Distinction in law

QUEENSLAND LAW SOCIETY SPECIALIST ACCREDITATION

Specialist Accreditation

Succession Law Assessment Criteria 2011

Queensland Law Society

1. Introduction

The 2011 Succession Law Specialist Accreditation Assessment Criteria will assist practitioners interested in becoming accredited in succession law to understand, apply and prepare for the assessment process.

This Assessment Criteria includes the following:

1. Introduction
2. Important dates
3. Privacy
4. Eligibility criteria
5. Application information
6. Assessment information
7. Succession Law Specialist Specific information
    - Core Areas (Schedule 1, Part A)
    - Skills (Schedule 1, Part B)
    - Reading List (Schedule 2)
    - Committee Members (Schedule 3)

Please note: The 2011 Succession Law Specialist Accreditation Assessment Criteria should be read in conjunction with the Specialist Accreditation Handbook.

Enquiries

Please address all enquiries regarding Succession Law Specialist Accreditation to:

Specialist Accreditation Queensland Law Society GPO Box 1785 Brisbane Qld 4001	tel: 07 3842 5929 fax: 07 3221 2279 email: specaccred@qls.com.au

2. Important dates

Wednesday 23 February 2011	Specialist Accreditation Information Evening Applications open
Monday 11 April 2011	Applications close (by 4pm)
May 2010	Candidates advised of acceptance into program
Saturday 16 July 2011	Written Examination held (am)
	Simulated Client Interview held (pm)
	Mock File distributed
Monday 8 August 2011	Mock File due (by 4pm or sent by registered post postmarked no later than 4pm)
November 2011	Candidates will be advised of results by mail

NB: The Succession Law Specialist Accreditation Advisory Committee reserves the right to change any of these dates, but will give candidates notice of any change.

Late applications will only be accepted at the discretion of the Succession Law Specialist Accreditation Advisory Committee.

3. Privacy

QLS is committed to protecting your privacy and the confidentiality and security of personal information provided by you to us. The information you provide us will be used to process your application and to contact you with further details of the program.

Further, it is a condition of application for accreditation that the applicant gives consent for the Professional Standards Department of the Law Society and the Legal Services Commission to provide to the Board and/or the Succession Law Specialist Accreditation Advisory Committee any information, the release of which is not prohibited by statute.

Further details about the QLS's privacy policy, including the Privacy Statement, Plan and Code of Practice and the collection of personal information can be found on the Society's website at www.qls.com.au.

4. Eligibility Criteria

Please read in conjunction with the Specialist Accreditation Handbook.

To be eligible to apply for accreditation, an applicant must:

- be a member of the Queensland Law Society;
- hold a current practising certificate;
- have been engaged in full time legal work for at least five years following the date of their admission to practice; and
- demonstrate substantial involvement (at least 25%) in this area of practice over the past three years.

An applicant who is not able to fully satisfy the criteria concerning:

- years of experience in practice;
- level of involvement within the last 3 years in the area of practice; or
- level of involvement other than the last 3 years

may be accepted into the program at the discretion of the Succession Law Specialist Accreditation Advisory Committee.

Application for the exercise of this discretion must accompany the application for accreditation and must be made by letter addressed to the Succession Law Specialist Accreditation Advisory Committee, outlining the applicant's case for the exercise of the Committtee's discretion to accept the applicant as a candidate.

5. Application Information

5.1 Closing date

Applications must be received by Queensland Law Society prior to 4pm on Monday 11 April 2011.

5.2 Form of Application

Applications must be made on the prescribed application form, which may be downloaded as part of the 'Specialist Accreditation Application Kit' from the Specialist Accreditation section of the Queensland Law Society website, at www.qls.com.au.

The form must be accompanied by the following documents:

1. a resume of work (see 5.4 below)
2. three references in support of the application (see 5.5 below)
3. the application fee of $880.00 (including G.S.T.) payable to the Queensland Law Society Inc by credit card or cheque

5.3 Address for Submission of Application

Completed applications must be submitted via email, fax or post to:

Specialist Accreditation Queensland Law Society GPO Box 1785 Brisbane Qld 4001	tel: 07 3842 5929 fax: 07 3221 2279 email: specaccred@qls.com.au

5.4 Resume of Work

5.4.1 The purpose of the resume

- The purpose of the resume is to demonstrate the applicant's experience and capacity in the area of succession law.
- This element will be assessed by reference to the resume demonstrating the applicant's ability to prepare, conduct and represent clients to a high standard in succession law.
- The Resume of Work is an eligibility pre-requisite. **Applicants will not proceed to the examination stage unless the resume of work meets all criteria as outlined.**

- Where the Committee proposes to reject an application, the applicant may be given the opportunity to clarify aspects of the application before a final decision is made.

5.4.2 General requirements of the resume

- The resume should be formal, concise and carefully presented. It should not exceed 4 pages (exclusive of any necessary attachments).

- The applicant should seek to address the specific requirements as set out below by reference where possible to the Succession Law Specialist Accreditation Performance Standards (outlined in this document).

- The resume should be set out as per the content requirements below, addressing each point.

- Applicants are required to use Microsoft Word format with 12pt font, 1.5 line spacing, with 2cm margins.

5.4.3 Specific content requirements of the resume

The resume should:

- state the applicant's date of admission to practice;

- give a broad description of the applicant's legal career since admission;
    - outline the applicants experience in succession law, including the percentage of time spent in the practice of succession law over the last five years and, in particular, the last twelve months.

- describe the applicant's experience in the following areas over the past three years:

    - drafting complex wills;
    - obtaining grants of representation where complicated factual circumstances existed;
    - prosecuting and defending contested solemn form proceedings;
    - administering estates which involved complex or unusual issues;
    - preparing administration accounts;
    - prosecuting and defending Family Provision applications;
    - drafting complex enduring powers of attorney; and
    - advising on superannuation and its role in estate planning.

- provide a brief description (not exceeding 250 words per matter) of at least one, but no more than three, matters that the applicant has conducted in the last 12 months which have involved some degree of complexity in law, procedure or fact. A short narrative of the circumstances and the issues involved and how the applicant dealt with them should be provided. No documents are needed.

- list any lectures, seminars, workshops, continuing legal education courses or publications that the applicant has conducted or been involved in, relevant to their succession law practice, over the last 12 months. The nature of the applicant's involvement should be specified.

5.5 Referees

5.5.1 Applicants are required to nominate three referees who can attest to their competence and involvement in the area of Succession Law. Applicants are urged to carefully consider the following criteria when selecting their referees:

- the referees should be legal practitioners residing in Queensland;

- no more than one reference may be obtained from a member of another profession, provided that the referee has appropriate expertise in their field and that field has some relevance to the application;

- it is desirable that at least one of the referees has acted on the other side of a transaction or matter in which the applicant has been involved;

- none of the following is eligible to act as a referee:

    - partner, associate, employer, employee (i.e. another member of the applicant's firm), or relative of the applicant;
    - another applicant in the area of practice (cross-references are not acceptable);
    - Specialist Accreditation Board members or members of the Advisory Committee in the nominated area of practice;
    - Queensland Law Society staff; or
    - Queensland Law Society Council members.

- the Succession Law Specialist Accreditation Advisory Committee reserves the right to seek additional references from referees and other people.

5.5.2 A Referee Report form has been included in the application kit. The responsibility for distribution of referee reports lies with the applicant.

5.5.3 All three Referee Report forms must be returned to QLS by the applicant or the referees by the closing date for applications (see 5.1 above). Applicants may not proceed to the examination stage until all three Referee Report forms are received by Queensland Law Society.

6. <u>Assessment Information</u>

6.1 Assessment Stage

Once an application is accepted by the Succession Law Specialist Accreditation Advisory Committee, an applicant becomes a 'candidate' and must successfully complete the prescribed assessment program set out in this section to be awarded specialist accreditation.

6.2 Performance Standards

Practitioners wishing to be accredited must display knowledge of the law and procedure which underpins the performance of tasks in this area of practice and be able to perform the below tasks:

- develop a relationship with the client;
- obtain information and instructions;
- plan a timetable and course of action; and
- implement the plan.

Further details of the standard required are contained in Schedule 1

6.3 Assessment Tasks

The assessment program for specialist accreditation in succession law is in three parts.

Part 1	Written Examination
Part 2	Simulated Client Interview
Part 3	Mock File

To gain accreditation, candidates must obtain the required mark in each Part of the assessment program.

The required marks are as follows:

Written Examination	*Part A + Part B = 65%*
Simulated Client Interview	*Candidates must achieve a grading of 3, 4 or 5 to pass. Grades of 1 and 2 are failures.*
Mock File	*65%*

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

6.3.1 Written Examination

Date:	Saturday 16 July 2011
Venue:	Queensland Law Society Auditorium, Law Society House, 179 Ann Street, Brisbane
Time:	Approx. 8.30am to 12.00pm (exam will run for 3 hours with 30 mins reading time)

Candidates will sit for a written examination.

The examination will cover a wide range of succession law matters that may be encountered in practice.

Candidates will be expected to demonstrate a broad knowledge of succession law and associated practices and procedures as outlined in the "Core Areas".

Detailed answers that identify the key issues and specify the advice appropriate to the situation are expected.

The examination may also include short answer questions requiring concise answers.

Examination conditions

- The duration, including reading time, will be 3 hours and 30 minutes.
- The examination will be open book.
- 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. Internet access is strictly prohibited.
- Mobile telephones are not permitted.
- Answers must be written in the answer booklets provided.
- Answers must be numbered correctly.
- Handwriting must be legible.
- Candidate numbers (not names) must be written on all answer books submitted.

6.3.2 Simulated Client Interview

Date:	Saturday 16 July 2011
Venue:	Queensland Law Society Auditorium, Law Society House, 179 Ann Street, Brisbane
Time:	Appointments allocated for Saturday afternoon following the written examination

As a minimum requirement, candidates are expected to be fully conversant with the brief, possess the ability to elicit information from the client, be able to accurately respond to client enquiries and display significant knowledge of key legal issues.

6.3.3 Mock File

Date of distribution:	Saturday 16 July 2011
Due date:	Monday 8 August 2011 (by 4pm or sent by registered post, postmarked no later than 4pm)

Candidates will be asked to advise on a mock file.

Concise and well organised material, written in plain English, is expected.

This exercise is designed to test a candidate's ability to:

- absorb a new scenario;
- identify errors and omissions;
- draw attention to important features of a file;
- make recommendations or initiate actions appropriate to the circumstances; and
- draft relevant documents.

Mock File conditions

- Candidates may use the resources of their offices in completing this exercise. **However, candidates will face automatic disqualification from the accreditation program if any assessment material is referred to counsel or any other person for opinion or assistance.**

- Submissions received after Monday 8 August 2011 will not be assessed unless the Advisory Committee directs otherwise.

- No references or marks which may identify the candidate or their firm should appear anywhere in the candidate's work.

- Candidates may not receive marks, or may not receive full marks, where they made legal assertions or draw legal conclusions without reference to case or statutory authority, or without demonstrating their process of reasoning. The time frame and conditions for the mock file lend themselves to completing this exercise in this manner.

7 Succession Law Specialist Specific Information

The following specific information about accreditation as a Succession Law Specialist is set out in the Schedules to this document:

- Core Areas (Schedule 1, Part A)
- Skills (Schedule 1, Part B)
- Reading List (Schedule 2)
- Committee Members (Schedule 3)

SCHEDULE 1

PART A CORE AREAS

1 <u>The Core Areas of succession law are:</u>

- Will Drafting & Estate Planning;
- Estate Administration; and
- Estate Litigation.

2 <u>Expected knowledge in Core Areas</u>

Note: This list is not exhaustive but is set as a guide to applicants on the type of matters that may be raised in the assessment program. Not all the topics listed will necessarily be tested. Topics are grouped under headings as a matter of convenience only. ***Any matter relevant to practice in succession law may be examined.***

2.1 "Legal health check"

2.1.1 Will

- capacity
  - appreciation of extent of assets
  - appreciation of moral claims
  - generally *Banks v Goodfellow* test

- drafting technique
  - executorship
  - pecuniary legacies
  - specific bequests and ademption
  - residue and accrual clauses, and catch-all clauses for lapse
  - testamentary discretionary trusts
  - mutual wills
  - will substitutes eg. joint tenancy & superannuation
  - tax implications
  - separate wills for separate jurisdictions
  - formalities of execution
  - circumstances of revocation

2.1.2 Enduring Power Of Attorney

- capacity and testing and recording capacity

- types of matters

2.1.3 Superannuation

- capacity to control post death including fundamental differences between lump sum payments and different types of income streams

- dependant beneficiaries nominated in will

- adjustment required in will for inclusion or non inclusion of superannuation benefits

2.2 Estate administration

2.2.1 Costs and time estimate

2.2.2 Domiciliary issues, tax and death duties

2.2.3 With grant

- necessity for
- desirability of

2.2.4 Without grant

- opportunities
- pros and cons

2.2.5 Applying for grant

- types of grant including reseals and foreign grants

2.2.6 General probate practice in the Registry

2.2.7 Interpretation

- general principles

    - extrinsic evidence
    - armchair principle

- descriptions of property

- descriptions of beneficiaries

2.2.8 Intestacy

- relevant statutory provisions

2.2.9 Marshalling of assets

- relevant statutory provisions
- distribution & appropriation

2.2.10 Taxation

- income by ordinary concepts
- capital gains/losses
- present entitlement strategies

2.2.11 Liabilities

2.2.12 Rights of beneficiaries

- to information
- to accounts
- to distribution

2.2.13 Releases and commission

- what type of release can be demanded
- executors' commission and trustees' commission

2.3 Contentious

2.3.1 Costs and time estimate

2.3.2 Solemn form challenges by third parties

2.3.3 Family provision

2.3.4 Contested interpretation

2.3.5 Administration arguments

2.3.6 Commission and accounting arguments

2.4 Other litigious

2.4.1 Interim administrator

2.4.2 Expert witness

2.4.3 Risk management measures

2.4.4 Removal and other orders vs executors

PART B SKILLS

The skills required to be demonstrated during the assessment process include the following:

1 <u>Develop a relationship with the client by</u>:

1.1 listening effectively to the client and identifying the client's desires and needs; and

1.2 communicating clearly and appropriately.

- asks effective questions and interacts with the client in a supportive way and, at the same time, adopts methods to test the reality of the client's statements;
- communicates in plain language with the client to dispel myths and educate regarding succession law, its limits, and realities;
- advises on the nature and risks of litigation, where appropriate responds promptly to the client's inquiries and concerns, and demonstrates a commitment to follow the client's instructions (within ethical limits);
- is patient, objective and professional;
- regularly advises the client as to the progress of the matter;
- discusses with, and enters into, a fee agreement with the client; and
- ensures the client has a realistic understanding of the matter.

2 <u>Obtains information and instructions by:</u>

2.1 taking instructions from the client (instructions include both the client's account of the relevant facts and the client's statements about what they want to obtain or achieve); and

The practitioner:

- displays an ability to communicate with a variety of clients to elicit all relevant details about the matter;
- displays thoroughness, persistence and awareness of relevant factors;

- structures the process of assisting the client to provide all relevant information; and
- draws the client's attention to any gaps or inconsistencies and checks the instructions with the client.

When appropriate, the practitioner:

- obtains written instructions;
- advises the client on the feasibility of obtaining what the client wants;
- distinguishes realistic and unrealistic expectations, and canvasses the question of costs (particularly in litigious matters);
- deals with any ethical issues arising from the instructions; and
- keeps a clear record of instructions.

2.2 obtaining relevant information from sources other than the client.

The practitioner:

- conducts appropriate searches and makes appropriate requests for information and documentation;
- is skilled in obtaining evidence from a variety of witnesses and experts for litigious matters; and
- uses court procedures to gather further evidence in litigious matters.

3 <u>Plan a timetable and course of action:</u>

The practitioner:

- assesses the facts, the client's wishes, and the task to be performed;
- identifies the steps to be taken to undertake the task;
- advises the client on the relevant law and available options; and
- provides the client with estimates of time involved to complete the task, or steps of the task if it comprises a number of steps.

3.1 In a litigious matter:

the practitioner:

- analyses the strength and weaknesses of the client's case in light of the available facts and the current law;
- considers the probable evidence of the opponent and the likely attitude to resolving the matter;
- assesses the likelihood of success;
- considers tactics to be used with opponent;
- determines the appropriate court and jurisdiction; and
- complies with time limits.

3.2 In a non litigious matter:

the practitioner acts:

- promptly and efficiently in relation to the client's instructions for a will; and
- minimises the time required for each stage for uncontested matters.

4 <u>Implements the plan:</u>

4.1 Drafting wills

The practitioner drafts the will:

- accurately and concisely;
- applying all relevant law to the facts; and
- gives effect to the client's confirmed instructions.

The draft is considered by the client, together with the appropriate advice given by the solicitor on its provisions.

The practitioner advises on the effects of any changes requested by the client and makes any amendments required by the client.

The practitioner obtains proper execution of the final form of the will, and advises on storage, the need for future revision, and costs the will.

4.2 Obtaining or contesting grants

The practitioner has a thorough knowledge of the laws and practices relating to grants of representation.

In uncontested matters, the practitioner:

- prepares all documents accurately, efficiently and promptly; and
- obtains the grant without delay.

In contested matters, the practitioner:

- initiates, intervenes in or defends proceedings, and prepares court documents which present the case properly and comply with court rules and practices;
- conducts any interlocutory procedure relevant to the jurisdiction and prepares witness statements and affidavits;
- where necessary, advises on appeal; and
- considers when to brief counsel, chooses an appropriate barrister, and acts appropriately as the instructing solicitor.

4.3 Administration of estates

The practitioner advises the client and acts, when instructed, on:

- the payment of debts;
- the collection and distribution of assets; and
- the keeping of accounts.

When undertaking these tasks, the practitioner is:

- guided by a thorough knowledge of:
  - the law involving the rights and duties of the personal representatives and beneficiaries; and
  - the requirements of asset holders;
- sensitive to the timing of transactions; and
- aware of taxation and stamp duty implications.

4.4 Accounts:

The practitioner is aware of, and acts accordingly, with respect to:

- the rights of, and limitations upon, the personal representative to commission and reimbursement of expenses properly incurred; and
- the preparation of administration accounts as evidence of proper administration.

The practitioner demonstrates knowledge of the required detail in accounts, the procedure for passing accounts and, if required, applying for commission.

4.5 Family provision:

The practitioner:

- has a thorough understanding of, and acts in accordance with, the provisions of all relevant legislation;
- is able to advise clearly and impartially on the eligibility of the applicant, the prospects of the application, and the costs implications for both the applicant and the estate; and
- acts promptly and efficiently in relation to time limits.

SCHEDULE 2

READING LIST

This is a recommended reference list only, compiled by the Advisory Committee in developing this Assessment Criteria. Candidates are not expected to have consulted all texts or services listed.

There are three categories of reading:

- texts and looseleaf services;
- legislation; and
- case law.

Candidates should also find it helpful to attend Queensland Law Society provided conferences and seminars.

1 <u>Texts and Looseleaf Services</u>

This list is divided into two groups:

- recommended reading; and

- recommended reference texts

1.1 Recommended reading list

de Groot, J. K. & Nickel, B. W., *Family Provision in Australia* (3rd ed, 2007)

de Groot, J.K., *Wills, Probate and Administration Practice (Qld)* (1985 –)

Hamilton, B, *The doctrine of unconscionable bargains in equity: Potent sword for estate lawyers* (2007) 27 Qld Lawyer 180

Lee, W. A. & Preece, A., *Lee's Manual of Queensland Succession Law* (6th ed, 2007)

Mackie and Burton, *Outline of Succession Law.*(3rd ed, 2007)

1.2 Recommended reference texts

Ford, H. A. J., & Lee, W. A., *Principles of the Law of Trusts* (3rd ed, 1996) (1996-2002) updated on monthly basis

Cassidy, *Mutual Wills* (2000)

Croucher & Vines, *Succession, Families, Property & Death* (3rd ed, 2008)

Haines, *Construction of Wills in Australia* (2007)

Perkins & Monahan, Estate Planning: *A Practical Guide for Estate & Financial Service Professionals* (2nd ed, 2008)

2 Legislation

This list is divided into two groups:

- recommended reading list; and
- relevant sections of specific acts

2.1 Recommended reading list

Queensland legislation

Succession Act 1981
Trusts Act 1973
Powers of Attorney Act 1998
Uniform Civil Procedure Rules 1999 (including any amendments made after the issue of this Assessment Criteria)

Federal legislation

Superannuation Industry (Supervision) Act 1993 and SIS Regulations

2.2 Recommended reading of relevant sections of the following acts

Queensland legislation

Adoption Act 2009
Duties Act 2001
Guardianship and Administration Act 2000
Land Act 1994
Land Title Act 1994
Partnership Act 1891
Property Law Act 1974
Public Trustee Act 1978
Status of Children Act 1978
Trustee Companies Act 1968

Federal legislation

Corporations Act 2001
Family Law Act 1975
Income Tax (Rates) Act 1986

Income Tax Assessment Act 1936
Income Tax Assessment Act 1997
Insurance Contracts Act 1984
Life Insurance Act 1995

3 Case Law

3.1 Capacity

- Test from *Banks v Goodfellow* applied in the following modern cases:
  - *Re: Clare (deceased)* [2009] QSC 403
  - *Brown v Sandhurst Trustees Ltd* [2009] VSC 212
  - *Tu v Estate of Tu* [2008] NSWSC 458
- Insane delusions and lucid intervals
  - *Bull v Fulton* (1942) 66 CLR 295
  - *Timbury v Coffee* (1941) 66 CLR 277
  - *Re: Clare (deceased)* [2009] QSC 403
- Undue Influence
  - *Smith v Glegg* [2004] QSC 443
  - *Nicholson v Knaggs* [2009] VSC 64
- Unconscionable Dealing
  - *Bridgewater v Leahy* (1998) 194 CLR 457
  - *Wittman v Wittman* [2006] QSC 142
- Onus of proof
  - Dore (as executor of the will of WHB Chenhall dec'd) [2006] QCA 494
  - *Kantor v Vosahlo* [2004] VSCA 235
- S.21 Supreme Court jurisdiction to make wills for those lacking testamentary capacity
  - *Bock v Bock* (unreported, de Jersey CJ, 23 September 2010)
  - *Payne v Smyth* [2010] QSC 45
  - *Decke v Decke [2009] QSC 65*
  - *Re Fenwick* [2009] NSWSC 530
  - *Bielby v Denny* (unreported, BS 10819 of 2009, Mullins J, 30 November 2009)
  - *Winstanley v Winstanley* (unreported, BS 11203 of 2007, Daubney J, 18 January 2008)

- *Boulton v Sanders & Ors* [2004] VSC 109

- Solicitor's professional liability re testamentary capacity

  - *Legal Practices Tribunal v Ford* [2008] LPT12
  - *Worby v Rosser* [2000] PNLR 140
  - *Council of the Queensland Law Society v Wakerling* [2004] QCA 42

3.2 Formalities of execution

Section 18 - Testamentary Intention Test

- *In the Will and one Codicil of Julia Lesley Cleland deceased* [2009] QSC 189
- *Re Garris* [2007] QSC 181
- *Estate of Masters* (1994) 33 NSWLR 446
- *Hatsatouris v Hatsatouris* [2001] NSWLA 408
- *In the Estate of Kelly* (1983) 32 SASR 370
- *Little v Hammond* [2007] QSC 183 & 398
- *Re Hodge* (unreported, Moynihan J. 14 February 2007)
- *Re Vogele* [2007] QSC 404
- *Hensler v Padget* [2008] QSC 82

3.3 Intention to revoke

- *In the Estate of Simkin* [1950] VLR 341
- *Cavallaro & Cavallaro v Markham & Ors* [1984] QSC 575 (83/0008) (unreported Cairns, Thomas J, 05/12/1984)
- Lippe v Hedderwick (1922) 31 CLR 148
- *Re Frame* [2007] SASC 164

3.4 Interpretation

- *Thorn v Dickens* [1906] WN 54
- *Shaw (decd), Re Shaw* [1955] St R Qd 284
- *In the Will of Allen* [1987] Qd R 860
- *Prince v Barnett & Molomby* (1997) 1 VR 582
- *Burman v. Burman* [1998] QCA 250
- *Re The Public Trustee as Executor of John Venery Cox [*2002] QSC 299
- *Bullock v Bullock* [2003] QSC 258
- *Romano & Anor v Ladewig & Anor* [2003] QCA 530
- *Summers v Garland* [2006] QSC 85
- *Trust Company of Australia Limited v Krannin & ors* [2006] QSC 280
- *Re Thomson & Anor* [2010] QSC 167
- *Ashton & Ors v Ashton & Ors* [2010] QSC 326

3.5 Mutual Wills

- *Bauer & Ors v Husset & Anor* [2010] QSC 269

3.6 Family Provision

- Two-stage process and relevance of 'moral duty'
  - *Vigolo v Bostin* (2005) 221 CLR 191; endorsing the approach in *Singer v Berghouse (No 2)* (1994) 181 CLR 201
- Claims of spouses
  - *Luciano v Rosenblum* (1985) NSWLR 65 at 69-70
- Claims of spouses in second marriages
  - *Manly v Public Trustee* [2008] QCA 198
  - *Meredith v Campbell* [2007] NSWSC 682
  - *Gigliotti v Gigliotti* [2002] VSC 279
- Impact of pre-nuptial agreements
  - *Kozak v Matthews* [2007] QCA 296
  - *Hills v Chalk* [2008] QCA 159
- Disputed de facto relationship
  - *KQ v HAE* [2006] QCA 296
  - *Summers v Garland* [2006] QSC 085
  - *Barker v Linklater* [2007] QSC 125
  - *Houston v Butler* [2007] QSC 284
- Applicant with a Disability
  - Oswell v Jones & Ors [2007] QSC 384
- Stepchildren
  - *Freeman v Jacques* [2005] QSC 200
  - *Powell v Monteath* [2006] QSC 024
  - *Daniels v Brooks & Anor* [2007] QDC 001
  - *Smilek v Public Trustee* [2008] NSWCA 190
  - *Currey v Gault* [2010] QSC 27

- Disentitling conduct

  - *Cross v Wasson* [2009] NSWSC 378
  - *Re Estate of Stewart; Murphy v Stewart* [2004] NSWSC 569 cf *Killiner v Freeman* [2000] NSWSC 263

- Increasing the estate 'pool' by setting aside inter vivos transactions

  - *Bridgewater v Leahy* (1998) 194 CLR 457

- Proper approach to a conditional gift with offensive condition is to bring a family provision application

  - *Ellaway v Lawson* [2006] QSC 170

- Rejection of Calderbank offers

  - *Underwood v Underwood* [2009] QSC 107
  - *Daley v Barton & Anor; Barton v Daley* [2008] QSC 322

- Applications out of Time

  - *Hills v Chalk* [2008] QCA 159
  - *Frey v Frey* [2009] QSC 43
  - *Curran v McGrath* [2010] QSC 172
  - *Summers v Garland* [2006] QSC 085

- Application for Dismissal

  - *Johnson v Public Trustee of Queensland as executor of the will of Brady (deceased)* [2010] QCA 260
  - *Sylvester v Sylvester & Anor* [2010] QSC 331
  - *Atthow v McElhone* [2010] QSC 177

3.7 Removal and other orders

- *Williams v Williams* [2004] QSC 269
- *Re Jensen* [1998) 2 Qd R 374
- *Baldwin v Greenland* [2007] 1 Qd R 117
- *Otto v Redhead & Ors* [2007] QSC 278 & [2008] QSC 280
- *Colston v McMullen* [2010] QSC 292

3.8 *Powers of Attorney Act 1998* – ss 106 & 107

- *Moylan v Rickard* [2010] QSC 327

SCHEDULE 3

Succession Law Specialist Accreditation Advisory Committee (current as at February 2011)

Dr J de Groot, de Groots Wills & Estate Lawyers (Chair)

Mr G Dickson, Barrister at Law

Mr P Gleeson, Gleeson Lawyers

Mr G Lanham, Minter Ellison

Ms B Leung, ANZ Trustees

Ms B Hamilton, QUT

Mr M Klatt, Mullins Lawyers

Ms J Knowlman, Ryan Kruger Lawyers

Ms S McLeod, Barrister at Law

Mr P Wilson, MPN Lawyers