.accreditedspecialisation.liv.asn.au following the written examination, 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.

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. Candidates will be required to provide a statutory declaration to that effect.

The assignment is expected to be typewritten and presented in a neat, legible and clear manner. Candidates will be advised of a suggested word limit for the take-home assignment.

Candidates are advised to avoid merely pre-drafting clauses from existing precedents into their response.

The completed exercise must be submitted as a word or PDF document through the submission box for this assessment piece on www.accreditedspecialisation.liv.asn.au by no later than 4pm on Wednesday, 8 August 2018.

Late submissions will not be accepted. It is the sole responsibility of the candidates to ensure all take home examination material is received by the Law Institute of Victoria (LIV) on or before the due date. Failure of the examination material to reach the LIV by the due date will result in failure of that examination component. Particular care should be taken with all forms of transmission to ensure it has been received by the LIV in time and in intended form.

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

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 business law focuses on advice and guidance to business.

A person accredited as a business 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 business 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 business 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 business 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.

Levels of Understanding

(a) 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.

(b) 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.

(c) 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 business 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 | Basic |
| Terms/construction | Intermediate |
| Avoidance and termination | Intermediate |
| Remedies | Basic |
| | |
| 2. Buying, selling and operating a business | |
| Establishing a new business | Advanced |
| Contractual principles | Intermediate |
| 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 licencing matters | Basic |
| Insurance – buy/sell arrangements | Intermediate |
| | |
| 3. Business Structuring | |

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|--|--------------|
| Corporations law | Basic |
| 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 |
| | |
| 4. Corporations Law | |
| Responsibilities and liabilities of directors | Intermediate |
| Share allotments | Advanced |
| ASIC requirements | Intermediate |
| Constitutions | Advanced |
| Insolvency | Basic |
| | |
| 5. Taxation related to business law | |
| Federal taxes: | |
| • Income tax | Basic |
| • Capital gains tax | Intermediate |
| • GST | Basic |
| • Fringe benefits tax | Intermediate |
| State taxes: | |
| • Dutiable transactions | Basic |
| • Land holder duty | Intermediate |
| • Land tax | Basic |
| • Payroll tax | Intermediate |
| • State duties arising from business transactions and structuring | Intermediate |
| | |
| 6. Leases | |
| Terms of lease | Advanced |
| Transfer of leases | Advanced |

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|--|--------------|
| Disclosure statements | Advanced |
| Enforcement of tenant or landlord rights | Advanced |
| Due diligence issues for landlords and tenants | Advanced |
| Insolvency regarding tenants and landlords | Advanced |
| | |
| 7. Employment | |
| Equal opportunity and anti-discrimination | Basic |
| Employment agreements | Advanced |
| Termination, redundancy and unfair dismissal | Advanced |
| Restraints and confidential information | Advanced |
| Occupational health and safety | Basic |
| WorkCover | Basic |
| Independent contractors | Advanced |
| | |
| 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 |
| | |
| 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 |
| | |
| 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 |
| | |
| 11. Intellectual property matters | |
| Trademarks | Intermediate |
| Business names | Advanced |
| Domain names | Basic |
| Designs | Basic |
| Copyright | Intermediate |
| | |
| 12. <i>Personal Property Securities Act 2009 (Cth)</i> | |
| Terms or trade | Advanced |
| Equipment leases and licences | Advanced |
| Registration of security interests | Advanced |

SCHEDULE 5: RELATED LEGISLATION AND OTHER MATERIALS

Legislation

- *Australian Consumer Law and Fair Trading Act 2012* (Vic)
- *Bankruptcy Act 1966* (Cth)
- *Building Energy Efficiency Disclosure Act 2010* (Cth)
- *Business Names Registration Act 2011* (Cth)
- *Chattel Securities Act 1987* (Vic)
- *Commercial Arbitration Act 2011* (Vic)
- *Competition and Consumer Act 2010* (Cth)
- *Copyright Act 1968* (Cth)
- *Corporations Act 2001* (Cth)
- *Credit Act 1984* (Vic)
- *Designs Act 2003* (Cth)
- *Disposal of Uncollected Goods Act 1961* (Vic)
- *Duties 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)
- *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)
- *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 (Directors' 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)

This list indicates a range of matters which could be addressed in the assessment program. This is not necessarily an exhaustive list. Candidates will be examined on the law as it stands at the date of assessment.