

Succession Law

Assessment Criteria 2021



Specialist Accreditation

Distinction in law



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1. INTRODUCTION

The *2021 Succession Law Specialist Accreditation Assessment Criteria* is designed to assist practitioners to understand, prepare for and undertake the assessment specific to this area of accreditation. This document is to be read in conjunction with the *Specialist Accreditation Scheme Handbook* which contains the policies and procedures relevant to all areas of accreditation.

2. CONTACT DETAILS

Please address all enquiries regarding specialist accreditation in succession law to the QLS Specialist Accreditation Team at spec@qls.com.au and (07) 3842 5952.

3. ASSESSMENT PROGRAM

General

Candidates must successfully complete the prescribed assessment program set out in this section to be awarded specialist accreditation in this area of accreditation. Practitioners wishing to be accredited should be able to:

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

Assessments

The assessment program for specialist accreditation in Succession Law is in three parts:

- | | |
|--------|----------------------------|
| Part 1 | Take Home Assignment |
| Part 2 | Written Examination |
| Part 3 | Simulated Client Interview |

Standard for Accreditation

To gain accreditation, candidates must meet the standard of accreditation as set by the Advisory Committee in each of the three parts of the assessment program. Candidates will be advised of the standard of accreditation in the assessment instructions.

Assessment Criteria

Details of the expected knowledge and skills to gain accreditation are contained at the end of this document.

IMPORTANT NOTICES:

- Candidates will be assessed on the law as it stands on the date of the assessment, and therefore any new legislation or case law not included in this document (dated February 2021) that is current as at the time of assessment, will be assessable.
- Candidates should treat this Assessment Criteria as a guide, but not a complete study tool for the assessment items.
- QLS and the Advisory Committee reserve the right to alter or modify the assessment conditions (discussed below), as required, and with advanced notice to candidates.

4. ASSESSMENT ITEMS

4.1. Take Home Assignment

Date of distribution:	TBC
Method of Distribution:	Online via Canvas

Candidates will be asked to submit a take home assignment. This assessment will be accessible by candidates on the QLS online learning management system, Canvas.

The Advisory Committee expects concise and well organised answers, and written in plain English.

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 matter;
- make recommendations or initiate actions appropriate to the circumstances; and
- draft relevant documents.

Assessment Conditions

- Candidates may use the resources of their offices in completing this exercise. **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 the due date will not be assessed. Candidates should refer to the appropriate section of the *Specialist Accreditation Scheme Handbook* if they experience a problem completing the assessment by the due date.
- No reference or marks which may identify the candidate or their firm should appear anywhere in the candidate's work.
- Candidates will either submit their assignment to the QLS Specialist Accreditation Team via email at spec@qls.com.au or upload online to Canvas. Candidates will be advised in advance of the submission method.

4.2. Written Examination

Date:	TBC
Venue:	Queensland Law Society, Law Society House, 179 Ann Street, Brisbane
Time:	Time to be confirmed (duration up to 3 hours with 30 minutes reading time)

Candidates will sit 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 include short answer questions requiring concise answers.

Examination conditions

- Candidates may sit the exam by completing an electronic version on their laptop or a hardcopy version by hand.
- **The written examination is an open book exam, but internet access is strictly prohibited and any candidate using the internet will be automatically disqualified from the program.**
- Candidates may take into the examination room any books, notes or other written material. Portable devices like iPads and Tablets may be used for reference purposes on a read-only basis (candidates sitting the exam electronically must complete it using a laptop). Candidates are reminded that access to the internet on laptops and any other portable devices is strictly prohibited.
- Mobile telephones and smart watches are not permitted.

- Candidates will be provided Question and Answer Booklets for the exam. The Question Booklet will be provided in hardcopy only, and candidates will elect to either respond to questions on an electronic or hardcopy version of the Answer Booklet.
- Electronic versions of the approved QLS Answer Booklet will be provided to candidates via USB key and all responses must be saved on the USB key. Candidates completing the exam using laptops will be solely responsible for any technical issues and/or malfunctions experienced during the sitting of the exam. No additional time will be granted to any candidates experiencing any technical issues and/or malfunctions whilst sitting the exam.
- Candidates completing the hardcopy versions of the Answer Booklet must provide legible handwriting.
- All responses to the exam questions must be answered in the QLS approved Answer Booklets.
- The names of candidates will not appear on any material submitted for assessment.

4.3. Simulated Client Interview

Date:	TBC
Venue:	Queensland Law Society, Law Society House, 179 Ann Street, Brisbane
Time:	Individual appointments will be allocated

Candidates will be required to undertake a simulated client interview, and are required to treat the assessment as a real life client interview.

Candidates will be assessed on four different criteria that include (amongst other things); gathering / ascertaining client instructions and concerns; identifying legal, ethical and procedural issues and giving correct advice to the client; developing a plan for the client; and demonstration of appropriate communication / rapport skills.

As a minimum requirement, candidates are expected to possess the ability to elicit information from the client, be able to accurately respond to client enquiries, display significant and accurate knowledge of key legal issues and be able to clearly communicate their advice to the client.

5. CORE AREAS OF KNOWLEDGE

For the purposes of the succession law specialist accreditation assessment program, the core areas of knowledge have been identified as:

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

6. EXPECTED AREAS OF KNOWLEDGE

The below list is not exhaustive but is set as a guide to candidates as to the type of matters that may be raised in the succession law specialist accreditation assessment program.

Topics are grouped under headings as a matter of convenience only.

Not all the topics listed will necessarily be tested. Any matter relevant to practice in succession law may be examined and may include matter that is not listed in the study guide.

6.1. Estate planning

- a. Wills
 - Capacity
 - appreciation of extent of assets
 - appreciation of moral claims
 - generally *Banks v Goodfellow* test
 - Drafting techniques

- executorship
- pecuniary legacies
- specific bequests and ademption
- residue and accrual clauses, and catch-all clauses for lapse
- life interests and limited interests
- Hotchpot and adjustment clauses
- testamentary trusts, including discretionary trusts, special disability trusts, superannuation trusts, and other trusts
- mutual wills
- will substitutes eg. joint tenancy, insurance & superannuation
- tax implications
- separate wills for separate jurisdictions
- formalities of execution
- circumstances of revocation
- powers
- Solicitor's negligence and professional liability
 - *Legal Services Commissioner v Ford* [2008] QLPT 12
 - *Legal Services Commissioner v Rouyanian* [2013] QCAT 057
 - *Hill v Van Erp* (1996-1997) 188 CLR 159
 - *Ryan v Dalton; Estate of Ryan* [2017] NSWSC 1007
 - *Queensland Art Gallery Board of Trustees v Henderson Trout (a firm)* [1998] QSC 250
 - *Worby v Rosser* [2000] PNLR 140
 - *Council of the Queensland Law Society v Wakeling* [2004] QCA 42
 - *Badenach v Calvert* [2016] HCA 18

- *Talbot v Boyd Legal (A Firm)* [2020] QSC 185
 - Cockburn, Tina; Hamilton, Barbara --- "Civil and Professional Liability for Will Making and Estate Planning - A New Standard for Australian Solicitors?" [2009] WkoLawRw 4; (2009) 17 Waikato Law Review 52
- b. Enduring Powers of Attorney
- capacity and testing and recording capacity
 - types of matters
 - conflict transactions
 - attorney transactions
 - drafting considerations
 - *Smith v Glegg* [2005] 1 Qd R 561
 - *Baker v Affoo* [2014] QSC 46
 - *Birch v Birch* [2018] QSC 289
 - *Pinter v Pinter* [2016] QSC 314
- c. Superannuation
- capacity to control payment post death including fundamental differences between lump sum payments and different types of income streams
 - nominations including binding nominations
 - dependant beneficiaries nominated in will
 - adjustment required in will for inclusion or non-inclusion of superannuation benefits
 - tax consequences post death
 - issues of control of trust and appropriate trustees in self-managed superannuation trusts

- *McIntosh v McIntosh* [2014] QSC 99
- *Katz v Grossman* [2005] NSWSC 934
- *Donovan v Donovan* [2009] QSC 26
- *Brine v Carter* [2015] SASC 205
- *Munro v Munro* [2015] QSC 61
- *Re Narumon Pty Ltd* [2018] QSC 185
- *Wareham v Marsella* [2020] VSCA 92lo

6.2. Estate administration

- a. Costs and time estimates
- b. Domicile issues, tax and death duties
- c. With grant
 - necessity for
 - desirability of
- d. Without grant
 - opportunities
 - pros and cons
- e. Applying for grant
 - types of grants including limited grants, reseals and foreign grants
 - informal wills
- f. General probate practice in the Registry
- g. Interpretation and construction
 - general principles
 - extrinsic evidence

- armchair principle
- descriptions of property
- descriptions of beneficiaries
- relevant statutory provisions
- Cases:
 - *Fell v Fell* (1922) 31 CLR 268
 - *Perrin v Morgan* [1943] AC 399
 - *The Public Trustee of Queensland v Smith* [2009] 1 Qd R 26
 - *Thorn v Dickens* [1906] WN 54
 - *Re Shaw* [1955] St R Qd 284
 - *Re Allen* [1988] 1 Qd R 1
 - *Burman v Burman* [1998] QCA 250
 - *The Public Trustee as Executor of Cox* [2002] QSC 299
 - *Bullock v Bullock* [2003] QSC 258
 - *Romano v Ladewig* [2003] QCA 530
 - *Trust Company of Australia Limited v Krannin* [2006] QSC 280
 - *Re Thomson* [2010] QSC 167
 - *McPherson v Byrne* [2013] 2 Qd R 516
 - *O'Brien v Smith* [2013] 1 Qd R 223
 - *Guillessen v Dawson* [2014] QSC 229
 - *Chapman v Wilson* [2014] 2 Qd R 282
 - *Hope v Schneider* [2016] QSC 44
 - *Suthers v Suthers* [2015] QSC 285
 - *Re Lapalme; Daley v Leeton* [2019] VSC 534

- *Davies v Davies & Anor (No 2)* [2019] QSC 294
- *Roberts v Pollock & Anor* [2019] QSC 184
- *Estate Patricia Ellen De Lorenzo* [2020] NSWSC 188
- *Serwin v Dolso* [2020] NSWSC 370
- *Greenham v Greenham* [2020] VSC 749
- *The Will of Edwin Marsden Tooth, Re: Ex parte Corporation of the Synod of the Diocese of Brisbane* [2020] QSC 214
- *Royal Brisbane and Women's Hospital Foundation v Attorney-Genral for the State of Queensland* [2020] QSC 222
- *Markin v Animals Australia Federation* [2020] VSC 113
- *In the will of Thomas Henry Finch* [2018] QSC 16
- *Re Graham (deceased)* [2020] QSC 155
- *Re Aitken: Maier v Hearne* [2020] VSC 432
- *The Will of Edwin Marsden Tooth, Re; Ex parte Corporation of the Synod of Brisbane* [2020] QSC 214
- *Application by Walsh (Estate of Robert Charles Walsh (deceased))* [2020] NSWSC 976
- *Banwell v Attorney – General (Qld)* [2020] QSC
- *Greenham v Greenham* [2020] VSC 749
- h. Intestacy
 - relevant statutory provisions
 - *Eatts v Gundy* [2014] QCA 309
 - *Re Mac* [2020] QSC 342
- i. Marshalling of assets
 - relevant statutory provisionsdistribution & appropriation

- j. Property related issues
- k. Taxation
 - income by ordinary concepts
 - capital gains/losses
 - present entitlement strategies
- l. Estate Liabilities
 - Jones v Jones [2020] QSC 6
 - Young v Martin [2020] WASC 442
- m. Rights of beneficiaries
 - to information
 - to accounts
 - to distribution
 - *Regine v Pletke* [2020] VSC 129
 - to copies of wills
- n. Releases and
 - what type of release can be demanded - *Plimsoll v Drake* (1995) 4 TASR 334
 - executors' commission and trustees' commission and fees
 - Re Estate of Badstuebner [2020] QSC 144
 - Barring claims
 - Re Aitken; Maier v Hearne [2020] VSC 432

6.3. Estate litigation

- o. Costs and time estimates

- p. Solemn form proceedings
- *Banks v Goodfellow* (1870) LR 5 QB 549
 - *Middlebrook v Middlebrook* (1962) 36 ALJR 216
 - Test from *Banks v Goodfellow* applied in the following modern cases:
 - *Re Clare* [2009] QSC 403
 - *Brown v Sandhurst Trustees Ltd* [2009] VSC 212
 - *Tu v Estate of Tu* [2008] NSWSC 458
 - *Frizzo v Frizzo* [2011] QCA 308
 - *Birt v The Public Trustee of Queensland* [2013] QSC 13
 - *Re Barlow* [2014] QSC 7
 - Insane delusions and lucid intervals
 - *Bull v Fulton* (1942) 66 CLR 295
 - *Timbury v Coffee* (1941) 66 CLR 277
 - *Re Clare* [2009] QSC 403
 - *Re Sue* [2016] NSWSC 721
 - *Hamill v Wright* [2018] QSC 197
 - Undue Influence
 - *Nicholson v Knaggs* [2009] VSC 64
 - *Birt v The Public Trustee of Queensland* [2013] QSC 13
 - *Cavallaro v Markham* (unreported Cairns, Thomas J, 05/12/1984)
 - *Montalto v Sala* [2016] VSCA 240
 - *Pinter v Pinter* [2016] QSC 314
 - Suspicious Circumstances
 - *Nock v Austin* (1918) 25 CLR 519

- *Tobin v Ezekiel* (2012) 83 NSWLR 757
- *The Estate of Milan Zlatevski; Geroska v Zlatevski* [2020] NSWSC 250

Knowledge and Approval

Li v Choi [2020] QCA 131

Re Sabasio [2020] QSC 247

- Onus of proof
 - *Bailey v Bailey* (1924) 34 CLR 558
 - *Re Dore* [2006] QCA 494
 - *Kantor v Vosahlo* [2004] VSCA 235
- Caveats and standing
 - *Leitch v Dore* [2005] QSC 069
 - *de Groot v Musso* [2011] QSC 69
 - *Re Devoy Fitzgerald* [1943] St R Qd 137
 - *Leach v Leach* [2007] QCA 117
 - *Londy v Kavanagh* [2018] 1 Qd R 646; [2017] QSC 161
 - *Campbell v Campbell* [2012] QSC 302

q. Family provision applications

- Two-stage process and relevance of 'moral duty'
 - *Vigolo v Bostin* (2005) 221 CLR 191
 - *Singer v Berghouse (No 2)* (1994) 181 CLR 201
- Claims of long term spouses
 - *Luciano v Rosenblum* (1985) 2 NSWLR 65
 - *Yeomans v Yeomans* [2011] QSC 344

- 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
 - *Mullins v Dihm* [2020] QDC 107
- Impact of pre-nuptial agreements
 - *Kozak v Matthews* [2007] QCA 296
 - *Hills v Chalk* [2009] 1 Qd R 409
- Disputed de facto relationships
 - *KQ v HAE* [2007] 2 Qd R 32
 - *Summers v Garland* [2006] QSC 085
 - *Barker v Linklater* [2007] QSC 125
 - *Houston v Butler* [2007] QSC 284
 - *Yeomans v Yeomans* [2012] QSC 344
 - *Spencer v Burton* [2015] QCA 104
- Disabled Applicants
 - *Oswell v Jones* [2007] QSC 384
 - *Abrahams v Abrahams* [2015] QCA 286
- 6 and 9 months notice and “distribution” of estate
 - *Holdway v Arcuri Lawyers* [2009] 2 Qd R 18
 - *Vickers v Pickering* [2016] QDC 58
- Cultural considerations
 - *Eatts v Gundy* [2014] QCA 309
 - *Omari v Omari* [2012] ACTSC 33

- Adult children
 - *Dawson v Joyner* [2011] QSC 385
 - *Allsop v Henderson* [2015] QSC 105
 - *Kennedy v Kennedy* [2016] WASC 210
 - *Salmon v Osmond* [2015] NSWCA 42
 - *Neibour-Pott v Pott* [2020] QSC 7
 - *Fenton-Anderson v Power (No 2)* [2020] QDC 294
- Stepchildren
 - *Freeman v Jaques* [2005] QSC 200 and *Freeman v Jaques* [2006] 1 Qd R 318
 - *Powell v Monteath* [2006] 2 Qd R 473
 - *Daniels v Brooks* [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* [2004] NSWSC 569
 - *Killiner v Freeman* [2000] NSWSC 263
 - *Christie v Christie* [2016] WASC 45
- Conditional gifts
 - *Ellaway v Lawson* [2006] QSC 170
- Costs
 - *Underwood v Underwood* [2009] QSC 107
 - *Daley v Barton* [2008] QSC 322

- *Jones v Jones* [2012] QSC 342
- *Collett v Knox* [2010] QSC 132
- *Collett v Knox* (No 2) (unreported, McMeekin J, 29 June 2010)
- *DW v RW* (No 2) [2013] QDC 189
- *Dawson v Joyner* (No 2) [2012] QSC 24
- *Cerneaz v Cerneaz* [2015] QDC 73
- *Wright v Wright No. 2* [2016] QDC 97
- *Sweaney v Bailie* [2017] QDC 295
- 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
 - *Mortimer v Lusink* [2016] QSC 119 and [2017] QCA 1
 - *Budulica v Budulica* [2016] QSC 184
- Application for Dismissal
 - *Johnson v Public Trustee of Queensland* [2010] QCA 260
 - *Sylvester v Sylvester* [2010] QSC 331
 - *Atthow v McElhone* [2010] QSC 177
 - *Catelan v Herceg* [2012] QSC 320
 - *Vickers v Pickering* [2016] QDC 58
 - *Charlesworth v Griffiths* [2018] QSC 115 and 139
- Bankruptcy
 - *Kowalski v Public Trustee* [2011] QSC 323

- Form of provision
 - *Stewart v Stewart* [2015] QSC 238
- Small estates
 - *DW v RW* [2013] QDC 163
 - *Cope v Public Trustee of Queensland* [2013] QDC 176
- Large Estates
 - *Darveniza v Darveniza* [2014] QSC 37
 - *Mead v Lemon* [2015] WASC 71 and *Lemon v Mead* (2017) 53 WAR 76
- Need for final orders
 - *Affoo v Public Trustee of Queensland* [2012] 1 Qd R 408
 - *Watts v The Public Trustee of Queensland* [2010] QSC 410
 - *Abrahams v Abrahams* [2015] QCA 286
- Monetary jurisdiction of the Court
 - *Danckert v Holmes* [2021] QDC 6
- r. Administration arguments
 - Lost wills
 - *Re Cardie* [2013] QSC 265
 - *Re Kelly* [2014] QSC 283
 - *Williamson v Pay* [2020] QSC 66
 - Leave to swear death and applications for a declaration of death
 - *Re Parker* (1995) 2 Qd R 617
 - *Re Bennett* [2006] QSC 250
 - *Re Maynard* [2015] QSC 144

- s. Commission and accounting arguments
- t. Equitable claims and remedies / unraveling ultra vires transactions
 - *Bridgewater v Leahy* (1998) 194 CLR 457
 - *Wittman v Wittman* [2006] QSC 142
 - *Johnston v Herrod* [2012] QSC 98
 - *Johnston v Herrod* [2013] 2 Qd R 102
 - *Nendy v Armstrong* [2020] QSC 380
 - *Campbell & Hook v TL Clacher (No2) & Ors* [2019] QSC 218
 - *Birch v Birch* [2020] QCA 31
- g. Funeral, burial disputes
 - Smith v Tamworth City Council and Ors* [1997] 41 NSWLR 680
 - Re Condo; Marinucci v Condo* [2020] VWC 613

6.4. Other

- a. Interim administrators
- b. Expert witnesses
- c. Risk management measures and legal ethics
- d. Trustee's application for directions
 - *Macedonian Orthodox Community Church St Petka Inc v His Eminence Petar The Diocesan Bishop of Macedonian Orthodox Diocese of Australia and New Zealand* (2008) 237 CLR 66
 - *Glassock v Trust Company* [2012] QSC 15
 - *Corbiere v Dulley* [2016] QSC 134
 - *Groundwater v Robinson* [2020] QSC 31

- *Re Murray (deceased)* [2020] QSC 155
- e. Removal of executors and other orders against executors
 - *Williams v Williams* [2004] QSC 269
 - *Chesney v Tognola* [2011] QSC 340
 - *Baldwin v Greenland* [2006] QCA 293
 - *Otto v Redhead* [2007] QSC 278 & [2008] QSC 280
 - *Colston v McMullen* [2010] QSC 292
 - *Pierpoint v Liston* [2012] QCA 199
 - *Jee v Jee* [2012] QSC 210
 - *Budulica v Budulica* [2017] QSC 60
 - *Re McLennan* [2018] QSC 124
 - *Buckingham v Buckingham* [2020] QSC 230
- f. Trustee right of indemnity and costs
 - *Rattigan v Hanly* [2020] NSWSC 1722
- g. Statutory wills
 - *Re Fenwick* [2009] NSWSC 530
 - *Re Keane: Mace v Malone* [2011] QSC 11 and *Re Keane: Mace v Malone (No 2)* [2011] QSC 98
 - *McKay v McKay* [2011] QSC 230
 - *Wickham v Smith* (unreported, Daubney J, 8 February 2012)
 - *Van der Meulen v Van der Meulen* [2014] QSC 33
 - *Re Matsis* [2012] QSC 349
 - *Doughan v Straguszi* [2013] QSC 295
 - *Re JT* [2014] QSC 163

- *GAU v GAV* [2016] 1 Qd R 1
 - *RKC v JNS* [2014] QSC 313
 - *Lawrie v Hwang* [2013] QSC 289
 - *Re G, CL* [2015] SASC 80
 - *Re MPL* [2016] QSC 61
 - *Re K* [2014] QSC 94
 - *VMH v SEL* [2016] QSC 148
 - *Re APB, ex parte Sheehy* [2017] QSC 201
 - *Re MTX* [2020] QSC 117
 - *Blumke v Campbell* [2020] QCA 217
- h. Rectification applications
- *Public Trustee of Queensland v Smith* [2009] 1 Qd R 26
 - *McPherson v Byrne* [2013] 2 Qd R 516
 - *Rose v Tomkins* [2018] 1 Qd R 549
- i. Compensation applications
- *Moylan v Rickard* [2010] QSC 327
 - *Public Trustee of Qld (as administrator estate of Richardson) v Lee* [2011] QSC 409
 - *RL v NSW Trustee & Guardian* [2012] NSWCA 39
 - *The Trust Company Ltd v Gibson* [2012] QSC 183
 - *Public Trustee v Stibbe* [2012] QSC 357
 - *Ede v Ede* [2006] QSC 378
 - *LPJ* [2011] QCAT 177
 - *Public Trustee of Queensland v BN* [2011] QCAT 666

- *Kebbell v Reynolds* [2012] QSC 088
 - *Neuendorf v The Public Trustee of Queensland* [2013] QSC 156
 - *Outram v Public Trustee of Queensland* [2020] QSC 80
- j. Informal wills (s 18)
- *Estate of Masters* (1994) 33 NSWLR 446
 - *Hatsaturis v Hatsaturis* [2001] NSWLA 408
 - *In the Estate of Kelly* (1983) 32 SASR 370
 - *Little v Hammond* [2007] QSC 183 & 398
 - *Re Vogele* [2007] QSC 404
 - *Hensler v Padget* [2008] QSC 82
 - *Yazbek v Yazbek* [2012] NSWSC 594
 - *Mahlo v Hehir* [2011] QSC 243
 - *Bell v Crewes* [2011] NSWSC 1159
 - *Mellino v Wnuk* [2013] QSC 336
 - *Re: Yu* [2013] QSC 322
 - *Re Grindrod* [2014] QSC 158
 - *Howe v Fischer* [2014] NSWCA 286
 - *Fast v Rockman* [2013] VSC 18
 - *Re Spencer* [2014] QSC 276
 - *Re Gew* [2020] QSC 119
- *Massey v Smith* [2015] QSC 86
 - *Lindsay v McGrath* [2016] 2 Qd R 160
 - *Re Hancock* [2016] VSC 496

- *Re Nichol* [2017] QSC 220
 - *Re Carrigan* [2018] QSC 206
 - *Radford v White* [2018] QSC 306
 - *Re Marshall (deceased)* [2020] QSC 109
 - *Re Weedon (deceased)* [2020] QSC 161
 - *Tolbert v Hicklin* [2020] QSC 166
 - *Re Picking* [2020] QSC 278
- k. Mutual wills
- *Bauer v Hussey* [2010] QSC 269
 - *Hussey v Bauer* [2011] QCA 091
 - *In the Will of Fernando Masci* [2014] QSC 281
- *Haggarty v Wood (No 2)* [2015] QSC 244
 - *Flocas v Carlson* [2015] VSC 221
- l. Revocation of wills
- *In the Estate of Simkin* [1950] VLR 341
 - *Cavallaro v Markham* (unreported Cairns, Thomas J, 05/12/1984)
 - *Lippe v Hedderwick* (1922) 31 CLR 148
 - *Re Fraser* [2010] QSC 208

7. SKILLS

The skills required to be demonstrated during the succession law specialist accreditation assessment program include the following:

7.1. **Developing a relationship with the client by:**

- a. Listening effectively to the client and identifying the client's desires and needs; and
- b. Communicating clearly and appropriately

The specialist succession law solicitor:

- 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.

7.2. **Obtaining information and instructions by:**

- a. 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). The specialist succession law solicitor:

- 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
- 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
 - assesses and manages professional risk effectively
 - keeps a clear record of instructions.
- b. Obtaining relevant information from sources other than the client. When gathering supporting information, the specialist succession law solicitor:
- 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
 - uses court procedures to gather further evidence in litigious matters.

7.3. Plan a timetable and course of action

The specialist succession law solicitor:

- 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
 - provides the client with estimates of time involved to complete the task, or steps of the task if it comprises a number of steps.
 - provides the client with accurate estimates of costs for each step
- a. In a litigious matter, the specialist succession law solicitor:
- 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
 - complies with time limits
 - advises the client on likely costs
 - provides advice on alternatives to litigation
- b. In a non-litigious matter

The specialist succession law solicitor acts:

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

7.4. Implements the plan

- a. Drafting Wills. The specialist succession law solicitor drafts the Will:
- accurately and concisely
 - applying all relevant law to the facts
 - gives effect to the client's confirmed instructions.

- Ensures 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.
- b. 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
- 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
- considers when to brief counsel, chooses an appropriate barrister, and acts appropriately as the instructing solicitor.

- c. Administration of estates. The practitioner advises the client and acts, when instructed, on:

- the payment of debts
- the collection and distribution of assets
- 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
 - the requirements of asset holders
 - sensitive to the timing of transactions
 - aware of taxation and stamp duty implications.
- d. 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
 - 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.

- e. Family provision. The specialist succession law solicitor:
- 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
 - acts promptly and efficiently in relation to time limits.

8. 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, nor are these designed to be an exhaustive list.

There are two categories: reading texts and looseleaf service, and legislation.

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

8.1. Texts and looseleaf services

This list is divided into recommended reading, and recommended reference texts.

a. Recommended reading

- de Groot, J. K. & Nickel, B. W., *Family Provision in Australia* (5th ed, 2017)
- 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* (7th ed, 2013)
- Land Title Practice Manual (Qld)
- Succession Law resources available on Queensland Law Society website http://www.qls.com.au/Knowledge_centre/Areas_of_law/Succession_law

b. 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)
- Cassidy, *Exploring the Benefits and Pitfalls of Using Mutual Wills* [2005] DeakinLaw Rw 7; (2005) 10(1) Deakin Law Review 121
- Croucher & Vines, *Succession, Families, Property & Death* (3rd ed, 2008)
- Haines, *Construction of Wills in Australia* (2007)
- Williams, *Construction of Wills in Australia*, 2nd edition, 2016

- Perkins & Monahan, *Estate Planning: A Practical Guide for Estate & Financial Service Professionals* (3rd ed, 2010)
- Williams & McCullough, *Statutory Will Applications, a Practical Guide*, (2014)

8.2. Legislation

This list is divided into recommended reading list, and relevant sections of specific acts.

a. Recommended reading list

Queensland legislation

- *Succession Act 1981*
- *Trusts Act 1973*
- *Powers of Attorney Act 1998*
- *British Probates Act 1898*
- *British Probates Regulation 2008*

Federal legislation

- *Australian Solicitors Conduct Rule 2012*

b. Recommended reading of relevant sections of the following acts

Queensland legislation

- *Acts Interpretation Act 1952*
- *Adoption Act 2009*
- *Births Deaths and Marriages Registration Act 2003*
- *Civil Partnerships Act 2011*
- *Civil Proceedings Act 2011*

- *Criminal Code*
- *Duties Act 2001*
- *Evidence Act 1977*
- *Guardianship and Administration Act 2000*
- *Land Act 1994*
- *Land Title Act 1994*
- *Partnership Act 1891*
- *Property Law Act 1974*
- *Public Guardian Act 2014*
- *Public Trustee Act 1978*
- *Status of Children Act 1978*
- *Surrogacy Act 2010*
- *Uniform Civil Procedure Rules 1999*

Federal legislation

- *Bankruptcy Act 1966*
- *Corporations Act 2001*
- *Family Law Act 1975*
- *Income Tax Assessment Act 1936*
- *Income Tax Assessment Act 1997*
- *Life Insurance Act 1995*
- *Superannuation Industry (Supervision) Act 1993 and SIS Regulations*