

Business Law

Assessment Criteria 2024



Specialist Accreditation

Distinction in law



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1. INTRODUCTION

The *2024 Business Law Specialist Accreditation Program Guide* 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 *2024 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 Business law to the QLS Specialist Accreditation Team at spec@qls.com.au .

3. IMPORTANT DATES

1 March 2024	Applications open.
31 March 2024	Applications close, 5pm.
Mid-late April 2024	Notification of candidates accepted into the program.
14 May 2024	Assessment Briefing Evening, more information will be provided to all candidates via Canvas and the Specialist Accreditation Team.
14 June 2024	Take Home Assignment scheduled to be released.
8 July 2024	Take Home Assignments scheduled to be due.
14 September 2024	Written Examination conducted via Microsoft Teams and Canvas.
15 September 2024	Simulated Client Interview will be conducted online using Microsoft Teams, more information will be provided to all candidates via Canvas.

Queensland Law Society reserves the right to change any of these dates. Sufficient notice will be provided to candidates. Please note that further information regarding each assessment component and how it will be conducted will be outline on Canvas.

4. ASSESSMENT PROGRAM

Learning Outcomes and Objectives

In the course of this program, candidates will undertake practical exercises in:

- Interviewing clients to ascertain their situation and objectives;
- Undertaking necessary research on relevant law, the client's business and industry where applicable;
- Providing advice on courses of action available to clients to meet their objectives;
- Drafting documents necessary for effecting determined course and protecting the interests of clients;
- providing technically correct and appropriately communicated advice (simple and plain English advice); and
- Comprehending the ethical rules applicable to the conduct of legal practitioners in the course of business law.

Candidates must pass the prescribed assessment program set out in this section to be awarded specialist accreditation in this area of accreditation. Candidates wishing to be accredited should demonstrate a high standard of:

- (a) ability to guide clients on their needs and objectives.
- (b) knowledge of the law and procedure which underpins the performance of tasks in this area of practice; and
- (c) oral and written advice on law and strategy which is expected of practitioners wishing to hold themselves out as specialists in the area.

For the purposes of these Learning Objectives, "high standard" means the standard expected of a specialist legal practitioner with enhanced skills, superior knowledge, significant experience and a high proficiency in Business Law, as reflected in the skills set out in Section 6 of this Guide – SKILLS. A candidate must demonstrate a "high standard" to meet the standard of accreditation.

Details of the knowledge and skills expected are contained in Parts 5 and 6 of this document.

The assessment program for specialist accreditation in business law is in three parts. All parts are weighted equally.

Part 1 Take Home Assignment

Part 2 Written Examination

Part 3 Simulated Client Interview

Standard of Accreditation

Candidates will be advised of the standard of accreditation in the instructions for each assessment item. The assessments will be graded on either a percentage score or on a scale of 1 – 5. Candidates wishing to be accredited must:

- a. perform at a high standard which is expected of candidates 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.

How the Assessments will be Conducted / Delivered

The Assessments will be conducted / delivered online using our Learning Management System Canvas. Assessment details will be confirmed by the QLS Specialist Accreditation Team ahead of the assessment dates via Canvas. All registered candidates for this program will be provided with student access accounts for Canvas.

The Take Home Assignment will be accessible by candidates on Canvas. Candidates will either upload their Assignment to the Canvas, or email the Specialist Accreditation Team at spec@qls.com.au by the required due date set by the Advisory Committee.

The Simulated Client Interview will be conducted virtually via Microsoft Teams. The Specialist Accreditation Team will provide all candidates with link details ahead of the assessment.

The Written Exam will be delivered online via Canvas. The Specialist Accreditation Team will provide further instructions about the exam ahead of the assessment.

IMPORTANT NOTE FOR ONLINE ASSESSMENTS: Candidates attending any online assessments:

- (a) must have strong and reliable internet connection;
- (b) will be solely responsible for any malfunctions, errors or technical problems of any kind associated with the electronic devices they use for the assessment;
- (c) will not be provided any additional time to complete an online assessment due to any malfunctions, errors or technical problems of any kind in relation to the electronic advice they use to complete the assessments, or due to their own poor internet connection or usage outages, without approval from the Advisory Committee on a case-by-case basis; and
- (d) absent Advisory Committee approval, candidates who fail to undertake or complete an online assessment due to any malfunctions, errors or technical problems of any kind in relation to the electronic device they use to complete the assessments, or due to any their own poor internet connection or usage outages, will fail that assessment.

4.1 Take home assignment

Candidates will be required to complete a take home assignment, which is subject to strict time and length limits and will assess the candidate's ability to handle matters in practice. The assignment will assess a variety of skills which may include preparation of documents, knowledge of procedures, and the identification and application of legal principles.

- This assessment will be uploaded to Canvas for candidates to access. Candidates will be provided with instructions about how to submit their completed assessment to QLS.
- Candidates may use the resources of their offices in completing this assessment task. **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 Candidate 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 be allotted a period of time to complete this assessment, up to a maximum of 3 weeks. Candidates will be informed by the QLS Specialist Accreditation Team about the exact assessment duration period in advance of the assessment being released.

4.2 Written examination

The written examination will cover a wide range of business law matters that may be encountered in practice. Candidates will be expected to demonstrate a high standard of

knowledge of business law and associated practices and procedures as outlined in Part 5 of this document.

It is expected that responses are appropriately detailed, identifying the key issues and advice appropriate to the specific situation.

Examination Conditions

- The duration, including perusal time, will be 3 hours and 30 minutes.
- Candidates may take books, notes or other written material into the exam room
- Candidates may access written material on an electronic device on a read only basis. The electronic device must not be connected to the internet.
- Internet access is prohibited
- Answers must be typed out using the allocated text box on Canvas

Note: Queensland Law Society will take no responsibility for any issues experienced on electronic devices during the written examination. Malfunctioning of electronic devices during the written examination will not constitute grounds for a special consideration application.

4.3 Simulated client interview

The Simulated Client Interview will be conducted online using Microsoft Teams and candidates will be greeted by a person acting in the role of a client. Candidates will be provided with further information on this assessment item closer to the date using Canvas.

IMPORTANT NOTE: The Advisory Committee and QLS reserve the right to modify any of the above assessment conditions, as required, with advanced notice to candidates.

5. KNOWLEDGE

The assessment for specialist accreditation in business law focuses on advice and guidance to small and medium-sized enterprises (SMEs). Matters relating to public companies e.g. the law relating to takeovers are generally outside the scope of this assessment program.

A legal practitioner accredited as a business law specialist is expected to be able to provide sound preliminary advice on all of the topics listed in Parts 5.1 and 5.2 below however this is not an exclusive list. More importantly, it is expected that a business law accredited specialist would be able to provide detailed advice on certain core areas such as buying and selling of a business and business structures.

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

- the sophistication and variety of their existing clients in terms of size, structure and fields of business activity
- the depth of experience in this field of law
- referrals of new clients based on individual expertise.

It should be noted that some areas of practice generally relevant to business law accredited specialists are assessed in depth in other specialties offered under the specialist accreditation scheme, e.g. Property Law, Taxation Law and Commercial Litigation.

5.1 Core areas of knowledge

For the purposes of the business law specialist accreditation assessment program, the candidate is expected to have a detailed knowledge of the following core areas of knowledge:

- Buying and selling a business (either by way of asset sale or share sale).
- Due diligence, including how to undertake due diligence on a business or a company.
- Contract management, including how to:
 - vary a contract;
 - assign or novate a contract; and
 - terminate a contract.
- Business structures, including establishing a new business:
 - *Corporations Act 2001* (Cth);
 - partnerships, trusts and sole proprietorship;
 - joint ventures;
 - powers, rights, duties and obligations of owners, directors and officers;
 - succession planning;
 - superannuation;
 - shareholder agreements, unitholders agreements and partnership agreements;
 - business names.
- Securities and guarantees, including:
 - mortgages and general security agreements;
 - guarantees; and
 - impact of *Personal Property Securities Act 2009* (Cth)
- Leases, including:
 - impact of the *Retail Shop Leases Act 1994* (Qld).
 - Operation and practice regarding *Personal Property Securities Act 2009* (Cth).

- Intellectual Property and data, including:
 - trade marks, passing off, business names and company names;
 - copyright;
 - websites and other social media platforms;
 - IP licenses;
 - Transfer of IP;
 - Confidentiality.
- Supply chain agreements, including:
 - Service agreements;
 - Sale of goods agreements;
 - unfair and unjust contracts.
- Franchising, including:
 - the *Franchising Code of Conduct*
- Competition and Consumer Protection, including:
 - misleading and deceptive conduct;
 - restraint of trade;
 - unconscionability;
 - product liability.
- Legal compliance, including:
 - Privacy laws;
 - Data protection laws;
 - Whistleblower laws;
 - Modern slavery laws.
- Company law applicable to proprietary companies including:
 - duties of directors;
 - board functions, powers, procedures;
 - shareholder rights and remedies;
 - shareholder meetings (calling and proceedings);

- fundraising; and
- dealing with company shares.
- Trust law applicable to trading trusts:
 - Duties of trustees;
 - Power and rights of trustees;
 - Beneficiary rights and remedies; and
 - Dealing with units in a unit trust.

5.2 Expected areas of knowledge

You are expected to have a working knowledge, in so far as they relate to the structuring, buying, selling and operation of a business of the areas of knowledge listed below.

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

Topics are grouped under headings as a matter of convenience only. Not all the topics listed will be tested and any matter relevant to practice in business law may be examined.

- Employment, including:
 - equal opportunity and anti-discrimination;
 - harassment and bullying;
 - employment agreements;
 - termination;
 - restraints and confidential information;
 - occupational health and safety issues; and
 - fringe benefits
- Taxation, including:
 - income tax;
 - capital gains tax;
 - GST;
 - state taxes;
 - tax fringe benefits; and
 - deemed dividends and income.
- Insolvency, including:
 - voluntary administration;
 - bankruptcy and arrangements without sequestration;
 - liquidation;
 - receivership; and
 - preferences and fraudulent disposition
- Insurance
- Incorporated Associations (non-profit sector)
- Planning and Environmental matters in-so-far as they relate to the buying, operation and sale of business, including:

- Contamination; and
- Zoning
- Statutory licensing in-so-far as it relates to the buying, operation and sale of a business
- Business Disputes, including:
 - the litigation process; and
 - alternative dispute avenues
- Commercial property conveyancing including an understanding of the conveyancing process and property due diligence considerations.

6. SKILLS

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

6.1 Ascertaining and obtaining information and instructions from the client, namely:

- eliciting details of the agreement and transaction from the client by employing a systematic and thorough approach, which is appropriate for the client and the complexity of the matter;
- identifying the parties and key legal issues, including advising on appropriate parties/structures and also commercial issues such as costs; and
- gathering data from external sources including government bodies and other professionals having regard to the requirements of regulatory bodies and where necessary researching industry requirements.

6.2 Preparing a plan and advising the client by:

- demonstrating an ability to recognise the legal, commercial and personal consequences of the proposal for the client and for any associated party.
- implementing a plan that addresses relevant issues, (depending upon the topic), such as:
 - the client's objectives;
 - liability between the participants in the structure;
 - liability of the entity itself to third parties;
 - liability of the participants to third parties;
 - jurisdiction of various regulatory authorities;
 - administration and reporting to government authorities;
 - direct and indirect tax issues for the entity and the participants;
 - the implications of financial arrangements;
 - succession planning and asset protection; and
 - commercial effectiveness.
- researching or using other resources to complete gaps in knowledge.
- communicating position clearly to client and confirming commitment.
- offering practical alternatives, if necessary, that reflect the client's commercial aims.
- communicating clearly the rights, obligations, risks and overall costs to the client and any associated third party, as is appropriate to the client's level of business

experience and sophistication, to assist the client to achieve a realistic understanding of the agreement/transaction.

6.3 Implementing a plan by:

In transactional matters:

- negotiating the terms of the agreement, displaying familiarity with the facts and instructions and an awareness of the legal problems. Considering commercial solutions and likely acceptable compromises.
- using constructive problem solving while taking account of the client's commercial goals and the other parties' objectives and tactics.
- drafting or scrutinising documents so that all documents reflect what the client understands as the agreement and achieves the client's aims.
- amending precedents to fit the particular transaction
- interpreting documents prepared by another party to recognise if any aspect of the agreement as negotiated is missing, or if any other element has not been adequately covered. Ensuring all documents are dealt with promptly and thoroughly.
- demonstrating knowledge of the rules of land and non-land transactions and being organised and able to handle last minute changes and undertakings.
- conducting research and searches promptly and thoroughly and dealing effectively with all parties to finalise financial arrangements. The final figure is accurately calculated with the proper adjustments, costs and disbursements.

- Completing matters with a due regard to time limits, notifying the appropriate regulatory bodies in accordance with the proper procedures and dealing with all post-settlement matters promptly and thoroughly.

In non-transactional matters:

- Advising client and assisting the client with management of obligations and risks of the business and its operating structure including:
 - powers, rights, duties and liabilities associated with ownership and management;
 - internal business disputes;
 - regulatory compliance;
 - fair dealing by and within business entities; and
 - directors' responsibilities.
- Advising the client on the best course of action to avoid disputes that may arise among parties in business or with other business entities and customers. Including advice on the documentation needed, the actions to be undertaken by the client and the business procedures that should be adopted. Negotiating on the client's behalf, mindful of the need to protect the client's position if the matter is litigated in the future.
- identifying remedies and courses of action available to the client in dealing with the dispute and advising the client in relation to:
 - the remedies available;
 - the practical and legal consequences of pursuing the available options;
 - ensuring that a commercially acceptable result is likely to be achieved;
 - the preferred course of action;

- the cost, timing and action needed by both the client and the legal practitioner;
 - the best method of negotiation and the tactics to be employed; and
 - the choice of suitable representation in matters which proceed to dispute resolution or litigation.
- Representing client, (e.g. before regulatory body) and communicating the client's case clearly and persuasively.