

22276VIC Advanced Diploma of Legal Practice

Accredited for the period: 1st January, 2015 to 31st December, 2020 under
Parts 4.4 and 4.6 of the *Education and Training Reform Act 2006*

Course Curriculum



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| Version 1 | 4 September 2014 | Original Accreditation Document |
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| Errata: | March 2016 | VU21651 Evaluate the concepts and principles of family law: Pre-requisite unit included in the above unit (in error) has been removed. |
| | August 2019 | Accreditation period extended from 31 December 2019 to 30 June 2020 |
| | June 2020 | Accreditation expiry date extended from 30 June 2020 to 31 December 2020 |



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This qualification has been entered on the TGA (Training.gov.au) being the official National Register of Vocational Education and training in Australia: <http://training.gov.au/>



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Section A: Copyright and course classification information

| | |
|---|--|
| 1. Copyright owner of the course | Copyright of this document is held by the Department of Education and Early Childhood Development (DEECD) Victoria © State of Victoria 2015 |
| 2. Address | Department of Education and Early Childhood Development (DEECD) Higher Education and Skills Group Executive Director Training Participation and Facilitation Division PO Box 4367 Victoria, 3001 Day to day contact: Business Industries Curriculum Maintenance Manager Chisholm Institute PO Box 684, Dandenong, Victoria, 3175 Ph: (03) 9238 8501 Fax: (03) 9238 8504 email: alan.daniel@chisholm.vic.edu.au |
| 3. Type of submission | This course is being submitted for re-accreditation. It replaces and has equivalent outcomes to: 22053VIC Advanced Diploma of Legal Practice |
| 4. Copyright acknowledgement | Copyright of this material is reserved to the Crown in the right of the State of Victoria. © State of Victoria (Department of Education and Early Childhood Development) 2015. The following units of competency: <ul style="list-style-type: none"> • BSBADM303B Produce texts from audio transcription • BSBADM504B Plan or review administration systems • BSBADM506B Manage business document design and development • BSBCMM401A Make a presentation • BSBCUS301B Deliver and monitor a service to customers • BSBDIV601A Develop and implement diversity policy • BSBEMS401B Develop and implement business development strategies to expand client base • BSBINM301A Organise workplace information • BSBITU301A Create and use databases • BSBITU303A Design and produce text documents • BSBITU304A Produce spreadsheets |

| | |
|--|--|
| | <ul style="list-style-type: none"> • BSBITU306A Design and produce business documents • BSBITU307A Develop keyboarding skills and accuracy • BSBITU404A Produce complex desktop published documents • BSBLEG418A Produce complex legal documents • BSBMGT502B Manage people performance • BSBMGT616A Develop and implement strategic plans • BSBRES401A Analyse and present research information • BSBSUS301A Implement and monitor environmentally sustainable work practices • BSBWHS301A Maintain workplace safety • BSBWOR502B Ensure team effectiveness • BSBWOR501B Manage personal work priorities and professional development • BSBWRT401A Write complex documents <p>are from the BSB07 Business Services Training package administered by the Commonwealth of Australia. © Commonwealth of Australia.</p> <p>The following units of competency:</p> <ul style="list-style-type: none"> • FNSCUS501A Develop and nurture relationships with clients, other professionals and third party referrers • FNSCNV506A Establish and manage a trust account <p>are from the FNS10 Financial Services Training package administered by the Commonwealth of Australia. © Commonwealth of Australia.</p> |
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|-----------------------------------|---|---|
| 6. Course accrediting body | Victorian Registration and Qualifications Authority (VRQA) | |
| 7. AVETMISS information | <i>[Classification codes for AVETMISS data may be found on the NCVET website at www.ncver.edu.au]</i> | |
| | ANZSCO <i>(Australian and New Zealand Standard Classification of Occupations)</i> | 271299 Judicial and Other Legal Professionals nec |
| | ASCED code <i>(Field of Education)</i> | 0909 Law |
| | National course code | 22276VIC |
| 8. Period of accreditation | 1 st January, 2015 to 31 st December, 2019 | |

Section B: Course information

| | | |
|--|---|--|
| 1. Nomenclature | | <i>Standard 1 AQTF Standards for Accredited Courses</i> |
| 1.1 Name of the qualification | Advanced Diploma of Legal Practice | |
| 1.2 Nominal duration of the course | 1090 - 1410 hours | |
| 2. Vocational or educational outcomes | | <i>Standard 1 AQTF Standards for Accredited Courses</i> |
| 2.1 Purpose of the course | <p>Graduates of the Advanced Diploma of Legal Practice will be able to meet the current and future industry requirement to effectively apply a comprehensive knowledge of a broad range of areas of legal interests to legal processes and practices across a wide variety of employment opportunities within legal practice environments and associated fields within public and/or corporate sectors.</p> <p>The vocational outcomes of the Advanced Diploma of Legal Practices are to:</p> <ul style="list-style-type: none"> effectively undertake legal research to underpin actions and outcomes for activities pertaining to legal ethics and legal areas of interest effectively source and manage information and legal practice operation resources effectively provide advice and assistance to existing and potential clients on legal services through knowledge of relevant legislation, legal processes and ability to interpret legislation effectively manage complex legal operations functions pertaining to a wide range of legal areas of interest develop the capacity of individuals and groups to actively participate in the development and implementation of team outcomes apply and manage communication skills and problem-solving skills to appropriately respond to requirements arising from areas of legal interest across a range of legal process and legal practice contexts apply and manage communication and organisational skills to develop and maintain reports, records, case notes, evidence briefs, and other documentation compliance requirements | |
| 3. Development of the course | | <i>Standards 1 and 2 AQTF Standards for Accredited Courses</i> |
| 3.1 Industry /enterprise /community needs | <p>The course has been available in Victoria for many years, starting as the Certificate of Business Studies (Law) in the mid-1970s, evolving into the Associate Diploma of Business (Legal Practice) available through RMIT, until finally becoming a Victorian Crown Copyright course with the current nomenclature in 2003 and under the direction of the Curriculum Maintenance Manager – Business Industries.</p> | |

The qualification remains a highly sought after course of study with well over 6,000 enrolments in the period of 2003 to 2008 across seven metropolitan and two regional TAFE providers. Enrolments for the existing accreditation period have been just as strong, across the same participating providers, indicating the continuing demand for the course. (See Fig 3.1)

Figure 3.1: Enrolment data 2010 to 2014

| 2009 | 2010 | 2011 | 2012 | 2013 |
|------|------|------|------|------|
| 938 | 817 | 493 | 668 | 540 |

Source: VET Course Data Set

The Higher Education and Skills Group has funded the project to re-accredit 22053VIC Advanced Diploma of Legal Practice due to this established need.

The key stakeholders have confirmed that research conducted into the industry need for people with legal practice qualifications and experience, prior to and during the five years of the accreditation period of the existing course, remains accurate and current.

During the recent research phase for the renewal of this course, the key stakeholders further stressed that the course continues to meet industry training needs and merely requires updating in regard to current legislative and regulatory amendments, changes and requirements. They report that the value of the course lies in its thoroughness, accuracy and breadth of learning about law and legal research methods and that this must be preserved.

They say that the applied learning across the course, along with the legal process and working in a legal environment areas of study, graduates are well prepared to be selected for entry into the legal practice sector, "...in fact we do not even look at applicants who have not done this course."¹

The content of this course has been determined and endorsed by the Steering Committee comprising a majority of industry representatives through a range of consultative processes including:

- a focus group comprising a range of stakeholders including industry representatives and content experts
- research by project team
- working party of content experts

See:

[Appendix 1](#) Course content developed by stakeholders

1.1 Training Demand/Job Search

1.2 Skills and knowledge mapping

After mapping the vocational outcomes against national training packages and accredited courses, it was found that there is no qualification that provides training in the vocational outcomes (Section

B 2. above) required for effective contribution within the legal practice sector.

Anticipated employment opportunities include:

- law clerk (litigation debt recovery, property, mortgage recovery)
- legal probate clerk
- conveyance clerk
- conveyance
- corporate law clerk
- mortgage clerk
- legal clerk
- family law assistant
- probate/deceased estate law clerk
- compliance officer
- assistant to parliamentary counsel
- Victorian legal aide
- working in Victoria Police
- land title officer
- legal assistant/secretary
- legal research assistant
- trainee court registrar
- paralegal

The job search analysis, and the associated knowledge and skills requirements, has been ratified by members of the Steering Committee and matched to the course structure.

Industry support is confirmed through the endorsement and active participation of the Steering Committee.

Members of the Steering Committee:

Chair - Anna Henderson: Executive Director, Business Skills Viability

- ~ Jacqui Ross: Solicitor, Baker and McKenzie Solicitors
- ~ Elizabeth Peace: Institute of Legal Executives
- ~ Emily O'Bree: Owenlaw Legal Pty Ltd
- ~ Debra Van Der Kraan: Department of Justice
- ~ Roz Curnow: CEO Institute of Legal Executives
- ~ Leanne Newson: Law Institute of Victoria
- ~ Sav Korica: Barrister
- ~ Bradley Deacon: Solicitor

| | |
|---|---|
| | <ul style="list-style-type: none"> ~ Robert Sheen: Industry Group Manager, Legal, Accounting and Financial Services, RMIT ~ Kathie Nickson: Teacher Legal Practice, Swinburne University of Technology ~ Suzanne Maugeri: Education Manager College of Law and Justice, Victoria University ~ Gabrielle Hodson: Kangan <p>In Attendance:</p> <ul style="list-style-type: none"> ~ Alan Daniel: Curriculum Maintenance Manager – Business Industries, Chisholm ~ Elizabeth Howard: Curriculum Projects Officer, Chisholm ~ Madeleine Hayne, Administrative Coordinator, CMM Business Industries, Chisholm |
| <p>3.2 Review for re-accreditation</p> | <p><i>Standards 1 and 2 for Accredited Courses</i></p> <p>Monitoring and evaluation of 22053VIC Advanced Diploma of Legal Practice has been conducted in accordance with Section B.9. Ongoing monitoring and evaluation, of the Course Documentation and ensuing feedback has been taken into account in the revised course.</p> <p>Revisions are based on formal and informal data collected from RTO teaching staff, student feedback and experts, and through input from the Steering Committee and Stakeholders</p> <p>Learners currently enrolled in the existing course may convert to: 22276VIC Advanced Diploma of Legal Practice which replaces and is equivalent to 22053VIC Advanced Diploma of Legal Practice.</p> <p>Please refer to the following - 3.2.1: Transition Table - for transition arrangements.</p> <p>No new enrolments into 22053VIC Advanced Diploma of Legal Practice after 30 June, 2015 are permitted.</p> |

| Transition Table | | |
|---|---|------------------------|
| No new enrolments into 22053VIC Advanced Diploma of Legal Practice after 30 June, 2015 are permitted. | | |
| New qualification title: | 22276VIC Advanced Diploma of Legal Practice | |
| Previous qualification title: | 22053VIC Advanced Diploma of Legal Practice | |
| 22276VIC Advanced Diploma of Legal Practice replaces and is equivalent to 22053VIC Advanced Diploma of Legal Practice | | |
| Units in current course | Units from superseded course | Relationship |
| BSBWHS301A Maintain workplace safety | BSBCMN311B Maintain workplace safety | Equivalent |
| VU21631 Investigate and apply legal process | VU20111 Legal process | Updated and equivalent |
| VU21632 Research and evaluate legal research method | VU20124 Legal research method | Updated and equivalent |
| VU21633 Analyse and apply law of contract | VU20108 Law of contract | Updated and equivalent |
| VU21634 Analyse and apply law of torts | VU20107 Law of torts | Updated and equivalent |
| VU21635 Define and evaluate law of evidence | VU20110 Law of evidence | Updated and equivalent |
| VU21636 Determine appropriate aspects of commercial law | VU20112 Commercial law | Updated and equivalent |
| VU21637 Employ property law principles and concepts | VU20109 Property law | Updated and equivalent |
| VU21638 Apply conveyancing process | VU20114 The conveyancing process | Updated and equivalent |
| VU21639 Explore and apply wills, probate and administration procedures | VU20116 Wills, probate and administration | Updated and equivalent |
| VU21640 Apply and apply civil procedure | VU20117 Civil procedure | Updated and equivalent |
| VU21641 Analyse and evaluate concepts and principles of criminal law | VU20118 Criminal law | Updated and equivalent |


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| VU21642 Practise in a legal environment | VU20113 Practise in a legal environment | Updated and equivalent |
| VU21643 Evaluate and apply concepts and principles of cyber law | | New unit |
| VU21644 Examine and apply land contract law | VU20119 Land contracts | Updated and equivalent |
| VU21645 Apply land contract law to mortgages leases and building contracts | VU20120 Mortgages leases and building contracts | Updated and equivalent |
| VU21646 Assess the application of consumer protection law | VU20121 Consumer protection law | Updated and equivalent |
| VU21647 Research the application of administrative law | VU20122 Administrative law | Updated and equivalent |
| VU21648 Research the application of intellectual property and business law | VU20123 Intellectual property and business law | Updated and equivalent |
| VU21649 Define and research the application of corporations law | VU20125 Corporations law | Updated and equivalent |
| VU21650 Define and research the application of employment law | VU20126 Employment law | Updated and equivalent |
| VU21651 Evaluate the concepts and principles of family law | VU20115 Family law | Updated and equivalent |
| BSBINM301A Organise workplace information | BSBINM301A Organise workplace information | No change |
| BSBCUS301B Deliver and monitor a service to customers | BSBCUS301A Deliver and monitor a service to customers | Equivalent |
| BSBRES401A Analyse and present research information | BSBRES401A Analyse and present research information | No change |
| BSBCM401A Make a presentation | BSBCM401A Make a presentation | No change |

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| BSBWRT401A Write complex documents | BSBWRT401A Write complex documents | No change |
| BSBEMS401B Develop and implement business development strategies to expand client base | BSBEMS401B Develop and implement business development strategies to expand client base | No change |
| BSBMGT502B Manage people performance | BSBMGT502B Manage people performance | No change |
| BSBWOR502B Ensure team effectiveness | BSBWOR502A Ensure team effectiveness | Equivalent |
| BSBDIV601A Develop and implement diversity policy | BSBDIV601A Develop and implement diversity policy | No change |
| BSBMGT616A Develop and implement strategic plans | BSBMGT616A Develop and implement strategic plans | No change |
| BSBITU307A Develop keyboarding skills and accuracy | BSBITU307A Develop keyboarding skills and accuracy | No change |
| BSBITU304A Produce spreadsheets | BSBITU304A Produce spreadsheets | No change |
| BSBITU306A Design and produce business documents | BSBITU306A Design and produce business documents | No change |
| BSBADM303B Produce texts from audio transcription | BSBADM303B Produce texts from audio transcription | No change |
| BSBITU303A Design and produce text documents | BSBITU303A Design and produce text documents | No change |
| BSBITU301A Create and use databases | BSBITU301A Create and use databases | No change |
| BSBITU404A Produce complex desktop published documents | BSBITU404A Produce complex desktop published documents | No change |
| BSBLEG418A Produce complex legal documents | BSBLEG401A Prepare and produce complex legal documents | Equivalent |
| BSBADM506B Manage business document design and development | BSBADM506B Manage business document design and development | No change |
| | BSBWOR204A Use business technology | Deleted |

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| BSBWOR501B Manage personal work priorities and professional development | BSBWOR501A Manage personal work priorities and professional development | Equivalent |
| BSBADM504B Plan or review administration systems | BSBADM504B Plan or review administration systems | No change |
| BSBSUS301A Implement and monitor environmentally sustainable work practices | BSBSUS301A Implement and monitor environmentally sustainable work practices | No change |
| FNSCUS501A Develop and nurture relationships with clients, other professionals and third party referrers | FNSICCUS501B Develop and nurture relationships with clients, other professionals and third party referrers | Equivalent |
| FNSCNV506A Establish and manage a trust account | FNSCONV503B Establish, manage and administer trust accounts | Equivalent |

| 4. Course outcomes | Standards 1, 2, 3 and 4 AQTF Standards for Accredited Courses |
|---------------------------------------|---|
| <p>4.1 Qualification level</p> | <p><i>Standards 1, 2 and 3 AQTF Standards for Accredited Courses</i></p> <p>The 22276VIC Advanced Diploma of Legal Practice is consistent <i>Qualification Framework 2nd Edition January 2013</i> (AQF) specification for Advanced Diploma (Level 6) as follows:</p> <ul style="list-style-type: none"> • Knowledge: Graduates of an Advanced Diplomas will have specialised and integrated technical and theoretical knowledge with depth within one or more fields of work and learning, through a demonstrated in-depth understanding of specialised legal knowledge within a range of areas of legislation: including law of torts, contracts, property, civil and criminal procedures, evidence, privacy, and/or administration, cyber law, consumer protection, family, and employment, in order to work within the operational and/or assistant level of organisations in the legal practice environment • Skills: Graduates at this level will have a broad range of cognitive, technical and communication skills to select and apply methods and technologies to: <ul style="list-style-type: none"> ◦ demonstrate a command of wide-ranging, highly specialised technical, creative or conceptual skills in the application of legal research techniques to identify legal information from a range of sources ◦ demonstrate accountability for personal outputs within broad parameters in developing own action/work plan according to own responsibilities and the legal project brief ◦ demonstrate accountability for personal and group outcomes within broad parameters in coordinating and facilitating team work • Application of knowledge and skills: Graduates at this level will apply knowledge and skills to demonstrate autonomy, judgment and defined responsibility to: <ul style="list-style-type: none"> ◦ analyse, diagnose, design and execute judgments across a broad range of technical or management functions in the application of relevant legislation in a legal practice environment ◦ generate ideas through the analysis and review of information and concepts at an abstract level of a range of information sources to draft complex legal documents • Volume of Learning: The Advanced Diploma of Legal Practice incorporates structured and unstructured learning. • Structured learning activities develop the knowledge and skills to operate as a para-legal professional within one or more fields of work and learning, through a demonstrated in-depth understanding of specialised legal knowledge within a range of areas of legislation. |

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| | <ul style="list-style-type: none"> • A significant number of additional hours of unsupervised learning are expected including research, work experience and/or industry placement to support successful course completion. • The volume of learning for this qualification is typically 1.5 – 2 years. |
| <p>4.2 Employability skills</p> | <p><i>Standard 4 AQTF Standards for Accredited Courses</i> This qualification has been mapped to national employability skills. Refer to the following Employability Skills Summary</p> |

| Employability Skills Summary | |
|---|---|
|  | |
| Qualification Code: | 22276VIC |
| Qualification Title: | Advanced Diploma of Legal Practice |
| <p>The following table contains a summary of the employability skills required for this qualification. This table should be interpreted in conjunction with the detailed requirements of each unit of competency packaged in this qualification. The Employability Skills facets described here are broad industry requirements that may vary depending on the packaging options.</p> | |
| Employability Skill | Industry/enterprise requirements for this qualification include the following facets: |
| <p>Communication that contributes to productive and harmonious relations across employees and customers</p> | <ul style="list-style-type: none"> • liaising, listening and consulting with colleagues, management and stakeholders to encourage participation, and clarify and evaluate issues • conducting legal and other research to collect, analyse, evaluate and present information • consulting with internal and external stakeholders including solicitors, barristers, doctors and insurers • questioning, clarifying and evaluating information • writing in a range of styles to suit different audiences |
| <p>Teamwork that contributes to productive working relationships and outcomes</p> | <ul style="list-style-type: none"> • managing and developing others to be effective and empowered team members • managing and providing feedback on individual and team performance • working closely with legal practitioners and others to research, collect, collate and present information • seeking expertise from other/s as nominated or required • providing advice and support to managers and other key personnel |
| <p>Problem solving that contributes to productive outcomes</p> | <ul style="list-style-type: none"> • analysing and selecting information for relevance and accuracy • selecting from a range problem solving and decision making strategies such as: <ul style="list-style-type: none"> ◦ managing trust accounts ◦ negotiating settlements ◦ analysing and interpret court rulings ◦ using discretion and judgment while working within codes of conduct ◦ determining appropriate application of law, procedures and remedies to legal issues |

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| | <ul style="list-style-type: none"> o resolving issues with clients and responding to changing situations |
| <p>Initiative and enterprise that contribute to innovative outcomes</p> | <ul style="list-style-type: none"> • applying learning and research to develop strategies, systems and procedures to meet requirements of the brief or work • generating and applying a range of options in response to workplace matters and agreed decisions • developing and maintaining business networks and relationships in a legal practice environment to maintain professional competence |
| <p>Planning and organising that contribute to long and short-term strategic planning</p> | <ul style="list-style-type: none"> • planning and arranging settlements in accordance with legislative and organisational requirements • maintaining information systems, records, and reporting procedures • reviewing and evaluating legal documentation and processes and recommend changes or improvements • maintaining information systems, records, and reporting procedures • planning and organising own work priorities and complete assigned tasks in accordance with all legislative and organisational requirements • checking and monitoring work to ensure compliance with regulatory, legislative, client and organisational requirements |
| <p>Self-management that contributes to employee satisfaction and growth</p> | <ul style="list-style-type: none"> • developing and evaluating strategies personal presentation and professional advancement • applying organisational and professional procedures, ethical and legal practices and business standards in own work • evaluating own actions to make judgments about performance • assessing own practice against identified objectives or code of ethics • establishing realistic goals and targets for self-development |
| <p>Learning that contributes to ongoing improvement and expansion in employee and company operations and outcomes</p> | <ul style="list-style-type: none"> • identifying and taking advantage of learning opportunities in the workplace • developing and maintaining personal and professional competence • seeking and undertaking opportunities for professional development and maintaining currency of knowledge of legal practice industry and practices |

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| | <ul style="list-style-type: none"> • maintaining currency of knowledge of relevant legislation and Codes of Practice • participating in networks relevant to legal practice work • participating regularly in review mechanism of own responsibility and performance |
| <p>Technology that contributes to the effective carrying out of tasks</p> | <ul style="list-style-type: none"> • using IT programs, software packages and electronic communication platforms relevant to workplace efficiency, research, development of audit tools and documents • preparing legal document from legal audio sources • using technology to assist the management of information, documentation, and to assist planning processes • applying ergonomics to developing improved occupational health and safety in using technology |

| 4.3 Recognition given to the course | <i>Standard 5 AQTF Standards for Accredited Courses</i> | | | |
|---|--|--|---------------|---------------|
| | Not applicable | | | |
| 4.4 Licensing /regulatory requirements | <i>Standard 5 for Accredited Courses</i> | | | |
| | Not applicable | | | |
| 5. Course rules | | <i>Standards 2, 6, 7 and 9 AQTF Standards for Accredited Courses</i> | | |
| 5.1 Course structure | <i>Standards 2, 6 and 7 AQTF Standards for Accredited Courses</i> | | | |
| | <p>22276VIC Advanced Diploma of Legal Practice comprises twenty-four (24) units as follows:</p> <ul style="list-style-type: none"> thirteen (13) core units four (4) units from Group A <p>PLUS</p> <ul style="list-style-type: none"> seven (7) units from Group B <u>or</u> from Group A not already selected <p>A maximum of two (2) units may be selected from any currently endorsed Training Package or accredited course first packaged at an AQF level 4, 5 or 6 in the source curriculum or training package. They can be substituted for Group B units and must be relevant to the outcomes of the course.</p> <p>It is recommended that, where possible, consideration is given to selecting units from the appropriate AQF levels for the stage of course being undertaken.</p> <p>A Statement of Attainment will be issued for any unit of competency completed if the full qualification is not completed.</p> | | | |
| Unit of competency/ module code | Field of Education code (6 digit) | Unit of competency/module title | Pre-requisite | Nominal hours |
| Complete 13 core units | | | | |
| BSBWHS301A | | Maintain workplace safety | Nil | 40 |
| VU21631 | 091103 | Investigate and apply legal process | Nil | 50 |
| VU21632 | 091103 | Research and evaluate legal research method | Nil | 50 |
| VU21633 | 090901 | Analyse and apply law of contract | Nil | 50 |
| VU21634 | 090999 | Analyse and apply law of torts | Nil | 50 |
| VU21635 | 090999 | Define and evaluate law of evidence | Nil | 50 |
| VU21636 | 091101 | Determine appropriate aspects of commercial law | Nil | 50 |
| VU21637 | 091101 | Employ property law principles and concepts | Nil | 50 |
| VU21638 | 090999 | Apply conveyancing process | Nil | 50 |
| VU21639 | 090999 | Explore and apply wills, probate and administration procedures | Nil | 50 |

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| VU21640 | 090999 | Analyse and apply civil procedure | Nil | 50 |
| VU21641 | 090905 | Analyse and evaluate concepts and principles of criminal law | Nil | 50 |
| VU21642 | 091103 | Practise in a legal environment | Nil | 70 |
| Total Core nominal hours | | | | 660 |
| Group A: Complete 4 units | | | | |
| VU21643 | 090999 | Evaluate and apply concepts and principles of cyber law | Nil | 50 |
| VU21644 | 090999 | Examine and apply land contract law | Nil | 50 |
| VU21645 | 090999 | Apply land contract law to mortgages leases and building contracts | Nil | 50 |
| VU21646 | 090901 | Assess the application of consumer protection law | Nil | 50 |
| VU21647 | 090999 | Research the application of administrative law | Nil | 50 |
| VU21648 | 080505 | Research the application of intellectual property and business law | Nil | 50 |
| VU21649 | 090901 | Define and research the application of corporations law | Nil | 50 |
| VU21650 | 090901 | Define and research the application of employment law | Nil | 50 |
| VU21651 | 090907 | Evaluate the concepts and principles of family law | Nil | 50 |
| Elective A nominal hours | | | | 200 |
| Group B: Complete 7 units selected from this list or from Group A list not already selected. A maximum of 2 relevant units may be selected from any currently endorsed Training Package or accredited course at Certificate IV, Diploma or Advanced Diploma and substituted for Group B units. | | | | |
| BSBINM301A | | Organise workplace information | Nil | 30 |
| BSBCUS301B | | Deliver and monitor a service to customers | Nil | 35 |
| BSBRES401A | | Analyse and present research information | Nil | 40 |
| BSBCMM401A | | Make a presentation | Nil | 30 |
| BSBWRT401A | | Write complex documents | Nil | 50 |
| BSBEMS401B | | Develop and implement business development strategies to expand client base | Nil | 50 |
| BSBMGT502B | | Manage people performance | Nil | 70 |
| BSBWOR502B | | Ensure team effectiveness | Nil | 60 |
| BSBDIV601A | | Develop and implement diversity policy | Nil | 70 |
| BSBMGT616A | | Develop and implement strategic plans | Nil | 80 |
| BSBITU307A | | Develop keyboarding speed and accuracy | Nil | 50 |
| BSBITU304A | | Produce spreadsheets | Nil | 35 |
| BSBITU306A | | Design and produce business documents | Nil | 80 |
| BSBADM303B | | Produce texts from audio transcription | Nil | 30 |
| BSBITU303A | | Design and produce text documents | Nil | 90 |
| BSBITU301A | | Create and use databases | Nil | 30 |
| BSBITU404A | | Produce complex desktop published documents | Nil | 50 |
| BSBLEG418A | | Produce complex legal documents | Nil | 80 |
| BSBADM506B | | Manage business document design and development | Nil | 80 |
| BSBWOR501B | | Manage personal work priorities and professional development | Nil | 60 |
| BSBADM504B | | Plan or review administration systems | Nil | 50 |
| BSBSUS301A | | Implement and monitor environmentally sustainable work practices | Nil | 40 |

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| FNSCUS501A | | Develop and nurture relationships with clients, other professionals and third party referrers | Nil | 50 |
| FNSCNV506A | | Establish and manage a trust account | Nil | 60 |
| Elective B nominal hours | | | 230 - 550 | |
| Total nominal hours of the course | | | 1090 - 1410 | |

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| 5.2 Entry requirements | <p><i>Standard 9 AQTF Standards for Accredited Courses</i></p> <p>There are no entry requirements for 22276VIC Advanced Diploma of Legal Practice although participants would be best equipped to achieve the course outcomes if they have the learning, reading, writing, oracy and numeracy competencies to Level 4 of the Australian Core Skills Framework (ACSF).</p> |
| 6. Assessment <i>Standards 10 and 12 AQTF Standards for Accredited Courses</i> | |
| 6.1 Assessment strategy | <p><i>Standard 10 AQTF Standards for Accredited Courses</i></p> <p>All assessment will be consistent with Standards 1.2 and 1.5 of the <i>Australian Quality Training Framework Essential Conditions and Standards for Initial/Continuing Registration or SNR 4.2 (Part2) and SNR 15.2 (Part 3) of the Standards for NVR Registered Training Organisations 2011</i></p> <p>See AQTF User guides to the Essential Conditions and Standards for Initial/Continuing Registration: and Standards for NVR Registered Training Organisations 2012:</p> <p>Imported units of competencies must be assessed according to the rules of the relevant training package.</p> <p>Assessment methods and collection of evidence will involve application of knowledge and skills to legal practice workplaces or simulated environments.</p> <p>All assessment activities will be related to a legal practice context.</p> <p>A range of assessment methods will be used, such as:</p> <ul style="list-style-type: none"> – action learning projects in real, or simulated, legal practice settings – research projects in a range of areas of legal interest – portfolio development and presentation – practical demonstration of skills – case studies and scenarios, including fact situations – observation – written and direct questioning / tests and examinations – review of information produced by the candidate and provided to the work group |

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| | <ul style="list-style-type: none"> – review of verified records and reports generated by the candidate <p>Where the learning is conducted in simulated worksites, the individual needs of the learner will be reflected in the assessment methods.</p> <p>Consistent with Standard 1, Element 5 of the <i>Australian Quality Training Framework Essential Standards for Initial/Continuing Registration</i>, RTOs must ensure that Recognition of Prior Learning (RPL) is offered to all applicants in determining competency for Credit.</p> <p>There is no mandatory workplace assessment.</p> |
| <p>6.2 Assessor competencies</p> | <p><i>Standard 12 AQTF Standards for Accredited Courses</i></p> <p>The <i>Australian Quality Training Framework Essential Conditions and Standards for Initial/Continuing Registration</i>, Standard 1.4 states the requirements for the competence of persons assessing the course See AQTF User guides to the Essential Conditions and Standards for Initial/Continuing Registration: or</p> <p>SNR 4.4 (Part 2) and SNR 15.4 (Part 3) of <i>Standards for NVR Registered Training Organisations 2012</i>: state the requirements for the competence for persons assessing the course. See Standards for NVR Registered Training Organisations 2012:</p> <p>Assessors of the imported units of competency must meet the guidelines of the relevant Training Package and/or accredited Course Documentation.</p> |
| <p>7. Delivery <i>Standards 11 and 12 AQTF Standards for Accredited Courses</i></p> | |
| <p>7.1 Delivery modes</p> | <p><i>Standard 11 AQTF Standards for Accredited Courses</i></p> <p>Delivery of units of competency from the relevant Training Packages must be consistent with the guidelines of the relevant Training Package.</p> <p>Delivery of units of competency imported from Training Packages should be contextualised to the legal practice industry sector, whilst ensuring that the delivery guidelines are adhered to. The following rules apply for contextualisation:</p> <ul style="list-style-type: none"> – elements and associated performance criteria must not be altered in any way – the range statement may be expanded as long as it does not increase the complexity of the unit – the evidence guide may be expanded as long as it retains the integrity of the unit and does not jeopardise the student’s potential to achieve the competency – learning and assessment resources may be tailored to the specific needs of the target group, while maintaining their validity. |

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| | <p>Delivery of units of competency will take into consideration the individual needs of students and will involve blended delivery mode including:</p> <ul style="list-style-type: none"> – workshops – individual assignments – team-based assignments – use of case studies – applied learning in the workplace or simulated legal practice environment – multi-media presentations and classroom instruction – industry guest speakers – group discussion <p>Learners may be supported through: on-line (internet, social media, email and telephony); face-to-face conferencing, mentoring and interviews; ad hoc arrangements, and regular progress monitoring, particularly for practical work.</p> <p>The course may be delivered part-time or full-time.</p> <p>There is no mandatory workplace delivery.</p> |
| <p>7.2 Resources</p> | <p><i>Standard 12 AQTF Standards for Accredited Courses</i></p> <p>Resources include:</p> <ul style="list-style-type: none"> • teachers/trainers who meet the: <ul style="list-style-type: none"> ◦ <i>Australian Quality Training Framework Essential Conditions and Standards for Initial/Continuing Registration</i> Standard 1.4. See AQTF User guides to the Essential Conditions and Standards for Initial/Continuing Registration; or ◦ SNR 4.4 (Part 2) and SNR 15.4 (Part 3) of Standards for NVR Registered Training Organisations 2012; • access to computers and internet • access to workplace or simulated legal practice environment |
| <p>8. Pathways and articulation</p> | <p><i>Standard 8 AQTF Standards for Accredited Courses</i></p> <p>This qualification comprises nationally endorsed units of competency from the BSB07 Business Services and FNS10 Financial Services Training Packages. Participants who successfully complete any of these units will, upon enrolment, gain credit into other qualifications that require those same units.</p> <p>Likewise, those participants who have successfully completed any of these units of competency from the Training Package will, upon enrolment into the Advanced Diploma of Legal Practice, gain credit for those same units.</p> <p>There are no formal articulation arrangements at present.</p> |

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| 9. Ongoing monitoring and evaluation | <p><i>Standard 13 AQTF Standards for Accredited Courses</i></p> <p>The Curriculum Maintenance Manager (CMM), Business Industries is responsible for monitoring and evaluation of the 22276VIC Advanced Diploma of Legal Practice</p> <p>The 22276VIC Advanced Diploma of Legal Practice will be reviewed at mid-point of accreditation period. Evaluations will involve consultation with:</p> <ul style="list-style-type: none">- course participants- legal practice industry representatives- teaching staff- assessors <p>Any significant changes to the course resulting from course monitoring and evaluation procedures will be reported to the VRQA through a formal amendment process.</p> |
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Appendix 1: Course content developed by stakeholders

1.1 Labour market information / Job search

Steering Committee and project team members have identified skills and knowledge areas required for practitioners engaged in the operation of a legal office or associated fields within public and/or corporate sectors. Anticipated employment outcomes are:

- Law clerk (litigation debt recovery, property, mortgage recovery)
- Legal probate clerk
- Conveyance clerk
- Conveyance
- Corporate law clerk
- Mortgage clerk
- Legal clerk
- Family law assistant
- Probate/deceased estate law clerk
- Compliance officer
- Assistant to parliamentary counsel
- Victorian legal aide
- Working in Victoria Police
- Land title officer
- Legal assistant/secretary
- Legal research assistant
- Trainee court registrar
- Paralegal

Training demand and course relevance to existing labour market positions is evidenced in research conducted prior to and during the accreditation period of the existing course and been confirmed by stakeholders and Steering Committee members. See table 1.1: Summary of research into skills and knowledge required by industry.

Table 1.1: Summary of research into skills and knowledge required by industry

| Job titles | Job profile/ required knowledge and skills |
|---------------------------------|--|
| Conveyancing clerk | <ul style="list-style-type: none"> – running cottage conveyancing files from start to finish – opening the file, searches – preparing correspondence and transfer documents – client liaison – arranging settlement – calculating settlement figures, and so on. – experienced working with the conveyancing protocol. |
| Litigation Recoveries Law Clerk | <ul style="list-style-type: none"> – liaising with clients – issuing court documents, settlement negotiation – preparing letters of demand |
| Legal Assistant | <ul style="list-style-type: none"> – liaising with clients – diary management – file management – preparation of court documents and briefs – providing day-to-day administrative support – assisting the team to juggle clients, team communication, media, travel and other external commitments – experience in personal injuries/medical negligence law – excellent verbal and written communication skills, including customer service skills |

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| | <ul style="list-style-type: none"> - ability to liaise with internal and external clients - excellent organisational and time management skills - proficiency with the Microsoft Office suite |
| Conveyancing Paralegal | <ul style="list-style-type: none"> - experience in conveyancing matters - attending to general conveyancing – residential purchases and vendor sales - excellent computer skills |
| Personal Injury Legal Assistant/ Paralegal | <ul style="list-style-type: none"> - supporting various solicitors with the personal injury matters - experience as a paralegal and legal assistant on personal injury matters |
| WorkCover Legal Assistant | <ul style="list-style-type: none"> - experience in WorkCover (either plaintiff or defendant), litigation or health - working on files related to WorkCover, litigation or health |
| Commercial Litigation Paralegal | <ul style="list-style-type: none"> - supporting a leading Partner in Commercial Litigation matters - primarily working with debt recovery, insolvency and mortgage recover - complete court work - take ownership of a high volume of files - having some financial responsibilities - knowledgeable on court procedures and processes - demonstrate excellent attention to detail and accuracy - open and honest communication at all levels of the firm - continuous improvement in practice areas - innovative and forward thinking - honest, trust and respect in relationships with clients and colleagues |
| Litigation Support Coordinator | <ul style="list-style-type: none"> - coordinate litigation support to commercial and litigation fee earners - managing the day to day use of CT Summation - creating new cases within the database - uploading of case data (images, court transcripts and so on) - correcting formatting errors - coding documents (subject and objective) - providing internal seminars on the capability of CT Summation - converting data from Word/Excel into database - merging server based database with mobile database - organising and establishing IT infrastructure within courtrooms - attending court to assist solicitors with document retrieval - charging all duties relevant matters to meet required billing target - experience working in a law firm - general legal knowledge including knowledge of discovery - general IT experience in order to maintain the database and troubleshoot - advanced knowledge of Word and Excel |

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| | <ul style="list-style-type: none"> - ability to work alone and take responsibility for tasks given - experience with CT Summation, Ringtail or similar - excellent communication skills |
| Patents and Trade Marks Filing Clerk | <ul style="list-style-type: none"> - processing patent, design and trade mark records - reviewing all incoming and outgoing correspondence relating to the above records - preparing applications and filing with intellectual property Australia - maintenance of a specialised database including data entry, updating of details and electronic file management of matters - daily monitoring of critical deadlines - experience in the area of intellectual property, trade marks and patents |
| Legal Information and Referral Officer | <ul style="list-style-type: none"> - provide information on legal services and referral - coordinate telephone advice - sound knowledge of legal system and of legal services - excellent communication skills - understanding of legal and social issues relevant to disadvantaged groups - demonstrated ability to train and supervise volunteers - ability to manage client database and client files - sound organisational skills and ability to prioritise workload - computer literacy and word processing skills - ability to work both independently and in a multi-disciplinary team |
| Corporate Law Assistant | <ul style="list-style-type: none"> - assisting with the preparation of legal documents including company documents, sales and shares, employment contracts, leases, sales and purchases of business, testamentary documents, probate and part 4 applications - maintaining Deeds and Lease Register - lodging of documents - research background information, gather records and files and collate - calculate final distributions on Estate matters - review and edit prepared documents - dicta typing of letters, reports and agreements - manage department debtors, work in progress and disbursements ledgers - incoming and outgoing mail - appointment setting - organising travel, business itineraries, conferences and meetings - liaising with clients and maintaining client database |
| Legal Information and Referral Officer | <ul style="list-style-type: none"> - provide information on legal services and referral - coordinate telephone advice - sound knowledge of legal system and of legal services |

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| | <ul style="list-style-type: none"> - excellent communication skills - understanding of legal and social issues relevant to disadvantaged groups - demonstrated ability to train and supervise volunteers - ability to manage client database and client files - sound organisational skills and ability to prioritise workload - computer literacy and word processing skills - ability to work both independently and in a multi-disciplinary team |
| Corporate Law Assistant | <ul style="list-style-type: none"> - assisting with the preparation of legal documents including company documents, sales and shares, employment contracts, leases, sales and purchases of business, testamentary documents, probate and part 4 applications - maintaining Deeds and Lease Register - lodging of documents - research background information, gather records and files and collate - calculate final distributions on Estate matters - review and edit prepared documents - dicta typing of letters, reports and agreements - manage department debtors, work in progress and disbursements ledgers - incoming and outgoing mail - appointment setting - organising travel, business itineraries, conferences and meetings - liaising with clients and maintaining client database |
| Legal Information and Referral Officer | <ul style="list-style-type: none"> - provide information on legal services and referral - coordinate telephone advice - sound knowledge of legal system and of legal services - excellent communication skills - understanding of legal and social issues relevant to disadvantaged groups - demonstrated ability to train and supervise volunteers - ability to manage client database and client files - sound organisational skills and ability to prioritise workload - computer literacy and word processing skills - ability to work both independently and in a multi-disciplinary team |
| Corporate Law Assistant | <ul style="list-style-type: none"> - assisting with the preparation of legal documents including company documents, sales and shares, employment contracts, leases, sales and purchases of business, testamentary documents, probate and part 4 applications - maintaining deeds and lease register - lodging of documents - research background information, gather records and files and collate |

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| | <ul style="list-style-type: none"> - calculate final distributions on estate matters - review and edit prepared documents - dicta typing of letters, reports and agreements - manage department debtors, work in progress and disbursements ledgers - incoming and outgoing mail - appointment setting - organising travel, business itineraries, conferences and meetings - liaising with clients and maintaining client database |
| Legal Information and Referral Officer | <ul style="list-style-type: none"> - provide information on legal services and referral - coordinate telephone advice - sound knowledge of legal system and of legal services - excellent communication skills - understanding of legal and social issues relevant to disadvantaged groups - demonstrated ability to train and supervise volunteers - ability to manage client database and client files - sound organisational skills and ability to prioritise workload - computer literacy and word processing skills - ability to work both independently and in a multi-disciplinary team |
| Mortgage Clerk | <ul style="list-style-type: none"> - general mortgage file management - involved in client training and development sessions; - people management – regular training and feedback sessions - reporting monthly updates to senior management and clients - specialist mortgage software development; - act as relief Conveyancing clerk where required - ensuring OHS and EO guidelines and legislation are adhered to within the office |
| Legal Clerk | <ul style="list-style-type: none"> - experience in conveyancing and leasing matters - experience in dictaphone typing - English language skills and an ability to speak Cantonese and Mandarin |
| Common law paralegal | <ul style="list-style-type: none"> - support the personal industry Common Law Claims team - experience in covering motor vehicle accident claims - exposure to related personal injury areas including public liability, professional indemnity and medical negligence - preparation of court documents and legal letters required to progress motor accident, work injury, slip and fall and medical negligence claims through commissions and the District and Supreme Courts - dealing with clients, insurance company representatives, defendant legal representatives, barristers and Motor Accident Authority staff - managing a large file load efficiently and to deadlines |

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| | <ul style="list-style-type: none"> - managing a high volume of client contact, proactively, openly and with empathy - progressing matters within authority limits and to timetables set by partners, solicitors and barristers, and referring issues and problems promptly; - maintaining an up to date, in depth knowledge of the operations and procedures of the Medical Assessment Service (MAS) and the Claims Assessment and Resolution Service (CARS) |
| Outside Clerk | <ul style="list-style-type: none"> - delivery of confidential documentation - attending to and lodging documents - attending to stamping of documents - collection and banking of cheques - attending settlements (acting for buyers ,sellers and mortgages) at various locations - attending to sundry matters as directed - experience in a similar role within the legal industry - demonstrated organisational and prioritisation ability - demonstrated time management - good presentation - computer skills |
| Conveyancing clerk | <ul style="list-style-type: none"> - client liaison skills - file management - conveyancing skills |
| Conveyancer | <ul style="list-style-type: none"> - a detailed understanding of the process of residential property sales and purchases. |
| Probate Law clerk | <ul style="list-style-type: none"> - excellent communication, numeracy and literacy skills. - probate law knowledge - deceased estate law knowledge |
| Family Law assistant | <ul style="list-style-type: none"> - providing an initial contact point for legal queries - undertaking independent legal research - drafting various documents and correspondence - preparing documents for trial - liaising with clients and external organisations - trial preparation |
| Legal PA (Paralegal) | <ul style="list-style-type: none"> - secretarial skills - administration skills - filing legal documents with courts - production of legal documents in commercial, insolvency, litigation and general law - knowledge in family, property, probate law and so on |

1.2 Skills and knowledge mapping

The following table (1.2) shows the mapping of the key skills areas for legal practice job roles, identified and confirmed by stakeholders and the Steering Committee, against suggested electives

selected from nationally endorsed Training Packages and accredited qualifications. Where identified skills areas are not covered by existing Training Packages and accredited qualifications, new units of competency have been developed.

Table 1.2: Required skills and knowledge mapping to course content

| Knowledge and skill areas | Mapped to endorsed/accredited units |
|--|--|
| Industry specific knowledge and skills | |
| <ul style="list-style-type: none"> – knowledge of and interpreting legislations – conveyance protocol – relief conveyancing – legal processes and procedures – court procedures, processes and operations and local support agencies – legal terminology and environment – legal knowledge including knowledge of discovery – legal administrative skills – paralegal, administrative and clerical support in a legal practice and environment – issuing court documents, settlement negotiation – completion of court forms – typing, amending and formatting correspondence, transfer documents and court/legal documents and briefs – prepare routine legal correspondence – drafting writs, default judgments and warrants – drafting letters of demand, liaising with clients and third parties – negotiating settlements together with a variety of other administrative duties – running conveyancing files from start to finish – a detailed understanding of the process of residential property sales and purchases – conveyancing skills – probate law knowledge – performing searches – legal file management (opening and maintaining files) – preparing written legal submissions under supervision – case managing – maintaining case management systems – undertaking advocacy duties under supervision – manage less complex legal matters under supervision | <p>VU21631 Investigate and apply legal process</p> <p>VU21632 Research and evaluate legal research method</p> <p>VU21633 Analyse and apply law of contract</p> <p>VU21634 Analyse and apply law of torts</p> <p>VU21635 Define and evaluate law of evidence</p> <p>VU21636 Determine appropriate aspects of commercial law</p> <p>VU21637 Employ property law principles and concepts</p> <p>VU21638 Apply conveyancing process</p> <p>VU21639 Explore and apply wills, probate and administration procedures</p> <p>VU21640 Analyse and apply civil procedure</p> <p>VU21641 Analyse and evaluate concepts and principles of criminal law</p> <p>VU21642 Practise in a legal environment</p> <p>VU21643 Evaluate and apply concepts and principles of cyber law</p> <p>VU21644 Examine and apply land contract law</p> <p>VU21645 Apply land contract law to mortgages leases and building contracts</p> <p>VU21646 Assess the application of consumer protection law</p> <p>VU21647 Research the application of administrative law</p> <p>VU21648 Research the application of intellectual property and business law</p> <p>VU21649 Define and research the application of corporations law</p> <p>VU21650 Define and research the application of employment law</p> <p>VU21651 Evaluate the concepts and principles of family law</p> |

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| <ul style="list-style-type: none"> - e-law - documentation preparation from legal audio sources - legal filing and archiving - uploading of case data (images, court transcripts and so on) | <p>BSBLEG401A Prepare and produce complex legal documents</p> |
| <p>IT skills</p> | |
| <ul style="list-style-type: none"> - proficiency in electronic file management - accurate typing skills - good computer, word processing and spreadsheet skills - proofreading and editing - knowledge and application of database | <p>BSBINM301A Organise workplace information</p> <p>BSBITU307A Develop keyboarding skills and accuracy</p> <p>BSBITU304A Produce spreadsheets</p> <p>BSBITU301A Create and use databases</p> <p>BSBITU306A Design and produce business documents</p> <p>BSBADM303B Produce text from audio transcription</p> <p>BSBITU303A Design and produce text documents</p> <p>BSBITU404A Produce complex desktop published documents</p> <p>BSBADM506B Manage business document design and development</p> |
| <p>Client relationships</p> | |
| <ul style="list-style-type: none"> - liaising with clients including solicitors, barristers, doctors and insurers - honesty, trust and respect in relationships with clients and colleagues - developing and maintaining a professional working relationship - provide high-level customer service | <p>BSBCUS301A Deliver and monitor a service to customers</p> <p>BSBEMS401B Develop and implement business development strategies to expand client base</p> <p>BSBDIV601A Develop and implement diversity policy</p> <p>BSBMGT616A Develop and implement strategic plans</p> |
| <p>Finance</p> | |
| <ul style="list-style-type: none"> - billing and trust accounting - arranging settlement - calculating settlement figures - having some financial responsibilities - monthly invoicing | <p>BSBADM504B Plan or review administration systems</p> <p>FNSCNV506A Establish, manage and administer trust accounts</p> |

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| <ul style="list-style-type: none"> - legal financial systems – time recording, charge out rates, detailed billing and how they relate to the practice | |
| <p>OHS/WHS</p> | <p>BSBWHS301A Maintain workplace safety</p> |
| <p>Generic skills</p> | |
| <ul style="list-style-type: none"> - assisting the team to juggle clients, team communication, media, travel and other external commitments - Excellent interpersonal skills - Co-ordinate support staff to ensure the smooth running of the files - Written and oral communication skills. - delegate work as required - work in a team environment with minimal supervision - organisational and priority setting skills and ability to cope with a high volume workload. - High-level interpersonal and communication skills including ability to deal with sensitive issues. - adapt to change and work in a team environment with minimal supervision - innovative and forward thinking - attention to detail and accuracy - open and honest communication at all levels of the firm - coordinating support staff - diary management, arranging meetings, managing electronic diaries - assisting the team to juggle clients, team communication, media, travel and other external commitments. - arranging mediation - focus on systems including preparing documents and typing speed and accuracy - drafting / responding to emails | <p>BSBCMM401A Make a presentation</p> <p>BSBWRT401A Write complex documents</p> <p>BSBWOR502B Ensure team effectiveness</p> <p>BSBWOR501B Manage personal work priorities and professional development</p> <p>BSBMGT502B Manage people performance</p> <p>BSBRES401A Analyse and present research information</p> <p>FNSCUS501A Develop and nurture relationships with clients, other professionals and third party referrers</p> |
| <p>Sustainability</p> | <p>BSBSUS301B Implement and monitor environmentally sustainable work practices</p> |



Section C: Units of Competency

The following units of competency have been developed for the course and are attached:

- VU21631 Investigate and apply legal process
- VU21632 Research and evaluate legal research method
- VU21633 Analyse and apply law of contract
- VU21634 Analyse and apply law of torts
- VU21635 Define and evaluate law of evidence
- VU21636 Determine appropriate aspects of commercial law
- VU21637 Employ property law principles and concepts
- VU21638 Apply conveyancing process
- VU21639 Explore and apply wills, probate and administration procedures
- VU21640 Analyse and apply civil procedure
- VU21641 Analyse and evaluate concepts and principles of criminal law
- VU21642 Practise in a legal environment
- VU21643 Evaluate and apply concepts and principles of cyber law
- VU21644 Examine and apply land contract law
- VU21645 Apply land contract law to mortgages leases and building contracts
- VU21646 Assess the application of consumer protection law
- VU21647 Research the application of administrative law
- VU21648 Research the application of intellectual property and business law
- VU21649 Define and research the application of corporations law
- VU21650 Define and research the application of employment law
- VU21651 Evaluate the concepts and principles of family law

The following units of competency have been imported from the BSB07 Business Services Training Package:

- BSBWHS301A Maintain workplace safety
- BSBINM301A Organise workplace information
- BSBCUS301B Deliver and monitor a service to customers
- BSBRES401A Analyse and present research information
- BSBCMM401A Make a presentation
- BSBWRT401A Write complex documents
- BSBEMS401B Develop and implement business development strategies to expand client base
- BSBMGT502B Manage people performance
- BSBWOR502B Ensure team effectiveness
- BSBDIV601A Develop and implement diversity policy

BSBMGT616A Develop and implement strategic plans
BSBITU307A Develop keyboarding skills and accuracy
BSBITU304A Produce spreadsheets
BSBITU306A Design and produce business documents
BSBADM303B Produce texts from audio transcription
BSBITU303A Design and produce text documents
BSBITU301A Create and use databases
BSBITU404A Produce complex desktop published documents
BSBLEG418A Produce complex legal documents
BSBADM506B Manage business document design and development
BSBWOR501B Manage personal work priorities and professional development
BSBADM504B Plan or review administration systems
BSBSUS301A Implement and monitor environmentally sustainable work practices

The following units of competency have been imported from the FNS10 Financial Services Training Package:

FNSCUS501A Develop and nurture relationships with clients, other professionals and third party referrers
FNSCNV506A Establish and manage a trust account

VU21631 Investigate and apply legal process

Unit Descriptor

This unit describes the skills and knowledge required to analyse and evaluate institutions within the Australian legal system, to investigate and classify sources of Australian Law, and, to assess concepts underlying the application of law in order to support the work of a legal office, practice or associated context.

No licensing, legislative, regulatory or certification requirements apply to this unit at the time of publication.

Employability Skills

This unit contains Employability Skills.

Application of the Unit

This unit supports the work of personnel engaged in the operation of a legal office or associated fields within public and/or corporate sectors.

| ELEMENT | PERFORMANCE CRITERIA |
|--|--|
| Elements describe the essential outcomes of a unit of competency. | Performance criteria describe the required performance needed to demonstrate achievement of the element. Where <i>bold italicised</i> text is used, further information is detailed in the required skills and knowledge and/or the range statement. Assessment of performance is to be consistent with the evidence guide. |
| 1. Report on the constitutional structure of government and the sources of law in Australia | 1.1 Identify the <i>structure and</i> the main institutions <i>of government in Australia</i> and outline the key functions of each component 1.2 Describe the <i>functions and hierarchy of government</i> in Australia and present in diagrammatic form. 1.3 Define and trace the <i>developmental bases of Australian Law</i> 1.4 Analyse and consider the rules for resolving conflicts of laws |
| 2. Analyse and evaluate division of the functions and limits of power between the Commonwealth and the States in Australia | 2.1 Research and assess the reasons for and purposes of federation 2.2 Identify the legislative powers of the Commonwealth, with reference to specific powers, exclusive powers and concurrent powers 2.3 Determine the limits on the legislative powers of the Commonwealth, with reference to implied limitations-specific powers, express prohibitions and referenda 2.4 Analyse the extent and influence of the Legislative powers of States, with reference to territorial limitations, concurrent powers and residual powers 2.5 Evaluate the relationship between the legislative powers of the Commonwealth and States in consideration of the: <ul style="list-style-type: none"> • exclusive powers of the Commonwealth • inconsistency between Commonwealth and State Law |

- external affairs power and the role of the High Court
3. Evaluate the differences between civil and criminal proceedings
 - 3.1 Describe and discuss Criminal Law, with specific reference to: summary offences; indictable offences; Mens Rea; strict liability, and penalties
 - 3.2 Describe and discuss Civil Law, with specific reference to areas of law and remedies
 - 3.3 Identify the **aspects of Criminal and Civil actions** and distinguish the differences between them
 - 3.4 Identify and describe the **jurisdictions of Victorian and Federal courts** and present diagrammatically.
 4. Evaluate the adversarial system of trial used in Australian courts
 - 4.1 Identify and compare the main features of both the adversarial system of trial and the inquisitorial system used in civil law countries with reference to the:
 - role of the parties
 - role of the judge
 - use of juries
 - 4.2 Identify and describe the **pre-trial procedures required in the adversary system**
 - 4.3 Outline and discuss the role of trial procedures for both criminal trials and civil hearings
 5. Evaluate and apply alternative dispute resolution procedures
 - 5.1 Research and discuss the **reasons why a person may not wish to take legal action** to resolve a potential legal dispute
 - 5.2 Identify and compare the **alternative dispute resolution procedures** with legal actions, in relation to: costs; time involved; formality of procedures; confidentiality, and, likelihood of outcome being satisfactory for all parties
 - 5.3 Describe how alternative dispute resolution procedures may be applied to a range of circumstances and analyse in terms of relevance and effectiveness.
 - 5.4 Identify how methods of alternative dispute resolutions are used within the court system and examine in terms of relevance and effectiveness.
 6. Outline and evaluate the role of judicial law making
 - 6.1 Outline the process of judicial law making and identify and list its advantages and disadvantages
 - 6.2 Describe the means by which precedent changes with reference to:

- applying and extending
 - distinguishing
 - reversing
 - overruling
 - disapproving
 - abrogating and inconsistency with legislation
- 6.3 Assess judicial law making with reference to:
- sources of precedent
 - reporting of case law
 - binding precedent
 - ratio decidendi
 - obiter dicta
7. Evaluate the process of enactment of legislation by Parliament
- 7.1 Outline and present diagrammatically the ***passage of legislation through Parliament***
- 7.2 Identify and describe the ***elements of an Act of Parliament***
- 7.3 Determine the ***classifications of Acts of Parliament***
- 7.4 Analyse the process of ***making delegated legislation***
8. Evaluate the approaches to the interpretation of legislation applied by the courts
- 8.1 Determine and outline the ***reasons why interpretation of legislation is required***
- 8.2 Identify and discuss the ***approaches to the interpretation of legislation*** applied by the courts
- 8.3 Outline and discuss the role of interpretation of legislation in the context of judicial law making
9. Research sources of legal information
- 9.1 Determine and outline ***primary sources of law*** and search for given examples of laws with reference to Act of Parliament, regulation and reported decision.
- 9.2 Determine and outline ***secondary sources of law***

REQUIRED SKILLS AND KNOWLEDGE

This describes the essential skills and knowledge, and their level, required for this unit.

Required Skills

- communication skills to work with clients, colleagues, management, relevant specialist personnel under direction, independently or within a team
- research and analytical skills to identify and debate a wide range of legal processes
- research, analytical and organisational skills to identify and evaluate sources of legal information
- research and analytical skills to determine relevance of particular legal processes to particular circumstances and contexts
- analytical and problem-solving skills to determine appropriate dispute resolution procedures
- analytical, literacy and technical writing skills to interpret information, prepare documents and reports

Required Knowledge

Please note: It is possible that over the five year accreditation period of this document, some legislation may become superseded. Teachers are encouraged to check the currency of legislation cited in this course at:

For Commonwealth Legislation: <http://www.comlaw.gov.au/>

For Victorian State Legislation: <http://www.legislation.vic.gov.au/>

- relevant international, Federal, State and local government legislative and statutory requirements and provisions
- legal research methodologies to effectively source primary and secondary sources of law
- sources of Australian Law
- Australian governmental system and structure
- Australian legal system and processes
- dispute resolution within in the Australian legal system

RANGE STATEMENT

The Range Statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. ***Bold italicised*** wording in the performance criteria is detailed below.

Structure of government in Australia may refer to:

- main institutions of government:
 - parliaments
 - governments
 - courts
- Commonwealth and State constitutions
- Federal system of government

Functions of government may refer to:

- Parliament - the enacting of legislation
- Government - the administration of law and making of delegated legislation.
- Courts - the resolution of legal disputes and law making by precedent

Developmental bases of Australian Law may refer to:

- English Law including common law, equity and statutes
- colonial laws
- native title and customary law

Aspects of Criminal and Civil actions may include:

- aim of proceedings
- parties to the proceedings
- initiation and control of proceedings
- burden of proof and standard of proof
- pre-trial procedures
- use of juries
- consequences and costs

Jurisdictions of Victorian and Federal courts may include:

- original jurisdiction-civil and criminal
- appellate jurisdiction
- composition of the court

Pre-trial procedures required in the adversary system may include:

- reasons for pre-trial procedures
- civil procedure
- committal hearings and hand-up briefs

Alternative dispute resolution procedures may include:

- negotiation
- mediation
- arbitration
- independent expert
- collaborative law

Reasons why a person may not wish to take legal action may include:

- costs
- delays
- uncertainty of outcome
- publicity
- non-resolution of the dispute

Passage of legislation through Parliament may include:

- sources of pressure for legal change
- role of political parties and cabinet
- initiation
- first reading
- second reading
- committee stage
- third reading
- repeat of procedure in second house

- royal assent
 - proclamation
- Elements of an Act of Parliament*** may include:
- number and year
 - title
 - enacting words
 - date of royal assent
 - commencement date
 - table of provisions
 - definitions
 - parts and divisions
 - sections, sub-sections, paragraphs and sub-paragraphs
- Classification of Acts of Parliament*** may include:
- public acts
 - private acts
 - codifying acts
 - consolidated acts
 - reprints
- Making delegated legislation*** may include:
- reasons for making law as delegated legislation
 - methods of making delegated legislation
 - disallowance, amendment and repeal of delegated legislation
 - types of delegated legislation-regulations, local laws, by laws and rules of court
- Reasons why interpretation of legislation is required*** may include:
- ambiguities
 - omissions
 - doubt whether legislation extends to an area
 - uncertainty as to the meaning of words when applied in a particular case
- Approaches to the interpretation of legislation*** may include:
- common law approaches
 - literal approach
 - golden rule
 - purpose approach
 - maxims of interpretation: ejusdem generis and nocitur a sociis
 - Acts Interpretation Act 1901 (Cth)
 - Purpose approach (S.15AA and equivalent provisions)
 - Use of extrinsic materials (S.15AB and equivalent provisions)

- Primary sources of law** may include:
- acts of parliament: annual volumes, consolidations and reprints
 - regulations and other delegated legislation: annual volumes and reprints
 - law reports: authorised reports, unauthorised reports and unreported decisions

- Secondary sources of law** electronic and hardcopy: may include:
- textbooks
 - loose leaf services
 - legal encyclopaedias
 - digests
 - law journals

EVIDENCE GUIDE

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, Range Statement and the Assessment Guidelines of this qualification.

- Critical aspects for assessment and evidence required to demonstrate competency in this unit**
- A person who demonstrates competency in this unit must provide evidence of:
- investigating sources of Australian Law
 - determining primary and secondary sources of law for a specific case, case study or scenario
 - searching primary sources of law in order to identify given examples of laws with reference to Act of Parliament, regulation and reported decision
 - tracing the development of Australian Law
 - researching, analysing and describing the functions and institutions of the Australian legal system
 - evaluating, discussing and employing concepts underlying the application of law within a legal office, or related, environment
 - knowledge of structure and functions of the Australian legal system
 - knowledge of Australian government structure and legislative powers
 - analysis of the application of the approaches to the interpretation of legislation in relation to particular provisions of legislation and a specific case study
 - analysis of a precedent in order to identify and apply the ratio decidendi and obiter dicta to a specific case study

Context of and specific resources for assessment

Assessment must ensure:

- activities are related to a legal practice context
- activities are related to laws, regulations and procedures currently operating across the jurisdictions relevant to this qualification

Resources implications for assessment include access to:

- suitable simulated or real workplace opportunities
- relevant Federal and State legislation and regulations
- relevant law reports
- primary and secondary sources of law

Method of assessment

A range of assessment methods should be used to assess practical skills and knowledge. The following assessment methods are appropriate for this unit:

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- research project and/or project work
- case studies and scenarios
- direct questioning
- examinations and tests
- presentations

Guidance information for assessment

Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended.

VU21632 Research and evaluate legal research method

Unit Descriptor

This unit describes the skills and knowledge required to source, correctly cite and document legal and legislative information relevant to a wide range of areas of legal interest in order to support the work of a legal office, practice or associated context.

No licensing, legislative, regulatory or certification requirements apply to this unit at the time of publication.

Employability Skills

This unit contains Employability Skills.

Application of the Unit

This unit supports the work of personnel engaged in the operation of a legal office or associated fields within public and/or corporate sectors.

| ELEMENT | PERFORMANCE CRITERIA |
|--|---|
| Elements describe the essential outcomes of a unit of competency. | Performance criteria describe the required performance needed to demonstrate achievement of the element. Where bold italicised text is used, further information is detailed in the required skills and knowledge and/or the range statement. Assessment of performance is to be consistent with the evidence guide. |
| 1. Analyse a fact situation, identify the research questions raised and identify and propose the legal categories to which those questions relate. | 1.1 Analyse a fact situation in relation to case study material and identify and discuss the research questions raised with reference to subject matter and persons involved. 1.2 Apply case study material to examine and evaluate legal categories to which a research question may relate with reference to cause of action (or defence) and remedies sought. |
| 2. Analyse and evaluate sources of legal information | 2.1 Identify sources of legal collections and examine and discuss the legal materials held by those libraries 2.2 Determine government or community organisations that may be a source of legal information 2.3 Identify, access and evaluate sources of legal information on the Internet |
| 3. Determine and apply the format for the citation of sources of legal information | 3.1 Identify and detail conventions in legal citation 3.2 Determine and apply the method of citing cases 3.3 Assess and specify the methods of citing Acts of Parliament, regulations and other delegated legislation 3.4 Determine the methods of citing secondary sources of legal information |

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| 4. | Determine and apply techniques for searching for legal information in computer databases | 4.1 Distinguish between the different ways of searching for computer-based information, including full text searching and hypertext navigation, and apply to practice |
| | | 4.2 Determine and apply methods of free text searching for information |
| | | 4.3 Evaluate the use of hypertext for text searching and navigation with reference to access mechanisms, cross referencing, navigation functions and working with the text |
| 5. | Identify, access and utilise secondary sources of legal information | 5.1 Identify and source relevant textbooks and legal encyclopaedias |
| | | 5.2 Source relevant indexes to legal periodicals |
| | | 5.3 Research and utilise relevant on-line, computer-based resources with reference to full-text electronic databases and Internet |
| | | 5.4 Search secondary sources and locate and analyse legal information relevant to practice |
| 6. | Determine and apply methods of searching for case law | 6.1 Determine and apply methods of finding case law on a particular subject |
| | | 6.2 Specify and apply methods of finding the subsequent history of a case |
| | | 6.3 Determine and apply methods of finding case notes and case citations |
| 7. | Determine and apply methods of searching for legislation relevant to case study material | 7.1 Determine and apply methods of finding legislation on particular subject/s , taking into account any amendments made to that legislation |
| | | 7.2 Determine and apply methods of finding whether legislation has been reprinted |
| | | 7.3 Access, and analyse for application, resources available to establish whether legislation has been judicially considered in relation to annotation services and full-text electronic databases |
| | | 7.4 Search for and analyse legislation relevant to case study material. |
| 8. | Determine and apply methods of finding delegated legislation | 8.1 Specify and apply methods of finding delegated legislation on particular subject/s , taking into account any amendments made to that legislation |

- 8.2 Determine and apply methods of finding whether delegated legislation has been reprinted
- 8.3 Describe, and analyse for application, resources available to determine whether delegated legislation has been examined judicially with reference to annotations and full-text electronic databases
- 8.4 Search for and analyse delegated legislation relevant to case study material

REQUIRED SKILLS AND KNOWLEDGE

This describes the essential skills and knowledge, and their level, required for this unit.

Required Skills

- communication skills to work with clients, colleagues, management, relevant specialist personnel under direction, independently or within a team
- critical thinking and analysing skills to identify research questions and the legal categories to which they belong
- research and analytical skills to identify, and source a wide range of legal information
- research, analytical and organisational skills to identify and evaluate sources of legal information and interpret that information in order to apply to a wide range of legal subjects / categories
- research and analytical skills to determine currency of information, such as amendments and/or reprints of legislation
- analytical, literacy and technical writing skills to correctly cite sources of legal information and prepare documents and reports

Required Knowledge

Please note: It is possible that over the five year accreditation period of this document, some legislation may become superseded. Teachers are encouraged to check the currency of legislation cited in this course at:

For Commonwealth Legislation: <http://www.comlaw.gov.au/>

For Victorian State Legislation: <http://www.legislation.vic.gov.au/>

- relevant international, Federal, State and local government legislative and statutory requirements and provisions
- legal research methodologies and techniques to effectively source secondary sources of legal information including:
 - computer searching techniques
 - searching for case law
 - searching for legislation
 - searching for delegated legislation
- citation methods for referencing sources of legal information

RANGE STATEMENT

The Range Statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. ***Bold italicised*** wording in the performance criteria is detailed below.

Government or community organisations may include:

- government departments
- statutory bodies
- community legal services

Sources of legal information on the Internet may include:

- World Wide Web
- newsgroups

Secondary sources of legal information may include:

- monographs, textbooks
- legal encyclopaedias
- legal periodicals
- newspapers, magazines, and non-legal periodicals
- information on the internet

Methods of free text searching for information may include:

- search terms and search operators
- Boolean searching
- automatic substitutions
- truncations
- order of precedence
- natural language searching

Textbooks and legal encyclopaedias may include:

- Halsbury's Laws of Australia
- The Laws of Australia
- Halsbury's Laws of England
- encyclopaedias
- electronic format
- hard copy

Indexes to legal periodicals may include:

- Attorney General's Information Services (AGIS)
- Australian Public Affairs Information Service (APIAS)
- Australian current law
- Australian Law Journal index
- Australian Legal Monthly Digest
- index to legal periodicals and books

Methods of finding case law may include:

- legal digests
- indexes

- legal encyclopaedias
 - full-text electronic databases
- Methods of finding the subsequent history of a case** may include:
- case citators
 - legal digests
 - indexes
 - annotators
 - full-text electronic databases
- Methods of finding case notes and case citations** may include:
- case citators
 - legal digests
 - legal encyclopaedias
 - indexes
 - full-text electronic databases
- Methods of finding legislation on particular subject/s** may include:
- subject and title indexes
 - tables
 - annotation services
 - full-text electronic databases
- Methods of finding delegated legislation on particular subject/s** may include:
- subject and title indexes
 - tables
 - annotation services
 - full-text electronic databases

EVIDENCE GUIDE

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, Range Statement and the Assessment Guidelines of this qualification.

Critical aspects for assessment and evidence required to demonstrate competency in this unit

A person who demonstrates competency in this unit must provide evidence of:

- identifying and categorising research questions arising from a particular fact situation
- identifying and applying legal research methods and techniques relevant to a particular subject or case
- documenting researched information using correct citation and documentation formats
- knowledge of legal research methods and techniques including documentation and citation protocols

Context of and specific resources for assessment

Assessment must ensure:

- activities are related to a legal practice context

- activities are related to laws, regulations and procedures currently operating across the jurisdictions relevant to this qualification

Resources implications for assessment include access to:

- suitable simulated or real workplace opportunities
- sources of relevant online, computer-based and print information and text books
- legislation and other secondary sources of information relevant to particular subject/s and case studies

Method of assessment

A range of assessment methods should be used to assess practical skills and knowledge. The following assessment methods are appropriate for this unit:

- research project and/or project work
- other case studies and scenarios
- direct questioning
- examinations and tests
- presentations

Guidance information for assessment

Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended. Suggested units may include but are not limited to:

- *VU21631 Investigate and apply legal process*

VU21633 Analyse and apply law of contract

Unit Descriptor

This unit describes the skills and knowledge required to apply a detailed knowledge of contract law in order to support the work of a legal office, practice or associated context.

No licensing, legislative, regulatory or certification requirements apply to this unit at the time of publication.

Employability Skills

This unit contains Employability Skills.

Application of the Unit

This unit supports the work of personnel engaged in the operation of a legal office or associated fields within public and/or corporate sectors. A practitioner would typically provide specialised knowledge of contract law principles across a range of social, domestic and commercial contexts.

ELEMENT

Elements describe the essential outcomes of a unit of competency.

PERFORMANCE CRITERIA

Performance criteria describe the required performance needed to demonstrate achievement of the element. Where ***bold italicised*** text is used, further information is detailed in the required skills and knowledge and/or the range statement. Assessment of performance is to be consistent with the evidence guide.

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| 1. Identify the key features of contract law | 1.1 Research and define the nature and meaning of a contract |
| | 1.2 Compare and contrast deeds/contracts under seal and simple deeds/contracts |
| | 1.3 Analyse the relationship between common law and legislation in contract, including reference to the <i>Australian Consumer Law (in Schedule 2 to the Competition and Consumer Act, 2010 (C'th)</i> |
| | 1.4 Identify and apply the regulation of the <i>form of contracts</i> across a range of contracts |
| | 1.5 Specify and evaluate the impact of legislation upon contract law across a range of contracts |
| 2. Apply the rules governing the requirement that the parties to a contract should reach an agreement comprised of offer and acceptance | 2.1 Define the terms <i>offer</i> and <i>acceptance</i> |
| | 2.2 Explain and apply details pertaining to the <i>rules governing offer</i> |
| | 2.3 Describe the <i>rules governing acceptance</i> and assess for application to practice |
| | 2.4 Distinguish between the terms of <i>revocation</i> , <i>rejection</i> and <i>lapse of offer</i> and evaluate for application to practice |

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| | 2.5 | Evaluate the <i>principles of revocation, rejection and lapse of offer</i> |
| 3. Analyse the old presumptions and assess current rules relevant to the requirement that parties have an intention to create legal relations | 3.1 | Assess the application of the objective test to be bound to enter legal relations and assess with reference to types of agreements and exceptions to the general rule |
| | 3.2 | Scrutinise the application of the old presumption concerning commercial agreements and assess with reference to types of agreements and exceptions to the general rule |
| | 3.3 | Apply procedures for determining the objectivity of the intention by parties to enter legal relations and binding agreement/s |
| 4. Identify and apply the rules which govern the requirement that consideration must be present in simple contracts | 4.1 | Define the legal principles governing consideration in relation to formal contracts |
| | 4.2 | Identify the <i>rules governing consideration</i> and apply across a range of simple contracts |
| | 4.3 | Define and apply the term <i>promissory estoppel</i> and its principal characteristics |
| 5. Identify and apply terms of contract | 5.1 | Explain <i>terms of a contract</i> |
| | 5.2 | Research, define and discuss the significance of the distinction between representation and terms |
| | 5.3 | Identify and describe the relevant factors in determination of representations and terms |
| | 5.4 | Identify and describe the nature, elements and effects of collateral contracts |
| | 5.5 | Research, assess and discuss the significance of the <i>categories of express terms; implied terms, and exclusion clauses</i> |
| 6. Analyse and apply legal principles relating to the position of persons who lack contractual capacity to enter into contracts | 6.1 | Analyse, for application to practice, the legal position of <i>minors entering contracts</i> |
| | 6.2 | Identify and compare other categories of persons lacking full contractual capacity, such as: mental state, drunkenness and bankruptcy |
| | 6.3 | Research, assess and compare the rights and liabilities of persons who enter into a contract with those who lack contractual capacity |
| 7. Assess the meaning and effects of consensual | 7.1 | Define the term <i>consensual problems</i> and discuss the distinctions between mistakes, misrepresentation, duress, undue influence and unconscionability |

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| problems of contracts | 7.2 | Determine the nature, categories and consequences of mistake and the effects of mistake, including common mistake, mutual mistake and unilateral mistake, and assess for application across a range of contexts |
| | 7.3 | Outline and describe the nature, categories and consequences of misrepresentation and the effect of legislation and assess for application across a range of contexts |
| | 7.4 | Define the nature, categories and consequences of duress, undue influence and unconscionability, and the effect of legislation, and assess for application across a range of contexts |
| | 8. | Determine the circumstances where a contract may be illegal or void and assess the consequences |
| 8. | 8.1 | Identify the circumstances where a contract may be illegal or void are and describe the consequences |
| | 8.2 | Identify the principles of contracts illegal by statute, including contracts illegal as formed and contracts illegal as performed, and describe the consequences |
| | 8.3 | Identify and describe the nature, categories and consequences of contracts illegal at common law |
| | 8.4 | Define the nature and consequences of contracts void and/or prohibited under common law and statute, with specific reference to void contracts, contracts in restraint of trade and unjust consumer credit contracts, and assess for application across a range of contexts |
| 9. | 9.1 | Define the legal principles relating to privity of contract and assignment of contract |
| | 9.2 | Identify and describe the nature, parameters and consequences of the doctrine of privity of contract |
| | 9.3 | Research and specify exceptions of privity of contract |
| | 9.4 | Determine and apply the correct procedure relating to assignment of contractual rights and obligations, including assignment by the parties and assignment by the operation of the law |
| 10. | 10.1 | Specify the procedures of discharge of contracts and apply across a range of contracts |
| | 10.3 | Assess the consequences for the contractual parties of discharge of contract/s across a range of circumstances |
| 11. | 11.1 | Determine remedies available when a contract is breached |

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| Apply remedies to breach of contract | 11.2 | Examine the nature and limitations of the remedies and evaluate for application across a range of breaches of contract |
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REQUIRED SKILLS AND KNOWLEDGE

This describes the essential skills and knowledge, and their level, required for this unit.

Required Skills

- communication skills to work with clients, colleagues, management, relevant specialist personnel under direction, independently or within a team
- research and analytical skills to identify and debate a wide range of contracts and contract conditions
- research, analytical and organisational skills to identify and evaluate application of principles of law of contract
- research and analytical skills to determine relevance of particular contract processes to particular circumstances and contexts
- analytical and problem-solving skills to determine appropriate application of principles of contract and to research appropriate remedies for breach of contract
- analytical, literacy and technical writing skills to interpret information, prepare documents and reports
- computer software technology skills to contract electronically

Required Knowledge

Please note: It is possible that over the five year accreditation period of this document, some legislation may become superseded. Teachers are encouraged to check the currency of legislation cited in this course at:

For Commonwealth Legislation: <http://www.comlaw.gov.au/>

For Victorian State Legislation: <http://www.legislation.vic.gov.au/>

- relevant international, Federal, State and local government legislative and statutory requirements and provisions pertaining to contracts
- the terms, nature and conditions of contracts, including:
 - agreement
 - intention to create legal relations
 - consideration and estoppel
 - terms and types of contracts
 - capacity to contract
 - defective contracts lacking consent
 - illegal and void contracts
 - privity of contract and assignment of contract
 - discharge of contract
 - remedies for breach of contract
- legal, ethical and technological principles and processes for contracting electronically

RANGE STATEMENT

The Range Statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. ***Bold italicised*** wording in the performance criteria is detailed below.

Form of contracts may include:

- contracts which must be made by deed
- contracts which must be reduced to writing
- contracts which must at least be evidenced in writing

Rules governing offer may include:

- the offer must be communicated
- an offer may be made to identified persons or to the whole world
- an offer may be revoked
- offers distinguished from options and invitations to treat
- offers by post
- offers made electronically

Rules governing acceptance may include:

- acceptance must relate to the offer
- mental acceptance without overt action is insufficient
- acceptance must be unqualified and unconditional
- the method of acceptance must conform with the mode of acceptance specified by the party making the offer
- acceptance by post
- acceptance electronically
- communication of acceptance may be dispensed with

Principles of revocation, rejection and lapse of offer may include:

- the circumstance and conditions in which an offer may be revoked
- express and implied rejection of an offer
- the circumstances when an offer will lapse

Rules governing consideration may include:

- consideration is an essential element in simple contracts
- consideration may be executed or executory but must not be past
- the consideration must be something moving from the person to whom the promise is made
- consideration need not be adequate to the promise
- consideration must not be too vague or uncertain
- consideration must be sufficient in the eyes of the law
- consideration cannot be satisfied by part-payment of a debt

Terms of a contract may include:

- written contracts and the parol evidence rule
- exceptions to the parol evidence rule

- partly written and partly oral contracts
 - oral contracts
- Categories of express terms** may include:
- conditions
 - warranties
 - innominate or intermediate terms
 - conditions precedent and subsequent
 - uncertain or meaningless terms
 - express terms
 - unfair and prohibited terms
- Implied terms** may include:
- terms implied by reference to past dealings between the parties
 - terms implied from custom or trade usage
 - terms implied to give a contract business efficacy
 - terms implied by statute
 - unfair terms in contracts
- Exclusion clauses** may include:
- the meaning and purpose of exclusion clauses
 - the principles governing the application of exclusion clauses contained in signed documents
 - the principles governing the application of exclusion clauses contained in unsigned documents
 - statutory modification of exclusion clauses, especially pursuant to the *Australian Consumer Law*
- Minors entering contracts** may include:
- contracts for necessities
 - beneficial contracts of service
 - trading contracts
 - supply of non-necessaries
- Discharge of contracts** may include:
- performance
 - agreement
 - frustration
 - breach
 - operation of law
 - provision for discharge contained within the contract
- Remedies available when a contract is breached** may include:
- rescission
 - damages
 - specific performance
 - injunction

- quantum meruit
- restitution

EVIDENCE GUIDE

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, Range Statement and the Assessment Guidelines of this qualification.

Critical aspects for assessment and evidence required to demonstrate competency in this unit

A person who demonstrates competency in this unit must provide evidence of:

- knowledge of the application of specific aspects of law of contract, for example: the legal positions of persons who lack contractual capacity; the appropriate application of remedy for a breach of contract, or, the application of the rules governing consideration
- knowledge of the nature, principles and elements of law of contract including the rights and liabilities of persons who enter into contract
- the application of law of contract across a range of contract contexts

Context of and specific resources for assessment

Assessment must ensure:

- activities are related to a legal practice context
- activities are related to laws, regulations and procedures currently operating across the jurisdictions relevant to this qualification

Resources implications for assessment include access to:

- suitable simulated or real workplace opportunities
- relevant Victorian legislation, such as:
 - *Age of Majority Act 1977*
 - *Electronic Transactions (Victoria) Act 2000*
 - *Fair Trading Act 1999*
 - *Goods Act 1958*
 - *Gambling Regulation Act 2003*
 - *Instruments Act 1958*
 - *Supreme Court Act 1986*
- relevant Commonwealth legislation, such as:
 - *Australian Consumer Law (in Schedule 2 to the Competition and Consumer Act, 2010)*
 - *Electronic Transactions Act 1999*
 - *National Credit Code (in Schedule 1 of the National Consumer Credit Protection Act, 2009)*

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| Method of assessment | <p>A range of assessment methods should be used to assess practical skills and knowledge. The following assessment methods are appropriate for this unit:</p> <ul style="list-style-type: none">• research project and/or project work• case studies and scenarios• direct questioning• examinations and tests• presentations |
| Guidance information for assessment | <p>Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended.</p> |

VU21634 Analyse and apply law of torts

Unit Descriptor

This unit describes the skills and knowledge required to apply the Law of Torts in order to support the work of a legal office, practice or associated context.

No licensing, legislative, regulatory or certification requirements apply to this unit at the time of publication.

Employability Skills

This unit contains Employability Skills.

Application of the Unit

This unit supports the work of personnel engaged in the operation of a legal office or associated fields within public and/or corporate sectors.

ELEMENT

Elements describe the essential outcomes of a unit of competency.

1. Identify the key features of law of torts

2. Identify and apply the rules of negligence

PERFORMANCE CRITERIA

Performance criteria describe the required performance needed to demonstrate achievement of the element. Where ***bold italicised*** text is used, further information is detailed in the required skills and knowledge and/or the range statement. Assessment of performance is to be consistent with the evidence guide.

1.1 Research and define the historical origin, nature and meaning of the term *tort*

1.2 Analyse the aims and rationale of the law of tort with reference to the structure and types of torts

1.3 Distinguish tort from crime, breach of contract, trust or other obligations

1.4 Examine the nature of the interests protected by the law of torts

1.5 Research and discuss the need for statutory intervention

2.1 Define the term *negligence* and analyse its ***concepts***

2.2 Research and determine possible ***defences to a negligence action***

2.3 Evaluate the means of proving negligence, including: burden of proof; standard of proof; the use of expert evidence, and, the application of the *res ipsa loquitur* concept

2.4 Examine the ***nature of damages*** that may be obtained in a negligence action

2.5 Determine legislative limits on negligence actions including: thresholds; limitation periods; and reduced liability in defined circumstances of loss, causation, intervening and/or break in chain of causation

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| 3. Analyse issues relating to particular categories of negligence | <p>3.1 Specify and evaluate the principles of occupier’s liability, with reference to the provisions of the occupier’s liability provisions of the <i>Wrongs Act 1958 (Vic)</i></p> <p>3.2 Examine the circumstances in which there can be liability for negligent misstatement causing economic loss</p> <p>3.3 Examine the <i>principle of vicarious liability</i></p> <p>3.4 Specify the circumstances in which there can be liability for negligently inflicted purely psychological harm in the absence of physical injury</p> <p>3.5 Specify the legal principles relating to liability for harm caused by defective products including the provision of Part VA of the <i>Trade Practices Act 1974 (Cth)</i></p> |
| 4. Analyse principles of strict liability | <p>4.1 Research and determine the principles of strict liability</p> <p>4.2 Compare and contrast strict liability with fault based liability</p> <p>4.3 Research and describe available defences to a strict liability claim</p> |
| 5. Analyse and apply Victorian and Commonwealth no-fault compensation schemes | <p>5.1 Explore the history and basis of the statutory schemes</p> <p>5.2 Identify and analyse the no-fault scheme regarding injury arising from a <i>transport accident</i></p> <p>5.3 Specify the current compensation schemes for employment-related injuries or diseases, both in Victoria and the Commonwealth and evaluate for application</p> <p>5.4 Identify the circumstances where common law remedies remain available in transport- and employment-related situations and evaluate for application</p> <p>5.5 Identify the problems arising from the statutory schemes and advantages and disadvantages of the schemes and discuss for impact on practice</p> |
| 6. Analyse and apply the law relating to the intentional tort of trespass to the person | <p>6.1 Define the term <i>assault</i> and identify its elements in tort law</p> <p>6.2 Define the nature of <i>battery</i> and identify its elements in tort law</p> <p>6.3 Define the term <i>false imprisonment</i> and identify its elements in tort law</p> <p>6.4 Identify the elements of intentionally causing harm in tort law</p> |

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| | 6.5 | Evaluate and apply the <i>possible defences to trespass to the person</i> |
| 7. Analyse and apply the elements of torts designed to protect interests in land | 7.1 | Examine the elements of, and defences to, the intentional tort of trespass to land |
| | 7.2 | Examine the tort of private nuisance and distinguish it from the tort of public nuisance |
| | 7.3 | Identify and apply the remedies available for interference with interests in land |
| 8. Analyse and apply intentional torts relating to interference with interests in goods | 8.1 | Compare and contrast the elements of the torts of trespass to goods, conversion and detinue in order to determine differences and areas of overlap |
| | 8.2 | Examine the nature of the remedies available and apply to a successful plaintiff in trespass to goods, conversion and detinue |
| 9. Investigate application of the law of defamation | 9.1 | Identify and describe the relevant <i>principles of defamation law</i> |
| | 9.2 | Define and evaluate and the <i>elements of defamation</i> |
| | 9.3 | Identify and describe the defences to a defamation action at common law and in legislation |
| | 9.4 | Determine and apply the possible remedies to a defamation action, including: <ul style="list-style-type: none"> • types of damages, • Injunction, and, • impact of an apology and offers to make amends, |
| | 9.5 | Research and describe the developments in relation to the protection of privacy, and discuss for application |

REQUIRED SKILLS AND KNOWLEDGE

This describes the essential skills and knowledge, and their level, required for this unit.

Required Skills

- communication skills to work with clients, colleagues, management, relevant specialist personnel under direction, independently or within a team
- research, critical analysis and organisational skills to investigate the nature and principles of the law of torts and its application across a wide range of relevant circumstances
- research, analytical and problem-solving skills to identify and evaluate legislation and statutory schemes related to law of torts

- analytical, communication and problem-solving skills to research and debate appropriate remedies available for a range of types of torts
- analytical, literacy and technical writing skills to interpret information, prepare documents and reports

Required Knowledge

Please note: It is possible that over the five year accreditation period of this document, some legislation may become superseded. Teachers are encouraged to check the currency of legislation cited in this course at:

For Commonwealth Legislation: <http://www.comlaw.gov.au/>

For Victorian State Legislation: <http://www.legislation.vic.gov.au/>

- relevant Federal and State legislative and statutory provisions pertaining to law of torts
- principles, aims and circumstances of tort law, including:
 - negligence including occupier's liability, negligent misstatement causing purely economic loss, vicarious liability and purely psychological harm
 - strict liability
 - no-fault compensation schemes
 - intentional torts against another person
 - torts relating to land
 - torts relating to goods
 - elements of defamation and defamation action

RANGE STATEMENT

The Range Statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. ***Bold italicised*** wording in the performance criteria is detailed below.

Concepts may refer to:

- duty of care including the neighbour principle and the tests applied
- breach of duty of care with reference to the standard of care to be observed and the tests applied
- loss and damage resulting from the breach of duty of care
- causation including novus actus interveniens
- scope of liability and remoteness of damage

Defences to a negligence action may include:

- voluntary assumption of risk
- contributory negligence
- other issues affecting liability related to the conduct of the plaintiff

Nature of damages may refer to:

- property damage
- personal injury
- purely economic loss
- plaintiff's duty to mitigate the loss

Principles of vicarious liability may include:

- consideration of attempts to define the nature of the employer/employee relationship
- distinguishing employees from independent contractors

- acting in the course of employment
 - non-delegable duties
- Possible defences to trespass to the person** may include:
- consent
 - self defence and defence of others
 - protection of property
 - necessity
 - lawful authority
- Principles of defamation law** may refer to:
- interests protected by law and who can bring an action in defamation
 - sources of defamation law
 - jurisdictional issues
 - method of trial and the role of the jury
- Elements of defamation** may refer to:
- defamatory material
 - reference to the plaintiff
 - publication

EVIDENCE GUIDE

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, Range Statement and the Assessment Guidelines of this qualification.

- Critical aspects for assessment and evidence required to demonstrate competency in this unit**
- A person who demonstrates competency in this unit must provide evidence of:
- knowledge of the statutory instances of Tort Law
 - researching, analysing and discussing Law of Torts to arrive at an effective courtroom strategy including precedent
 - knowledge of the origin, nature, aims and rationale of Tort Law
 - knowledge of the forms of Tort Law
 - knowledge of historical and contemporary application and delivery of Tort Law in Commonwealth and Victorian courts
- Context of and specific resources for assessment**
- Assessment must ensure:
- activities are related to a legal practice context
 - activities are related to laws, regulations and procedures currently operating across the jurisdictions relevant to this qualification
- Resources implications for assessment include access to:
- suitable simulated or real workplace opportunities
 - Relevant legislation, such as:
 - *Wrongs Act 1958 (Vic)*
 - *Limitation of Actions Act 1958 (Vic)*

- o *Transport Accident Act 1986 (Vic)*
- o *Occupier's Liability Act 1983*
- o *Accident Compensation Act as amended by the Accident Compensation (Workcover) Act 1992*
- o *Domestic (Feral and Nuisance) Animals Act 1994 (Vic)*
- o *Defamation Act 2005 (Vic)*
- o *Competition and Consumer Act 2010 (Cth)*
- o *Trade Practices Act 1974 (Cth)*
- o *Safety, Rehabilitation and Compensation Act 1988 (Cth)*

Method of assessment A range of assessment methods should be used to assess practical skills and knowledge. The following assessment methods are appropriate for this unit:

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- research project and/or project work
- case studies and scenarios
- direct questioning
- examinations and tests
- presentations

Guidance information for assessment Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended.

VU21635 Define and evaluate law of evidence

Unit Descriptor

This unit describes the skills and knowledge required to employ rules of evidence and procedure as they apply to civil and criminal trials, and to analyse and evaluate evidence available in connection with the preparation of a case for trial, in order to support the work of a legal office, practice or associated context.

No licensing, legislative, regulatory or certification requirements apply to this unit at the time of publication.

Employability Skills

This unit contains Employability Skills.

Application of the Unit

This unit supports the work of personnel engaged in the operation of a legal office, insurance company or associated fields within public and/or corporate sectors.

ELEMENT

Elements describe the essential outcomes of a unit of competency.

PERFORMANCE CRITERIA

Performance criteria describe the required performance needed to demonstrate achievement of the element. Where ***bold italicised*** text is used, further information is detailed in the required skills and knowledge and/or the range statement. Assessment of performance is to be consistent with the evidence guide.

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| 1. Analyse the concept of evidence and identify court procedures relating to evidence | 1.1 Define and illustrate the term and general nature of <i>evidence</i> |
| | 1.2 Identify and describe the real, oral, direct, circumstantial, original, hearsay, primary, secondary, and, documentary types of evidence |
| | 1.3 Discuss the rationale behind the rules and court procedures dealing with evidence |
| | 1.4 Examine the <i>no case to answer</i> submission to court/s in relation to criminal cases, civil cases, and election in civil cases |
| 2. Determine and analyse the standard of proof and burden of proof in civil and criminal cases, and specify types of presumptions | 2.1 Specify the standard of proof in civil and criminal cases |
| | 2.2 Specify the standard of proof applicable to determining the admissibility of evidence |
| | 2.3 Establish the importance of the burden of proof in civil and criminal cases |
| | 2.4 Determine and describe the specific elements, facts in issue and possible defences related to area/s of substantive law |
| | 2.5 Identify and debate the <i>types of presumptions</i> and their effects |

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| | 2.6 | Explain the phrase <i>facts that do not have to be proved</i> and analyse its application |
| 3. Analyse and apply the rule relating to relevance of evidence | 3.1 | Analyse the concept of relevance of evidence in relation to facts in issue and credit |
| | 3.2 | Determine and apply the appropriate test/s of relevance of evidence |
| | 3.3 | Identify and compare evidence that is directly relevant with that which is indirectly relevant |
| | 3.4 | Examine and apply the rules for: relevance of evidence; provisional relevance of evidence, and, inferences to relevance of evidence |
| 4. Analyse and evaluate the rules governing examination of evidence in the conduct of a civil or criminal trial | 4.1 | Evaluate and discuss the <i>rules in relation to examination in chief</i> |
| | 4.2 | Analyse and discuss the <i>rules of cross examination</i> |
| | 4.3 | Evaluate and apply the concept and rules of re-examination in relation to the purpose and restrictions on questions that may be asked |
| | 4.4 | Identify the circumstances in which evidence is permitted to be used in rebuttal |
| | 4.5 | Define and discuss the term, purpose, and procedure for <i>Voir Dire</i> |
| 5. Determine the rules relating to competence and compellability of witnesses | 5.1 | Compare and contrast the terms <i>competent</i> and <i>compellable</i> and distinguish a competent witness from a compellable witness. |
| | 5.2 | Determine those <i>persons who may not be competent and compellable witnesses</i> |
| | 5.3 | Identify and discuss the <i>privileges that may exempt a person from answering questions</i> |
| 6. Analyse and apply statutory and common law rules which provide the basis for evidence to be excluded | 6.1 | Review the rule against hearsay, including exceptions to the rule, in relation to: <ul style="list-style-type: none"> • first-hand hearsay • business records • electronic communications • Aboriginal and Torres Strait Islander traditional laws and customs • reputation • interlocutory proceedings |

- 6.2 Review the rule excluding opinion evidence, including exceptions to the rule, in relation to:
- evidence relevant for a purpose other than as opinion evidence
 - lay opinions
 - expert opinions – opinions based on specialised knowledge
 - Aboriginal and Torres Strait Islander traditional laws and customs
- 6.3 Review the rules of evidence relating to admissions with reference to:
- exclusion of evidence of admissions
 - reliability of admissions by defendants
 - admissions made with authority
 - proof of admissions
 - evidence of silence
- 6.4 Determine admissibility of evidence of judgments and convictions.
- 6.5 Determine the admissibility of evidence relating to tendency and coincidence is determined
- 6.6 Analyse the concept of credibility of a witness with reference to:
- admissibility of evidence as to credibility
 - examination and cross-examination of witnesses
 - credibility of persons who are not witnesses
 - persons with specialised knowledge
- 6.7 Determine and assess the rules of evidence relating to the character of an accused person with reference to:
- character in the context of the rules of evidence
 - relevance of character evidence
 - similar fact exception rule
 - evidence about character of the accused and co-accused
 - cross-examination of character of accused or co-accused

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| | 6.8 | Determine and review the <i>admissibility of identification evidence in a criminal trial</i> |
| | 6.9 | Analyse and assess the nature and context of privileges in relation to evidence |
| | 6.10 | Review the nature of judicial discretion to exclude evidence, including and with reference to: <ul style="list-style-type: none"> • general discretion to limit or exclude • prejudicial evidence in criminal proceedings • improperly obtained evidence • cautioning of suspected offenders |
| 7. | Determine the circumstances under which a trial judge may give warnings to a jury | 7.1 Describe and evaluate the reasons why a warning may be given to a jury |
| | | 7.2 Describe and discuss the effect of the <i>Evidence Act 2008</i> on corroboration warnings |
| | | 7.3 Identify and assess the circumstances under which a judge may still give a corroboration warning |
| 8. | Determine and evaluate the main considerations to be exercised by a legal practitioner when preparing a case for trial | 8.1 Determine the fundamentals in the preparation of a case |
| | | 8.2 Identify the important elements of collection, form and content, in the gathering of proof of evidence and assess for application |
| | | 8.3 Identify the <i>process in compelling the production of evidence</i> and evaluate for application |
| | | 8.4 Determine the processes for tendering types of evidence, such as: documents; photographs; maps and plans; real evidence, and views |
| | | 8.5 Describe and discuss the purpose and content of opening and closing addresses |
| 9. | Explore and comply with the Victorian Uniform Evidence Act | 9.1 Research and document the history of the development of Uniform Evidence Legislation |
| | | 9.2 Research and discuss the objectives and justification for the introduction of the <i>Evidence Act 2008 (Vic)</i> |
| | | 9.3 Identify and describe the structure and provisions of the <i>Evidence Act 2008 (Vic)</i> and its relationship with the <i>Evidence Act 1995 (Cth)</i> and assess for application to practice |

REQUIRED SKILLS AND KNOWLEDGE

This describes the essential skills and knowledge, and their level, required for this unit.

Required Skills

- communication skills to work with clients, colleagues, management, relevant specialist personnel under direction, independently or within a team
- research to identify and source legislation and provisions relevant to the law of evidence
- analytical and organisational skills to determine types and relevance of evidence
- critical analysis skills to research and evaluate the history and development of relevant legislation and provisions, such as the Uniform Evidence Act including the *Evidence Act 2008 (Vic)*
- research, critical analysis and organisational skills to investigate the nature and principles of the law of evidence and its application across a wide range of relevant circumstances
- analytical, literacy and technical writing skills to interpret information, prepare documents and reports

Required Knowledge

Please note: It is possible that over the five year accreditation period of this document, some legislation may become superseded. Teachers are encouraged to check the currency of legislation cited in this course at:

For Commonwealth Legislation: <http://www.comlaw.gov.au/>

For Victorian State Legislation: <http://www.legislation.vic.gov.au/>

- relevant Federal and State and local government legislative and statutory provisions pertaining to law of evidence
- principles, aims and provisions of law of evidence, including:
 - concept and nature of evidence
 - no case to answer submissions
 - standard and burden of proof in civil and criminal cases
 - relevance of evidence
 - rules governing examination in chief, cross examination and re-examination
 - competence and compellability of witnesses
 - rules of evidence
 - corroboration warning
 - preparation for trial
 - Uniform Evidence Act

RANGE STATEMENT

The Range Statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. ***Bold italicised*** wording in the performance criteria is detailed below.

Types of presumption

may refer to:

- irrebuttable presumptions
- rebuttable presumptions
- presumptions which do not depend on proof of another fact
- presumptions which require proof of a basic fact

Facts that do not to be proved may include:

- facts judicially noted
- facts formally admitted
- civil cases
- criminal cases

Rules in relation to examination in chief may refer to:

- nature and purpose of examination in chief
- restriction on leading questions
- reviving memory in court
- evidence given by police officers
- reviving memory out of court
- effects of calling for production of documents
- prior consistent statements
- unfavourable witnesses

Rules of cross examination may refer to:

- the right to cross-examine
- the common law rule in *Browne v Dunn*
- attacking the credit of a witness
- improper questions
- leading questions
- prior inconsistent statements of witnesses
- finality of answers to collateral questions

Persons who may not be competent and compellable witnesses may include:

- competence – lack of capacity (this may include children and mentally incapacitated persons)
- compellability - reduced capacity
- compellability – Sovereign and others
- competence and compellability – judges and jurors
- competence and compellability of defendants in criminal proceedings
- compellability of spouses and other family members in criminal proceedings
- comment on the failure of a defendant or other family member to give evidence in criminal proceedings

Privileges that may exempt a person from

- client legal privilege including legal advice and litigation

answering questions

may include:

- religious confessions
- privilege against self-incrimination
- doctor/client privilege pursuant to the Evidence (Miscellaneous Provisions) Act 1958)
- evidence excluded in the public interest:
 - exclusion of evidence of reasons for judicial decisions
 - exclusion of evidence of matters of state
 - exclusion of evidence of settlement negotiations (formerly known as without prejudice communications)

Admissibility of

identification may refer to:

- visual identification
- identification by practice
- jury directions

Process in compelling the production of evidence may refer to:

- subpoenas including when a person can be examined without having been served with a subpoena
- notice to produce
- call

EVIDENCE GUIDE

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, Range Statement and the Assessment Guidelines of this qualification.

Critical aspects for assessment and evidence required to demonstrate competency in this unit

A person who demonstrates competency in this unit must provide evidence of:

- following correct procedures for the evaluation and submission of evidence in a criminal or civil case
- analysis of standard of proof and burden of proof in civil and criminal cases
- evaluation of the rules governing examination in chief, cross examination and re-examination
- determination of the rules relating to competence and compellability of witnesses
- knowledge and interpretation of legal terminology and fundamental concepts relevant to types of evidence and the law of evidence
- knowledge and application of the various rules of evidence and exceptions to such rules
- knowledge of Federal and State legislation and provisions relevant to Law of Evidence
- analysis and evaluation of evidence available in connection with the preparation of a case for trial

Context of and specific resources for assessment

Assessment must ensure:

- activities are related to a legal practice context
- activities are related to laws, regulations and procedures currently operating across the jurisdictions relevant to this qualification

Resources implications for assessment include access to:

- suitable simulated or real workplace opportunities
- relevant legislation, such as:
 - *Legislation*
 - *Evidence Act 2008 (Vic)*
 - *Evidence (Miscellaneous Provisions) Act 1958 (Vic)*
 - *Crimes Act 1958 (Vic)*
 - *Criminal Procedure Act 2009 (Vic)*
 - *Juries Act 2000 (Vic)*
 - *Evidence Act 1995 (Cth)*

Method of assessment

A range of assessment methods should be used to assess practical skills and knowledge. The following assessment methods are appropriate for this unit:

- research project and/or project work
- case studies and scenarios, such as:
 - determination of competency and/or compellability of witnesses
 - examination of evidence
 - exclusion of evidence
 - examination and re-examination of evidence
 - burden of proof
 - content and impact of opening and closing addresses
- direct questioning
- examinations and tests
- presentations

Guidance information for assessment

Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended.

VU21636 Determine appropriate aspects of commercial law

Unit Descriptor

This unit describes the skills and knowledge required to appropriately apply aspects of commercial law, including partnerships, bankruptcy, business names, franchises and trusts, in order to support the work of a legal office, practice or associated context.

No licensing, legislative, regulatory or certification requirements apply to this unit at the time of publication.

Employability Skills

This unit contains Employability Skills.

Application of the Unit

This unit supports the work of personnel engaged in the operation of a legal office or associated fields within public and/or corporate sectors.

ELEMENT

Elements describe the essential outcomes of a unit of competency.

1. Evaluate Common Law as to agency and the rights, duties and obligations of the parties
2. Identify and assess the key features of forming partnerships

PERFORMANCE CRITERIA

Performance criteria describe the required performance needed to demonstrate achievement of the element. Where ***bold italicised*** text is used, further information is detailed in the required skills and knowledge and/or the range statement. Assessment of performance is to be consistent with the evidence guide.

- 1.1 Specify the purpose and existence of an agency, including the relationship of the principal, agent and third parties
- 1.2 Outline the ***process for the creation of the Agency*** and distinguish the difference between agencies created
- 1.3 Identify and assess the ***scope of an Agent's Authority***
- 1.4 Explain ***types of Agents*** and the differences between them
- 1.5 Specify the ***duties, rights and liabilities of the agent*** and analyse for application
- 1.6 Specify the ***duties, rights and liabilities of the principal*** and analyse for application
- 1.7 Identify the ways in which ***an agency agreement may be terminated*** and analyse for application
- 1.8 Apply the Law of Agency to case examples.
- 2.1 Classify the factors that constitute a partnership and analysed for application
- 2.2 Specify the ***factors relevant to forming a partnership*** and analyse for application
- 2.3 Compare and contrast, for application to practice, the advantages and disadvantages inherent in ***an unlimited or general partnership***

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| 3. Identify and apply the legal requirements of partnerships | 3.1 Analyse and determine the <i>relations of partners to outsiders</i> |
| | 3.2 Analyse the <i>relationship of partners to each other</i> |
| | 3.3 Classify the legal factors relevant to the <i>dissolution or change in composition of a partnership</i> |
| | 3.4 Analyse and compare the <i>main features of a limited partnership with a general partnership</i> |
| 4. Analyse the rights and obligations of creditors and debtors | 4.1 Classify and contrast the <i>legal alternatives available to a creditor in relation to a debtor who fails to pay a debt</i> |
| | 4.2 Identify and describe the <i>administration of bankruptcy</i> |
| | 4.3 Analyse for application, the <i>legal issues and procedures involved with bankruptcy</i> as a consequence of a creditor's petition |
| | 4.4 Specify the procedures and documentation related to a debtor's petition |
| | 4.5 Classify and analyse the types of arrangements available under Part X of the <i>Bankruptcy Act</i> , including the circumstances in which such arrangements may be appropriate, with reference to deeds of composition, deeds of assignment and deeds of arrangement |
| | 4.6 Examine for application, the nature and uses of a <i>Bankruptcy Act</i> Part IX debt agreement |
| 5. Analyse the consequences of bankruptcy upon the parties involved | 5.1 Identify the property that is available for distribution amongst creditors under the <i>Bankruptcy Act</i> and analyse the doctrine of relation back, undervalued transactions, transactions to defeat creditors, and undue preferences |
| | 5.2 Research and discuss the effects of bankruptcy, on the bankrupt, secured and unsecured creditors and the debtor's property |
| | 5.3 Compare for application to practice, the rights of secured and unsecured creditors, in relation to being paid |
| | 5.4 Identify and describe the circumstances in which a bankrupt can be discharged from bankruptcy, including the implications for the bankrupt and the creditors |
| 6. Determine and apply the major features of trusts | 6.1 Identify and describe the <i>major features of trusts</i> |
| | 6.2 Compare and contrast, for application, the various <i>reasons for using trusts</i> |

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| | 6.3 | Explain the methods of creating various forms of trusts and their nature |
| | 6.4 | Identify and describe the legal factors governing the role of trustees |
| | 6.5 | Analyse the rights of the beneficiaries of a trust with reference to: the circumstances in which they may direct the trustee, and their rights when the trustee has breached a duty as a trustee |
| | 6.6 | Assess the process of the winding up of trusts with reference to: distribution of assets to beneficiaries as authorised by the trust instrument, release or variation from the trust obligations, and disposition of the trust property |
| 7. | Analyse the legal requirements of the use and registration of business, company and association names, and the rights of their owners | 7.1 Evaluate for application, the legal requirements related to the registration and use of business, company and association names |
| | 7.2 | Identify the legal protection available to the user of a name in relation to the tort of passing off, <i>Trade Practices Act 1974</i> , tort of deceit, corporations law and <i>Associations Incorporation Act</i> |
| | 7.3 | Explain the legal authority as representative of partners, those acting on behalf of associations, the trustees, and company directors and officers |
| 8. | Analyse the legal nature of franchises | 8.1 Specify and describe the factors which constitute franchises |
| | 8.2 | Specify the legal nature of a franchise and analyse for application |
| | 8.3 | Research and discuss the impact of the Franchising Code of Conduct upon franchises |
| | 8.4 | Research and discuss the impact of the <i>Trade Practices Act 1974</i> on franchises |
| | 8.5 | Research and discuss the rights and liabilities of the parties in franchises |

REQUIRED SKILLS AND KNOWLEDGE

This describes the essential skills and knowledge, and their level, required for this unit.

Required Skills

- communication skills to work with clients, colleagues, management, relevant specialist personnel under direction, independently or within a team
- research to identify and source legislation and provisions relevant to commercial law

- critical analysis skills to research and evaluate the impact of legal provisions on aspects of commercial law
- research, critical analysis and organisational skills to investigate the nature and principles of the types of commercial law, rights and obligations of the parties and their application across a wide range of relevant circumstances
- analytical, literacy and technical writing skills to interpret information, prepare documents and reports

Required Knowledge

Please note: It is possible that over the five year accreditation period of this document, some legislation may become superseded. Teachers are encouraged to check the currency of legislation cited in this course at:

For Commonwealth Legislation: <http://www.comlaw.gov.au/>

For Victorian State Legislation: <http://www.legislation.vic.gov.au/>

- relevant Federal and State and local government legislative and statutory provisions pertaining to commercial law
- key features and aspects of commercial law, including:
 - partnerships and their legal requirements
 - bankruptcy and its consequences, including the rights and obligations of creditors and debtors
 - nature of trusts
 - setting up, maintaining and dissolving trusts
 - rights and obligations of the parties involved in trusts
 - legal nature of franchises, their regulation, and the rights and liabilities of the parties
 - use and registration of business and association names
 - the authority of representatives of companies, partnerships, trusts and associations

RANGE STATEMENT

The Range Statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. ***Bold italicised*** wording in the performance criteria is detailed below.

Process for the creation of the agency may refer to:

- in writing
- verbally
- by implication
- at law
- by ratification

Scope of an Agents Authority may refer to:

- express or implied actual authority
- apparent or ostensible authority

Types of agents may include:

- general agents
- special agents

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| | <ul style="list-style-type: none"> • universal agents |
| <p><i>Duties, rights and liabilities of the agent</i> may include:</p> | <ul style="list-style-type: none"> • follow lawful instructions • act personally • take reasonable care • act in best interests of principal • receive remuneration • indemnity |
| <p><i>Duties, rights and liabilities of the principal</i> may include:</p> | <ul style="list-style-type: none"> • pay remuneration and commission • indemnify agent |
| <p>Ways in which <i>an agency agreement may be terminated</i> may include:</p> | <ul style="list-style-type: none"> • by the parties • by operation of the law |
| <p><i>Factors relevant to forming a partnership</i> may include:</p> | <ul style="list-style-type: none"> • the formal legal requirements • the benefits of a written agreement • registration of a business name |
| <p><i>An unlimited or general partnership</i> may refer to:</p> | <ul style="list-style-type: none"> • the liability of partners • restrictions in respect of the number of partners • partners as principal and agent for each other • the impact of taxation • the degree of public disclosure and legal regulation • flexibility of operation |
| <p><i>Relations of partners to outsiders</i> may refer to:</p> | <ul style="list-style-type: none"> • the authority of a partner to bind the firm • the liability of parties for torts, misapplication of money or property received by a firm, and improper use of trust property by a partner • the circumstances in which a person who is not a partner may be held as a partner |
| <p><i>Relationship of partners to each other</i> may refer to:</p> | <ul style="list-style-type: none"> • the ability of partners to flexibly agree upon the terms of their relationship • the implied rules governing the relationship between partners under the partnership act • the ability of a majority of partners to expel a partner • the obligations of partners to render true accounts and full information, account for private profits, and refrain from competition with the firm |

- Dissolution or change in composition of a partnership*** may refer to:
- the rights, obligations and liabilities of incoming and outgoing partners or creditors
 - the manner of retiring from a partnership
 - the steps to be followed in the dissolution of a partnership
- Main features of a limited partnership with a general partnership*** may include:
- formation
 - liability of partners
 - management
- Legal alternatives available to a creditor in relation to a debtor who fails to pay a debt*** may include:
- alternative forms of dispute resolution
 - court action
 - enforcement of judgment and orders through alternative procedures such as attachments, summons for oral examination and warrants
- Administration of bankruptcy*** may refer to:
- court jurisdiction
 - the inspector general in bankruptcy, official receivers, and official trustee.
 - the insolvency and Trustee Service Australia (ITSA)
 - administration of a bankrupt's estate
 - trustee in bankruptcy
- Legal alternatives available to a creditor in relation to a debtor who fails to pay a debt*** may include:
- alternative forms of dispute resolution
 - court action
 - enforcement of judgment and orders through alternative procedures such as attachments, summons for oral examination and warrants
- Legal issues and procedures involved with bankruptcy*** may include:
- acts of bankruptcy
 - creditor's petition
 - sequestration order
- Major features of trusts*** may include:
- fixed trusts
 - discretionary trusts
 - unit trusts
- Reasons for using trusts*** may include:
- taxation issues
 - benefits of trading trusts
 - flexibility of trusts
- Forms of trusts*** may include:
- express trusts
 - implied trusts
 - constructive trusts

Role of trustees may include:

- appointment
- duties
- powers
- liabilities
- rights
- removal, retirement or death of a trustee

EVIDENCE GUIDE

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, Range Statement and the Assessment Guidelines of this qualification.

Critical aspects for assessment and evidence required to demonstrate competency in this unit

A person who demonstrates competency in this unit must provide evidence of:

- determining appropriate application of aspects of commercial law including partnerships, bankruptcy, trusts, franchises and business names and with reference to the rights and obligations of the parties
- examining bankruptcy in the context of the rights and obligations of creditors and debtors, and its consequences
- analysing trust in relation to its features, its creation, maintenance and dissolution processes, and the rights and obligations of parties involved
- examining the legal requirements of the business name and the owner's rights
- analysing the legal nature, regulation and the rights and liabilities of the parties concerned in a franchise

Context of and specific resources for assessment

Assessment must ensure:

- activities are related to a legal practice context
- activities are related to laws, regulations and procedures currently operating across the jurisdictions relevant to this qualification

Resources implications for assessment include access to:

- suitable simulated or real workplace opportunities
- relevant legislation, such as:
 - *Associations Incorporation Act (Vic)*
 - *Business Names Act (Vic)*
 - *Partnership Act (Vic)*
 - *Trustee Act (Vic)*
 - *Bankruptcy Act (Cth)*
 - *Trade Practices Act 1974 (Cth)*

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| Method of assessment | <p>A range of assessment methods should be used to assess practical skills and knowledge. The following assessment methods are appropriate for this unit:</p> <ul style="list-style-type: none">• research project and/or project work• case studies and scenarios• direct questioning• examinations and tests• presentations |
| Guidance information for assessment | <p>Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended.</p> |

VU21637 Employ property law principles and concepts

Unit Descriptor

This unit describes the skills and knowledge required to employ property law concepts and applications, including analysis of estates and interests, mortgages, easements, and covenants, tenancies, and adverse possession, in order to support the work of a legal office, practice or associated context.

No licensing, legislative, regulatory or certification requirements apply to this unit at the time of publication.

Employability Skills

This unit contains Employability Skills.

Application of the Unit

This unit supports the work of personnel engaged in the operation of a legal office, conveyancing office, financial institution or lending mortgage department, government department, or other associated field within public and/or corporate sectors.

ELEMENT

Elements describe the essential outcomes of a unit of competency.

PERFORMANCE CRITERIA

Performance criteria describe the required performance needed to demonstrate achievement of the element. Where ***bold italicised*** text is used, further information is detailed in the required skills and knowledge and/or the range statement. Assessment of performance is to be consistent with the evidence guide.

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| 1. Determine and define the nature of property | <p>1.1 Examine the meaning of <i>property</i> with reference to:</p> <ul style="list-style-type: none"> • the feudal origin of concepts of land law • the doctrine of tenure • the doctrine of estates • personal property • real property • fixtures and chattels <p>1.2 Explain the term <i>convey</i> and outline the <i>features</i> in the context of property law and conveyancing procedures</p> <p>1.3 Evaluate and apply the tests that distinguish, fixtures and chattels (goods) and research relevant case law</p> |
| 2. Analyse holdings in real estate | <p>2.1 Identify and describe the concept of the holding of land in <i>fee simple</i></p> <p>2.2 Research and describe the <i>nature of estates</i> vested in possession, other than a fee simple</p> <p>2.3 Research and describe the <i>nature of equitable estates and interests</i></p> |

- 2.4 Examine and compare the distinguishing features of **joint tenancy and tenancy in common**
- 2.5 Examine the effect of the rules of co-ownership and discuss it in reference to a range of property law contexts
3. Analyse and assess proof of possession of a particular interest in land
- 3.1 Research and describe the nature and proof of a **common law title** and apply to a range of contexts
- 3.2 Examine the concept of **Torrens title holding** in relation to a range of contexts
- 3.3 Identify and discuss the **reasons for title investigation analysis** and apply to a range of contexts
4. Analyse and apply relevant features of the Torrens title system / *Transfer of Land Act*
- 4.1 Research the historical background, aims and general features of the Torrens title system and provisions of the *Transfer of Land Act* and analyse with reference to:
- the compensation scheme
 - the registry of Land Victoria
 - how land comes under the operation of the scheme including conversion of common law holdings
 - the single document as proof of title
 - the centrality of registration to the scheme
 - distinction between title examples and styles
- 4.2 Outline the relevant provisions of *The Transfer of Land Act* for the registration of interests other than freehold, including mortgages, caveats, easements, restrictive covenants and the process of registration
- 4.3 Examine the legislative provisions and case law in relation to:
- the conclusiveness of the register
 - the estate of the registered proprietor being paramount and the exceptions
 - the concept of indefeasibility and the controversy over whether it is immediate or deferred
 - the meaning of *fraud* in the context of indefeasibility and its effect
 - in personam rights
- 4.4 Specify the relevant **procedures at the registry of Land Victoria**

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| 5. Examine the nature of a possessory title | <p>5.1 Analyse the meaning of <i>adverse possession</i></p> <p>5.2 Examine the relevant provisions of <i>Limitation of Actions Act</i></p> <p>5.3 Research, debate and apply the procedures for obtaining a Certificate of Title based on adverse possession, with reference to the <i>Transfer of Land Act</i> provisions and the Land Victoria guidelines</p> |
| 6. Examine the nature of estates which are less than freehold and which may encumber freehold estates | <p>6.1 Identify and discuss the <i>aspects of tenancies</i></p> <p>6.2 Identify the main <i>provisions of the Residential Tenancies Act</i> and assess for application</p> <p>6.3 Identify the <i>operation of the Retail Leases Act</i> and assess for application</p> |
| 7. Establish the nature and the function of a mortgage at common law and within the operation of the Transfer of Land | <p>7.1 Determine the <i>nature of a mortgage</i></p> <p>7.2 Analyse the nature of a mortgage under the common law with specific reference to:</p> <ul style="list-style-type: none"> • the mortgage as a conveyance • the equity of redemption and the rights of mortgagor • the concepts of postponing and <i>clogging</i> the equity of redemption <p>7.3 Examine the <i>nature of a mortgage under the Transfer of Land Act</i>, for application to practice</p> |
| 8. Analyse and assess the basic nature and function of an easement and covenant | <p>8.1 Specify the essential elements, the nature and the function of an <i>easement</i></p> <p>8.2 Research the basic nature and function of a <i>restrictive covenant</i> and assess for application</p> <p>8.3 Analyse the features of an easement and covenant in relation to:</p> <ul style="list-style-type: none"> • a case study • various case examples • title examples |

REQUIRED SKILLS AND KNOWLEDGE

This describes the essential skills and knowledge, and their level, required for this unit.

Required Skills

- communication skills to work with clients, colleagues, management, relevant specialist personnel under direction, independently or within a team
- research to identify and source legislation and provisions relevant to property law

- critical analysis skills to research and evaluate the history and development of relevant legislation and provisions such as Torrens title systems and *Transfer of Land Act*
- research, critical analysis and organisational skills to investigate the nature and principles of the property law and its application across a wide range of relevant circumstances
- analytical, literacy and technical writing skills to interpret information, prepare documents and reports

Required Knowledge

Please note: It is possible that over the five year accreditation period of this document, some legislation may become superseded. Teachers are encouraged to check the currency of legislation cited in this course at:

For Commonwealth Legislation: <http://www.comlaw.gov.au/>

For Victorian State Legislation: <http://www.legislation.vic.gov.au/>

- relevant Federal and State and local government legislative and statutory provisions pertaining to property law
- principles, aims and circumstances property law, including:
 - Property, land holding and transfer
 - Real estate holdings
 - Proving the existence of estates in land
 - The General or Common Law holding
 - The Torrens System
 - Adverse Possession
 - Estates of certain duration
 - Mortgages
 - Easements and Covenants

RANGE STATEMENT

The Range Statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. ***Bold italicised*** wording in the performance criteria is detailed below.

Features may include:

- conveying the property includes fixtures
- the ownership of real property as a 'right in rem'

Fee simple may refer to:

- the meaning of fee simple
- disposition of a fee simple interest
- the inheritance of a fee simple interest
- the fee simple interest as a freely disposable interest.

Nature of estates refer to:

- the estate in fee tail and its extinction in Victoria
- life estates and their possible uses
- estates pur autre vie
- future interests

Nature of equitable estates and interests may refer to:

- historical development
- how equitable interests differ from legal interests
- the nature of a trust and different types of trust including express, implied, resulting and constructive trusts
- common uses of trusts
- creation of equitable interests

Joint tenancy and tenancy in common may include:

- the unities required for a joint tenancy
- the nature of the right of survivorship
- severance of a joint tenancy
- partition
- manner of creating a joint tenancy or tenancy in common
- relevant presumptions as to the nature of the tenancy and the rebuttal of such presumptions.

Common law title may include:

- the 'nemo dat' rule
- the chain of title
- the meaning of good root of title
- relevant provisions of the Property Law Act
- deficiencies in the common law system
- a deed of conveyance, mortgage (conveyance and re-conveyance) and chain of title

Torrens title holding may include:

- the nature of the difference between a Torrens title and a common law title
- the nature of a certificate of title
- the nature and effect of registration

Reasons for title investigation analysis may include:

- proof of good title
- the discovery of encumbrances
- identity of the land

Procedures at the registry of Land Victoria may include:

- title searching methods
- analysis of search results
- lodgement and registration of instruments of title processes

Adverse possession may refer to:

- the nature of the intention required
- the nature of the acts required
- rationale of the concept

Limitations of Actions Act may include:

- the time limits set out in the Act
- factors extending the limitation period

- stopping time running
- successive adverse possessions
- analysis and comparison of different case examples

Aspects of tenancies may include:

- the nature of a tenancy
- the creation of a tenancy
- implied terms of a tenancy
- different types of tenancy arrangement
- forfeiture of a tenancy and a case study

Provisions of the Residential Tenancies Act may include:

- the role of the Victorian Civil and Administrative Tribunal
- tenancies to which the Act applies
- rights and duties of the tenant and the landlord
- variation of rent
- bonds
- termination
- examination of a sample tenancy agreement

Operation of the Retail Leases Act may refer to:

- tenancies to which the Act applies
- the main provisions of the Act
- rental reviews
- protection of tenants
- the statutory option
- disclosure statements and analysis of forms used
- determination of disputes
- case studies

Nature of a mortgage may refer to:

- the mortgage as a security
- the mortgage as a contract
- the rights and obligations of the mortgagor
- the rights and obligations of the mortgagee
- secured and unsecured creditors

Nature of a mortgage under the Transfer of Land Act may refer to:

- the difference from the effect of a mortgage of common law land
- the procedure upon default by the mortgagor
- the power to take possession
- the power of sale and the procedural requirements for its exercise

- the obligations of the mortgagee when exercising the power of sale, and discussion of case examples
- foreclosure
- the application of priorities rules

Easement may include:

- creation
- registration
- extinction
- removal from title
- relevant legislative provisions

Restrictive covenant may include:

- the requirement for registration if the burden of the covenant is to pass with the land
- the creation of a covenant
- the enforcement of a covenant
- modification and removal of covenants
- the relevant Land Registry documents

EVIDENCE GUIDE

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, Range Statement and the Assessment Guidelines of this qualification.

Critical aspects for assessment and evidence required to demonstrate competency in this unit

A person who demonstrates competency in this unit must provide evidence of:

- Knowledge of property law concepts and applications relating to estates and interests, mortgages, easements, and covenants, tenancies, and adverse possession
- Establishing the function of a mortgage at common law and within the operation of the Transfer of Land
- Examining the various holdings in real estate and joint tenancy and tenancy in common including the implications for the holder of any of the various interests
- Proving the existence of estates in land
- Assessing the Torrens title system in relation to the transfer and proof of ownership of an interest in land
- Examining the provisions of the Limitations of Actions Act and procedures for obtaining a Certificate of Title based on adverse possession
- Analysing the different types of tenancy arrangements and the provisions of the Residential Tenancies Act
- Investigating the provisions nature of estates which are less than freehold and which may encumber freehold estates
- Analysing the function of a mortgage at common law and within the operation of the Transfer of Land

- Assessing the function of an easement and covenant

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| Context of and specific resources for assessment | <p>Assessment must ensure:</p> <ul style="list-style-type: none">• activities are related to a legal practice context• activities are related to laws, regulations and procedures currently operating across the jurisdictions relevant to this qualification <p>Resources implications for assessment include access to:</p> <ul style="list-style-type: none">• suitable simulated or real workplace opportunities• relevant legislation, such as:<ul style="list-style-type: none">◦ <i>Limitation of Actions Act 1958</i>◦ <i>Property Law Act 1958</i>◦ <i>Residential Tenancies Act 1997</i>◦ <i>Retail Tenancies Reform Act 1998</i>◦ <i>Transfer of Land Act 1958 (Transfer of Land Act)</i> |
| Method of assessment | <p>A range of assessment methods should be used to assess practical skills and knowledge. The following assessment methods are appropriate for this unit:</p> <ul style="list-style-type: none">• research project and/or project work• case studies and scenarios, including:<ul style="list-style-type: none">◦ applying the concept <i>convey</i> to a relevant case study and examining the relevant evidence of transfer and conveyance◦ examining the effect of the rules of ownership on real case parties• direct questioning• examinations and tests• presentations |
| Guidance information for assessment | <p>Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended.</p> |

VU21638 Apply conveyancing process

Unit Descriptor

This unit describes the skills and knowledge required to employ land contract law through a comprehensive knowledge of relevant legislation and the procedures and documentation associated with conveyancing transactions for the sale and purchase of Victorian land, in order to support the work of a legal office, practice or associated context.

No licensing, legislative, regulatory or certification requirements apply to this unit at the time of publication.

Employability Skills

This unit contains Employability Skills.

Application of the Unit

This unit supports the work of personnel engaged in the operation of a legal office, conveyancing department or office, financial institution, bank loans or mortgage department, and/or associated fields within public and/or corporate sectors.

ELEMENT

Elements describe the essential outcomes of a unit of competency.

1. Specify the main features of contract law relevant to the sale of land

PERFORMANCE CRITERIA

Performance criteria describe the required performance needed to demonstrate achievement of the element. Where bold italicised text is used, further information is detailed in the required skills and knowledge and/or the range statement. Assessment of performance is to be consistent with the evidence guide.

- 1.1 Outline the principles and minimum requirements for a ***contract for the sale of land***
- 1.2 Identify and describe the factors that could lead to a contract being void or voidable
- 1.3 Identify and describe the ***formal requirements of a contract for the sale of land***, including the extent to which written evidence is required for the sale of land to be enforceable
- 1.4 Identify and describe the nature of an open contract
- 1.5 Outline the terms implied by common law or equity into a contract where there is no express provision, with reference to:
 - who carries the risk of damage or destruction of the property following the sale
 - the vendor's obligations in relation to preservation of the property following sale
 - the vendor's obligation to disclose defects in title and give a good title free of undisclosed defects
 - the circumstances in which the caveat emptor principle applies

- terms implied as to the time for performance of the contract and whether time is of the essence of the contract
2. Specify and apply the terms that are commonly expressly included in a contract for the sale of land
 - 2.1 Outline and apply the ***form and content of the standard contract*** prescribed by the Estate Agents (Contracts) Regulations, including: particulars of sale; special conditions; general conditions, and vendors' statements
 - 2.2 Analyse and apply the ***conveyancing procedures and obligations*** that arise from the contract for the sale of land, including: finance clauses; insurance; caveatable interests, and deposit holding procedures
 3. Analyse and apply legislation that regulates contracts for the sale of land
 - 3.1 Outline and detail the ***provisions of the Sale of Land Act relating to terms contracts***
 - 3.2 Explain the meaning of the ***purchaser's right to cool off***
 - 3.3 Analyse the ***requirements for vendors' statements***, including the consequences of breach of Section 32 of the *Sale of Land Act*
 - 3.4 Outline the ***statutory provisions in relation to insurance of premises***, including who bears the risk of damage or destruction of premises, and analyse for application
 - 3.5 Analyse for application, the provisions of the *Sale of Land Act* relating to dealing with deposits and release of deposit prior to settlement
 - 3.6 Identify and describe the regulation of swimming pools relevant to a conveyancing transaction
 4. Analyse and apply the law relating to defective building work and illegal structures in the context of sales of land
 - 4.1 Determine the principles of the common law in relation to the sale of land which includes a defectively constructed or incomplete building and analyse for application
 - 4.2 Identify the provisions of the *Domestic Building Contracts Act* including implied warranties and obligations of a builder in relation to major domestic building contracts, and analyse for application
 - 4.3 Identify the provisions of the *Building Act* in relation to insurance obligations of builders, obligations of owner-builders who sell a building, and, warranties required in contracts for the sale of property by an owner-builder, and analyse for application
 - 4.4 Outline the role of the Victorian Civil and Administrative Tribunal in resolving disputes relating to domestic building work

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| 4.5 | Define the term <i>illegal structure</i> and analyse, for application, the law relating to a sale of land on which there is an illegal structure |
| 5. | Analyse and apply the role of estate agents in the sale process |
| 5.1 | Examine the <i>terms of the contracts used to engage an agent</i> |
| 5.2 | Outline and debate the <i>legal and ethical obligations of the agent</i> to the vendor and the purchaser |
| 5.3 | Research and analyse for application, the rules and legal provisions under Division 4 of the <i>Sale of Land Act</i> for conducting auction sales of real estate, including dummy bids and vendor's bids |

REQUIRED SKILLS AND KNOWLEDGE

This describes the essential skills and knowledge, and their level, required for this unit.

Required Skills

- communication skills to work with clients, colleagues, management, relevant specialist personnel under direction, independently or within a team
- research and analytical skills to identify and debate a range of conveyancing contexts
- research, analytical and organisational skills to identify and evaluate application of rules and provisions under the *Sale of Land Act*
- research and analytical skills to determine application of specific conveyancing processes and procedures to particular circumstances and contexts
- analytical and problem-solving skills to determine appropriate application of rules, processes and principles for addressing breaches of contract, sale of illegal structures, unethical auction practices and other disputes
- analytical, literacy and technical writing skills to interpret information, prepare documents and reports
- technological skills to operate office equipment and legal- and/or conveyancing-related software

Required Knowledge

Please note: It is possible that over the five year accreditation period of this document, some legislation may become superseded. Teachers are encouraged to check the currency of legislation cited in this course at:

For Commonwealth Legislation: <http://www.comlaw.gov.au/>

For Victorian State Legislation: <http://www.legislation.vic.gov.au/>

- relevant international, Federal, State and local government legislative and statutory requirements, regulations and provisions pertaining to sale of land contracts and conveyancing
- general principles of the law of contract as relevant to sale of land transactions, including:
 - formalities required for a binding contract for the sale of land
 - terms implied by courts in relation to contracts for the sale of land

- o terms commonly expressly contained in contracts for the sale of land
- o investigation of title
- o procedures required to complete a conveyancing transaction
- o statutory intervention in contracts for the sale of land
- o law relating to defective building work and illegal structures in the context of sales of land
- o the role of estate agents in the sale of land
- o law and practices specifically relating to auction sales
- dispute resolution strategies and formal agencies for resolution of disputes

RANGE STATEMENT

The Range Statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. ***Bold italicised*** wording in the performance criteria is detailed below.

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| <i>Contract for the sale of land</i> may include: | <ul style="list-style-type: none"> • consideration • agreement |
| <i>Formal requirements of a contract for the sale of land</i> may include: | <ul style="list-style-type: none"> • minimum requirements to satisfy Section 126 of the <i>Instruments Act</i> • doctrine of part performance |
| <i>Form and content of the standard contract</i> may refer to: | <ul style="list-style-type: none"> • legal status of the contract • particulars of sale • general conditions • special conditions • contracts conditional on the purchaser obtaining finance |
| <i>Conveyancing procedures and obligations</i> may refer to: | <ul style="list-style-type: none"> • misdescription of the land • obligations of the vendor in relation to the condition of the premises and goods • investigation of title • liability for charges or other obligations occurring after the contract • apportionment of outgoings • purchaser's right to inspection prior to settlement • settlement procedures • remedies for breach of contract • remedies for misleading and deceptive conduct • consumer legislation issues |
| <i>Provisions of the Sale of Land Act relating to terms contracts</i> may refer to: | <ul style="list-style-type: none"> • meaning of terms contract • relevant terms in the standard contract of sale and provisions Section 32 of the <i>Sale of Land Act</i> |

- reasons for the enactment of the provisions
 - prohibitions under the *Sale of Land Act*
- Purchaser's right to cool off** may refer to:
- notice on contract
 - consequences of failure to include notice
 - circumstances in which there is no right to cool off
 - time limit for cooling off
 - method of exercising right to cool off
 - amount payable by purchaser if right to cool off is exercised
- Requirements for vendors' statements** [pursuant to Section 32 of the Sale of Land Act] may include:
- the contents of the statement
 - meaning of *connected* in relation to services
 - the purchaser's right to rescind a contract due to a defective vendor's statement
 - the rights of a purchaser if a defect in the vendor's statement is discovered after settlement
 - circumstances in which there is no right for a purchaser to rescind despite the vendor's failure to comply with Section 32 of the *Sale of Land Act*
- Statutory provisions in relation to insurance of premises** may include:
- dwelling substantially destroyed
 - right of vendor to reinstate before completion
 - purchaser may rely on vendor's insurance
 - Commonwealth and State legislation
- Terms of the contracts used to engage an agent** may include:
- exclusive agency authorities
 - auction authorities
 - open engagements
 - the pre-conditions for an agent's entitlement to commission
- Legal and ethical obligations of the agent** may include:
- remedies for breach of the obligations
 - dispute resolution mechanisms and strategies
 - role of Estate Agents Resolution Service and of the Victorian Civil and Administrative Tribunal

EVIDENCE GUIDE

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, Range Statement and the Assessment Guidelines of this qualification.

Critical aspects for assessment and evidence required to demonstrate competency in this unit

A person who demonstrates competency in this unit must provide evidence of:

- investigating documents, and following procedures and obligations relevant to completing a conveyancing transaction

- knowledge of the legislation, principles and practices that regulate contracts for the sale and purchase of land including auction sales
- knowledge of Federal and State legislation, regulations and provisions relevant to undertaking conveyancing]
- Examination of statutory intervention in contracts of the sale of land
- Analysis of law and practices specifically relating to auction sales
- Examination of terms implied by courts and commonly expressed contained in contracts for the sale of land

Context of and specific resources for assessment

Assessment must ensure:

- activities are related to a legal practice context
- activities are related to laws, regulations and procedures currently operating across the jurisdictions relevant to this qualification

Resources implications for assessment include access to:

- suitable simulated or real workplace opportunities
- relevant and current Victorian legislation and regulations, such as:
 - *Estate Agents Act 1980*
 - *Estate Agents (Professional Conduct) Regulations 2008*
 - *Estate Agents (Contracts) Regulations 2008*
 - *Sale of Land Act 1962*
 - *Transfer of Land Act 1958*
 - Domestic Building and Contracts Act 1995
 - Building Act 1993
 - Australian Competition and Consumer Law 2010 (Cth) (CCA), also known as the Australian Consumer Law (ACL)

Method of assessment

A range of assessment methods should be used to assess practical skills and knowledge. The following assessment methods are appropriate for this unit:

- research project and/or project work
- case studies and scenarios
- direct questioning
- examinations and tests
- presentations

Guidance information for assessment

Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended.

VU21639 Explore and apply wills, probate and administration procedures

Unit Descriptor

This unit describes the skills and knowledge required to apply the rules and provisions for areas of wills and deceased estates in order to provide specialised support of the work of a legal office, practice or associated context.

No licensing, legislative, regulatory or certification requirements apply to this unit at the time of publication.

Employability Skills

This unit contains Employability Skills.

Application of the Unit

This unit supports the work of personnel engaged in the operation of a legal office or associated fields within public and/or corporate sectors.

ELEMENT

Elements describe the essential outcomes of a unit of competency.

1. Explore and apply the procedure for drafting and execution of wills

PERFORMANCE CRITERIA

Performance criteria describe the required performance needed to demonstrate achievement of the element. Where ***bold italicised*** text is used, further information is detailed in the required skills and knowledge and/or the range statement. Assessment of performance is to be consistent with the evidence guide.

- 1.1 Identify and describe the law applicable to the validity of wills and ***practical considerations arising from that law***
- 1.2 Research and describe the ***considerations exercised by the Registrar of Probates*** in relation to admitting or objecting to a form of a will
- 1.3 Evaluate the functions of the following specialist areas:
 - delegation of will making power
 - revocation and amendment of wills
 - incorporation by reference republication and revival
 - purpose and operation of secret trusts
- 1.4 Outline and evaluate the alternative procedures for drafting a simple will, including:
 - taking instructions
 - ambiguous clauses
 - proper description of real and personal property
 - description of charities
 - appointment of executors
 - creation of testamentary trusts

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| | 1.5 | Evaluate and practice the procedures for assessing a will and for handling objections to the validity of the will and codicil, including diagnosis, correction and removal of errors |
| 2. Analyse and apply provisions relating to caveats | 2.1 | Investigate the meaning, forms and effects of caveats and analyse for application to practice |
| | 2.2 | Identify the necessary content of a caveat, including the basis of claim, and apply the procedure |
| | 2.3 | Examine the probate jurisdiction of the Supreme Court |
| | 2.4 | Specify and apply the procedure for the commencement of proceedings , including the appropriate forms and documents |
| | 2.4 | Examine and analyse a particular example or case study, outlining the principles of drafting a will and the handling of objections to the validity of the will and codicil. |
| | 2.5 | Produce a draft of a will and codicil. |
| 3. Identify and apply procedures for family provision claims | 3.1 | Research, describe and discuss the Family Provision claims , including situations that give rise to claims |
| | 3.2 | Research and debate the effect of an order on a will |
| | 3.3 | Outline and apply the procedure to make a claim for family provision under Part IV of <i>Administration and Probate Act, 1958</i> |
| 4. Evaluate and apply the law relating to the distribution of intestate estates | 4.1 | Examine and apply the provisions of the Administration and Probate Act relating to distribution of intestate estates |
| | 4.2 | Define and apply the clauses for effectiveness |
| | 4.3 | Compare and contrast the differences between classes of estates and analyse their application to the distribution of intestate estates |
| 5. Investigate and assess the powers, duties, and obligations of executors and trustees in relation to the administration of deceased estates | 5.1 | Evaluate and identify the law relating to powers, duties and obligations of both executors and trustees in relation to the administration of deceased estates |
| | 5.2 | Outline the practical considerations in the administration of deceased estates |
| | 5.3 | Research and discuss the effects of an executor failing to perform |
| 6. Follow procedures to obtain probate of | 6.1 | Identify and describe the terms <i>Probate</i> and <i>Administration</i> are defined and the general considerations and use of power in Probate Applications and Letters of Administration |

a will or letters of administration

- 6.2 Research and discuss the impact and implications of the power that Probate or Administration gives an executor or administrator, including the application Power from Probate and Power from Letters of Administration
- 6.3 Outline the procedure for obtaining a grant of probate or administration, with consideration of: advertising; searching; affidavits; the order, and the probate application/order for probate
- 6.4 Determine the impact and implications of the power that 'Probate' or 'Administration' give an Executor or Administrator.

REQUIRED SKILLS AND KNOWLEDGE

This describes the essential skills and knowledge, and their level, required for this unit.

Required Skills

- communication skills to work with clients, colleagues, management, relevant specialist personnel under direction, independently or within a team
- research, analytical and organisational skills to identify and evaluate the application of rules and provisions pertaining to wills, probate and administration law
- research and analytical skills to determine and respond to the functions and effects of powers and duties of executors and trustees
- diagnostic and critical thinking skills to analyse drafting errors in a will and codicil and generate ideas for correcting and removing them
- team skills to use of conceptual drafting skills in a small group environment
- analytical and problem-solving skills to determine appropriate procedures and processes for handling objections to the validity of a will and codicil
- technical writing and organisational skills to use the correct documentation and procedures to draft wills and codicils and obtain a grant of probate
- analytical, literacy and technical writing skills to interpret information, prepare documents and reports

Required Knowledge

Please note: It is possible that over the five year accreditation period of this document, some legislation may become superseded. Teachers are encouraged to check the currency of legislation cited in this course at:

For Commonwealth Legislation: <http://www.comlaw.gov.au/>

For Victorian State Legislation: <http://www.legislation.vic.gov.au/>

- relevant international, Federal, State and local government legislative and statutory requirements, regulations and provisions pertaining to family law
- general principles of law relating to wills, including:
 - caveats and contesting the validity of a will

- o the family provisions
- o *Administration and Probate Act, 1958* and intestate estates
- o duties of executors and trustees
- o obtaining a grant of probate and letters of administration

RANGE STATEMENT

The Range Statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. ***Bold italicised*** wording in the performance criteria is detailed below.

Practical considerations arising from that law may refer to:

- Wills Act, 1997
- the requirement to be in writing
- to be signed at the foot or end
- by the testator or the will makers direction
- in the presence of two witnesses
- judicial dispensing power
- testamentary capacity
- statutory wills
- construction of wills

Considerations exercised by the Registrar of Probates may include:

- general considerations
- signed with different pens
- not in writing
- ambiguous
- revoked will

Procedure for the commencement of proceedings may include:

- basis of claim
- initiation of proceedings
- proceedings in court

Family provisions claims may refer to:

- history of provisions: formerly the testators family maintenance provisions
- being the legal procedures necessary to make a claim for adequate provision by a person for whom the deceased had a responsibility to make provision
- the law relating to family provision
- eligible applicants
- general provisions
- Bosch's Case
- Singer v Berghouse

Effect of an order on a will may refer to:

- the basic effect

- effect on other bequests
- Procedure to make a claim for family provision** may include:
- originating summons, form and effect
 - procedure generally before the court
 - possible orders
 - reseal of probates
- Provisions of the Administration and Probate Act evaluation** may include:
- distribution of intestate estate
 - partner (includes spouse and domestic partner)
 - children
 - remote issue
 - other possible beneficiaries
 - no next of kin
- Clauses for effectiveness** may include:
- gifts subject to condition precedent
 - gifts subject to conditions subsequent interests
 - life interests and other restricted gifts
- Classes of estates** may include:
- personal estate
 - residual estate
 - notional estates
- Practical considerations in the administration of deceased estates** may include:
- valuing estate
 - ascertaining beneficiaries
 - special or ongoing business requirements
 - overseas property
 - not to waste
 - investment of trust funds and ‘prudent person principle’
- Effects of an executor failing to perform** may include:
- fraud
 - non action
 - inappropriate distribution
 - negligence
 - tax and duties

EVIDENCE GUIDE

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, Range Statement and the Assessment Guidelines of this qualification.

Critical aspects for assessment and evidence required to

A person who demonstrates competency in this unit must provide evidence of:

- Knowledge of wills and probate relating to validity of wills, drafting procedures and execution of wills

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| demonstrate competency in this unit | <ul style="list-style-type: none">• Interpreting the key principles of wills and probate law• Examining legal procedures to make a claim for family provisions• Researching and analysing law relating to the distribution of intestate estates• Investigating the administration of deceased estates• Obtaining a grant of probate and letters of administration |
| Context of and specific resources for assessment | <p>Assessment must ensure:</p> <ul style="list-style-type: none">• activities are related to a legal practice context• activities are related to laws, regulations and procedures currently operating across the jurisdictions relevant to this qualification <p>Resources implications for assessment include access to:</p> <ul style="list-style-type: none">• suitable simulated or real workplace opportunities• relevant legislation, such as:<ul style="list-style-type: none">◦ <i>Wills Act, 1997</i>◦ <i>Administration & Probate Act, 1958</i>◦ <i>Trustee Act, 1958</i> |
| Method of assessment | <p>A range of assessment methods should be used to assess practical skills and knowledge. The following assessment methods are appropriate for this unit:</p> <ul style="list-style-type: none">•• research project and/or project work• case studies and scenarios• direct questioning• examinations and tests• presentations |
| Guidance information for assessment | <p>Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended.</p> |

VU21640 Analyse and apply civil procedure

Unit Descriptor

This unit describes the skills and knowledge required to employ legal principles in the area of litigation and civil procedures including the civil jurisdiction, structure, procedure and operation of the courts in Victoria, in order to support the work of a legal office, practice or associated context.

No licensing, legislative, regulatory or certification requirements apply to this unit at the time of publication.

Employability Skills

This unit contains Employability Skills.

Application of the Unit

This unit supports the work of personnel engaged in the operation of a legal office or associated fields within public and/or corporate sectors.

ELEMENT

Elements describe the essential outcomes of a unit of competency.

PERFORMANCE CRITERIA

Performance criteria describe the required performance needed to demonstrate achievement of the element. Where ***bold italicised*** text is used, further information is detailed in the required skills and knowledge and/or the range statement. Assessment of performance is to be consistent with the evidence guide.

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| 1. Analyse the structure and purpose of the Victorian civil courts system | 1.1 Outline the jurisdictional limits of the Victorian Supreme Court, County Court and Magistrates' Court 1.2 Identify and describe the role and jurisdiction of the Federal Court 1.3 Examine the role of administrative tribunals in relation to dispute resolution 1.4 Outline the roles of <i>court personnel</i> |
| 2. Identify and assess sources of procedural rules and practices in the Supreme Court of Victoria | 2.1 Research and describe the nature and functions of court rules with reference to judicial interpretation of rules and the court's inherent power to control procedure and practice directions 2.2 Identify the circumstances in which no rules apply and describe the action/s to be followed in these circumstances 2.3 Examine the power of the court to prevent abuse of its processes |
| 3. Analyse and apply the steps prior to litigation and the commencement of litigation | 3.1 Identify the <i>steps prior to litigation</i> and analyse for application 3.2 Determine the commencement of a <i>Supreme and County Court action</i> 3.3 Determine the requirements of a Magistrates' Court complaint |

- 3.4 Outline the method of issue of a writ and complaint
- 3.5 Describe the **means by which an originating process may be served** and analyse for application
- 3.6 Determine, and analyse for application, the requirements of *notice of appearance* (Supreme and County Courts) and *notice of defence* (Magistrates' Court), including: conditional appearance' interlocutory and final judgments in default of appearance, and judgment in default in the Magistrates' Court
- 4. Assess the nature, function and form of pleadings, particulars and third party procedures
 - 4.1 Identify the **course of pleadings**
 - 4.2 Describe the content, form and requirements of a pleading
 - 4.3 Outline the methods of answering an opponent's pleading
 - 4.4 Analyse the procedures relating to counterclaims, as compared with set-offs
 - 4.5 Examine the **nature and purpose of particulars**
 - 4.6 Identify the procedures relating to the joinder of third and subsequent parties, and claims for indemnity or contribution between parties, and analyse for application
- 5. Analyse and apply interlocutory procedures in defended actions
 - 5.1 Examine the circumstances in which summary judgment is available under Order 22 of the Supreme Court Rules and determine the applicable procedures
 - 5.2 Outline and apply the **process of discovery of documents**
 - 5.3 Examine and apply the **nature and purpose of interrogatories**
 - 5.4 Outline the uses and effect of notices to admit and analyse for application
 - 5.5 Outline the **settlement procedures** and analyse for application
 - 5.6 Research and discuss the role of judges, masters and magistrates in the **pre-trial stages of litigation**
 - 5.7 Determine and describe the methods of fixing a date for hearing in the Victorian Supreme Court, County Court and Magistrates' Court
- 6. Analyse and apply the processes of preparation for trial, the enforcement of judgments or orders, and costs
 - 6.1 Identify and apply the **process of preparation for trial**
 - 6.2 Evaluate the **process of enforcement of judgments or orders** and analyse for application
 - 6.3 Determine the **costs considerations in relation to litigation**

7. Analyse and apply non-litigious avenues of dispute resolution
- 7.1 Evaluate and discuss mediation, as an alternative avenue of dispute resolution, with reference to:
- the nature of the process of mediation
 - the roles of the parties
 - the legal status of outcomes
 - pre-issue mediation in the Magistrates' Court
- 7.2 Evaluate and discuss arbitration, as an alternative avenue of dispute resolution, with reference to:
- the nature of the process of arbitration
 - the roles of the parties
 - the legal status of the outcomes
- 7.3 Analyse the operations of alternative avenues of dispute resolution and corollary advantages and disadvantages, including collaborative law, and debate to improve practice

REQUIRED SKILLS AND KNOWLEDGE

This describes the essential skills and knowledge, and their level, required for this unit.

Required Skills

- communication skills to work with clients, colleagues, management, relevant specialist personnel under direction, independently or within a team
- research and analytical skills to determine and respond to the civil jurisdiction, structure, procedure and operation of the courts in Victoria
- research, analytical and organisational skills to identify and evaluate the application of procedural rules, practice directions, processes and operations relating to areas of litigation and civil procedures in Victoria
- analytical and problem-solving skills to determine appropriate procedures and processes for each possible and probable stage of litigation
- diagnostic and critical thinking skills to evaluate, determine and utilise non-litigious methods and avenues of dispute resolution
- analytical, literacy and technical writing skills to interpret information, prepare documents and reports

Required Knowledge

Please note: It is possible that over the five year accreditation period of this document, some legislation may become superseded. Teachers are encouraged to check the currency of legislation cited in this course at:

For Commonwealth Legislation: <http://www.comlaw.gov.au/>

For Victorian State Legislation: <http://www.legislation.vic.gov.au/>

- relevant international, Federal, State and local government legislative and statutory requirements, regulations and provisions pertaining to civil procedure

- Aspects of civil procedure, including:
 - structure and jurisdiction of civil courts in Victoria
 - rules of procedure
 - conduct of Supreme, County and Magistrates' Court civil actions
 - nature, function and form of pleadings, particulars and third party procedures
 - interlocutory procedures in defended actions
 - enforcement of judgments, orders and costs
 - alternative dispute resolution including collaborative law

RANGE STATEMENT

The Range Statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. ***Bold italicised*** wording in the performance criteria is detailed below.

Court personnel may include:

- judges
- magistrates
- masters
- registrars
- prothonotary

Steps prior to litigation may include:

- taking instructions
- consideration of alternatives to litigation
- consideration of the risks of litigation
- correspondence prior to issuing proceedings including considering pre-trial discovery
- choice of court

Supreme and County Court action may refer to:

- types of originating process
- the nature, form and content of a Writ
- the nature of a cause of action
- choice of mode and place of trial
- joinder of parties.

Means by which an originating process may be served may refer to:

- personal service
- substituted service
- acceptance of service
- service outside Victoria
- service on corporations.

Course of pleadings may include:

- Statement of Claim
- Defence
- Reply

- pleadings subsequent to Reply
- judgment in default of pleading
- striking out a pleading
- amendment of pleadings.

Nature and purpose of particulars may refer to:

- when required
- the difference between particulars and substantive allegations
- requests for further and better particulars.

Process of discovery of documents may include:

- the form and content of an Affidavit of Documents
- grounds for claims of privilege
- preliminary discovery
- discovery from a non-party
- inspection of documents
- discovery implications in Magistrates' Court arbitration cases

Nature and purpose of interrogatories may refer to:

- form and content
- grounds for objection
- interrogatory implications in Magistrates' Court arbitration cases

Settlement procedures may include:

- formal offers of compromise
- Calderbank offers
- Notice of willingness to contribute.

Pre-trial stages of litigation may include:

- directions hearings
- case management
- interlocutory orders
- consequences of failure to comply with procedural directions or orders.

Process of preparation for trial may include:

- witnesses
- subpoenas
- proofs of evidence
- statements of expert evidence
- exhibits
- choice of counsel
- preparation of brief
- instructing in court

Process of enforcement of judgments or orders may include:

- procedures of the Sheriff
- warrant of seizure and sale
- warrant of possession
- transfer/registration of judgment
- attachment of earnings and attachment of debt
- examination of judgment debtor

Costs consideration in relation to litigation may include:

- the nature of party and party and solicitor/client costs
- the court's discretion in relation to costs
- the process of party and party assessment of costs
- scales of costs
- costs cap implications in Magistrates' Court arbitration cases
- costs agreements including conditional costs agreements

EVIDENCE GUIDE

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, Range Statement and the Assessment Guidelines of this qualification.

Critical aspects for assessment and evidence required to demonstrate competency in this unit

A person who demonstrates competency in this unit must provide evidence of:

- knowledge of the application of: form of pleadings, particulars and third party procedures
- correctly following procedures of a civil litigation from commencement to non-litigious dispute resolution
- Analysis of the structure, procedures and operation of the court systems in Victoria
- knowledge of litigation and civil procedure, including civil jurisdiction, structure, procedure and operation of the civil courts system in Victoria
- knowledge of alternative avenues of dispute resolution including collaborative law
- knowledge of preparation process for trial and the enforcement of judgments or orders and costs
- knowledge of interlocutory procedures in defended actions

Context of and specific resources for assessment

Assessment must ensure:

- activities are related to a legal practice context
- activities are related to laws, regulations and procedures currently operating across the jurisdictions relevant to this qualification

Resources implications for assessment include access to:

- suitable simulated or real workplace opportunities
- relevant Federal and State and local government legislation, regulations, standards and provisions

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| Method of assessment | <p>A range of assessment methods should be used to assess practical skills and knowledge. The following assessment methods are appropriate for this unit:</p> <ul style="list-style-type: none">• research project and/or project work• case studies and scenarios• direct questioning• examinations and tests• presentations |
| Guidance information for assessment | <p>Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended.</p> |

VU21641 Analyse and evaluate concepts and principles of criminal law

Unit Descriptor

This unit describes the skills and knowledge required to employ legal principles and aspects of criminal law, including criminal procedure, substantive aspects of criminal offences as defined in legislation and at common law, and, to evaluate the impact of law reform issues, in order to support the work of a legal office or associated context.

No licensing, legislative, regulatory or certification requirements apply to this unit at the time of publication.

Employability Skills

This unit contains Employability Skills.

Application of the Unit

This unit supports the work of personnel engaged in the operation of a legal office, legal aid provider, government department or associated justice contexts within public and/or corporate sectors.

ELEMENT

Elements describe the essential outcomes of a unit of competency.

1. Analyse the concept of crime and assess the purposes of criminal law within society
2. Outline and apply the pre-trial and trial procedures in a criminal matter and discuss the possible penalties for a criminal offence

PERFORMANCE CRITERIA

Performance criteria describe the required performance needed to demonstrate achievement of the element. Where ***bold italicised*** text is used, further information is detailed in the required skills and knowledge and/or the range statement. Assessment of performance is to be consistent with the evidence guide.

- 1.1 Research, discuss and define the concept of crime
- 1.2 Research, compare and contrast the sources of criminal law
- 1.3 Analyse the concepts of *mens rea* and *actus reus*
- 1.4 Identify and describe the particular purposes of criminal law, with reference to retribution, deterrence, reformation and rehabilitation, and certainty
- 2.1 Identify and describe the preliminary and trial procedures in Victoria with particular reference to:
 - summary offences, indictable offences and indictable offences triable summarily
 - the Victorian court hierarchy in the criminal justice system
 - the mention system
 - the committal process
 - arraignment
 - the procedure in relation to a jury trial
 - the procedure in the Magistrates' Court following a not guilty plea

- 2.2 Define the concept of bail, the process of a bail application, and the conditions under which bail may be granted according to the *Bail Act 1977 (Vic)* and analyse for application
- 2.3 Identify and describe the sentencing procedures followed in the Victorian criminal justice system, with reference to:
 - the sentencing hearing
 - dismissals
 - discharges
 - adjournments
 - offenders with an intellectual disability
 - victim impact statements
- 2.4 Identify and discuss the various ***penalties available for particular criminal offences***
- 2.5 Research and discuss the reforms to evidence and criminal procedure in Victoria, with reference to:
 - Criminal Procedure Act 2009 (Vic)
 - Evidence Act 2008 (Vic)
- 2.6 Analyse the Charter of Human Rights and Responsibilities Act 2006 (Vic) with reference to criminal law issues.
3. Analyse and apply the key elements of the criminal offences of murder and manslaughter, and assess the available defences to such prosecutions
 - 3.1 Define and analyse the concept of *homicide* and analyse for application, making reference to:
 - who may be the victim of homicide
 - infanticide
 - child destruction
 - murder, manslaughter and culpable driving
 - concealment of birth
 - the meaning of *death*
 - 3.2 Distinguish homicides which are defined in legislation from those defined at common law
 - 3.3 Analyse and define the ***specific elements of the criminal offence of murder***, including when the offence of murder is substantiated, and analyse for application
 - 3.4 Analyse and define the ***specific elements of the criminal offence of manslaughter***, including when an offence of manslaughter is substantiated, and analyse for application
 - 3.5 Research current issues regarding homicide, including the controversy in relation to euthanasia, and discuss their impact

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| | 3.6 | Research changes to abortion laws in Victoria, with reference to <i>Abortion Law Reform Act 2008 (Vic)</i> , and analyse for application |
| 4. Determine and apply the elements of offences against the person other than homicide | 4.1 | Demonstrate the key elements of criminal assault and other offences involving violence , including when an offence is substantiated, and analyse for application |
| | 4.2 | Research and discuss current issues in offences against the person, including domestic violence and assistance for victims of crime and stalking |
| | 4.3 | Determine the key elements that comprise sexual offences , including when an offence is substantiated, and analyse for application |
| | 4.4 | Research current issues regarding sexual offences, including inter alia sentencing practice for rape offences, jury direction in rape cases and refer to the sexual history of the complainant, and analyse for practice |
| 5. Evaluate and apply the available defences to particular offences | 5.1 | Identify and describe the concept of <i>defensive homicide</i> on a charge of murder and determine the circumstances under which defensive homicide is available as a defence |
| | 5.2 | Define the concept of <i>self-defence</i> and determine the circumstances under which self-defence may be applied |
| | 5.3 | Assess the defences of duress, marital coercion, sudden or extraordinary emergency, superior orders and necessity, with reference to availability, elements, particular issues in relation to the offence of murder, precedent, and <i>Crimes (Homicide) Act 2005</i> |
| | 5.4 | Identify and describe the circumstances in which impaired or altered mental states may negate criminal responsibility |
| 6. Analyse and apply the law relating to the types of participation in crime and attempts | 6.1 | Analyse the culpability of the participants in a given crime, using relevant culpability case examples . |
| | 6.2 | Analyse and assess the concept of <i>attempt</i> in criminal law, with reference to actus reus, voluntary desistance, mens rea, legal and factual impossibility and the statutory provisions |
| 7. Analyse and apply the various elements to the criminal offence of theft, and discuss the available statutory defences | 7.1 | Research and discuss the historical background to the law of theft, including larceny at common law and the reasons behind the introduction of the theft provisions of the <i>Crimes Act</i> |
| | 7.2 | Analyse and discuss the terms <i>property</i> , <i>belonging to another</i> , and <i>appropriates</i> as stipulated by the <i>Crimes Act</i> |
| | 7.3 | Describe the concept of <i>intention of permanently depriving</i> , as defined by the <i>Crimes Act</i> , with reference to the presumption |

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| | | in relation to motor vehicles and aircraft, and analyse for application |
| | 7.4 | Define the concept of appropriation of property <i>dishonestly</i> , as defined by the <i>Crimes Act</i> , with reference to claim of right, consent, unknown owner and willingness to pay, and analyse for application |
| | 7.5 | Analyse the applications of theft provisions to case study materials. |
| 8. Determine and apply the elements of crimes of obtaining property as defined by the Crimes Act | 8.1 | Outline the definitions of the criminal offences of obtaining property by deception and of obtaining a financial advantage by deception, as stipulated by S 81 and S 82 of the <i>Crimes Act and apply to case study material</i> |
| | 8.2 | Analyse, for application, the criminal offences of robbery and armed robbery (S75 & S75A), burglary and aggravated burglary (S76 & S77) and blackmail (S87), as defined by the <i>Crimes Act and apply to case study material</i> |
| 9. Analyse and apply the key elements required for strict and absolute liability offences | 9.1 | Identify and explain the distinctions between mens rea offences, strict liability offences and offences of absolute liability and the criteria for making the distinctions |
| | 9.2 | Research the rationale for offences of strict or absolute liability and relevant statutory provisions for creating them and analyse for application |
| | 9.3 | Examine the operation of the defence of mistake in relation to strict liability offences, including the distinction between a mistake of fact and a mistake of law, and, the onus of proof in relation to mistake, and analyse for application |
| | 9.4 | Analyse strict and absolute liability offences with reference to case study material. |

REQUIRED SKILLS AND KNOWLEDGE

This describes the essential skills and knowledge, and their level, required for this unit.

Required Skills

- communication skills to work with clients, colleagues, management, relevant specialist personnel under direction, independently or within a team
- research, analytical and critical thinking skills to identify, evaluate and debate a wide range of aspects and elements of criminal law
- research and analytical skills to determine relevance of particular sections of the *Crime Act* to particular offences
- analytical, literacy and technical writing skills to interpret information, prepare documents and reports

Required Knowledge

Please note: It is possible that over the five year accreditation period of this document, some legislation may become superseded. Teachers are encouraged to check the currency of legislation cited in this course at:

For Commonwealth Legislation: <http://www.comlaw.gov.au/>

For Victorian State Legislation: <http://www.legislation.vic.gov.au/>

- relevant international, Federal, State and local government legislative and statutory requirements, regulations and provisions pertaining to criminal law
- General concepts, procedures and elements of criminal law, including:
 - the concept of crime and purposes of criminal law in society
 - criminal procedures in a criminal matter and possible penalties for a criminal offence
 - key elements of criminal offences of murder and manslaughter
 - assault and sexual offences
 - defences to particular offences
 - criminal offences of theft
 - property offences
 - strict liability offences

RANGE STATEMENT

The Range Statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. ***Bold italicised*** wording in the performance criteria is detailed below.

Penalties available for particular criminal offences may include:

- fines
- community based orders
- intensive correction orders
- suspended sentences
- custodial sentences
- hospital orders
- compensation and restitution

Specific elements of the criminal offence of murder may include:

- actus reus
- causation
- the mental state required including express and constructive malice
- 'reckless' murder
- intoxication as relevant to mens rea

Elements that constitute the offence of manslaughter may include:

- voluntary and involuntary manslaughter
- criminal negligence including manslaughter by omission
- unlawful and dangerous act

Key elements of criminal assault and other offences involving violence may include:

- actus reus
- harmful or offensive contact or the threat of such
- degree of injury in relation to statutory offences
- mens rea
- intentional
- reckless
- negligent
- consent as a defence and circumstances in which the defence is not available

Key elements that comprise sexual offences may include:

- rape
- actus reus
- sexual penetration
- absence of consent
- factors vitiating consent
- mens rea
- subjective test of intention
- recklessness
- other unlawful acts of sexual penetration

Circumstances under which defensive homicide is available as a defence may include:

- availability
- effect
- burden of proof
- Crimes (Homicide) Act 2005
- elements - the subjective and objective tests
- abolition of provocation as a partial defence to murder
- battered wife syndrome
- family violence
- relevant cases

Circumstances under which self-defence may be applied may include:

- availability
- history including the changing view of excessive self-defence in homicide
- elements
- battered woman syndrome
- self-defence of either self, another or property

- relevant cases
 - Crimes (Homicide) Act 2005
- Circumstances in which impaired or altered mental states may negate criminal responsibility*** may include:
- the M'Naghten rules in relation to insanity
 - sane and insane automatism
 - the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997
 - onus of proof in relation to mental impairment
 - unfitness to stand trial
 - the effect of a successful defence of mental impairment
 - the circumstances in which the effect of alcohol or drugs may negate criminal responsibility
- Relevant culpability case examples may include:***
- the role of participants, such as:
 - principals
 - abettors
 - accessories after the fact
 - the statutory provisions
 - the concept of derivative culpability
 - the doctrines of innocent agency, acting in concert and common purpose

EVIDENCE GUIDE

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, Range Statement and the Assessment Guidelines of this qualification.

Critical aspects for assessment and evidence required to demonstrate competency in this unit

A person who demonstrates competency in this unit must provide evidence of:

- the ability to explain the concept of crime and criminal law in society
- knowledge of Criminal Law relating to criminal procedures, substantive aspects of criminal offences as defined in legislation, and law reforms
- investigating criminal procedures and the possible penalties for a criminal offence
- analysing elements of criminal offences of manslaughter and murder
- assessing the available defences to particular offences
- analysing the key elements required for strict and absolute liability offences
- knowledge of applications of relevant sections of the Crimes Act in a range of case study materials

Context of and specific resources for assessment

Assessment must ensure:

- activities are related to a legal practice context
- activities are related to laws, regulations and procedures currently operating across the jurisdictions relevant to this qualification

Resources implications for assessment include access to:

- suitable simulated or real workplace opportunities
- relevant legislation, such as:
 - *Bail Act 1977 (Vic)*
 - *Crimes Act 1958 (Vic) as amended to date*
 - *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*
 - *County Court Act 1958 (Vic)*
 - *Magistrates' Court Act 1971 (Vic)*
 - *Sentencing Act 1991 (Vic)*
 - *Summary Offences Act 1958*
 - *Crimes (Homicide) Act 2005 (Vic)*
 - *Abortion Law Reform Act 2008 (Vic)*
 - *Charter of Human Rights and Responsibilities Act 2006 (Vic)*
 - *Criminal Procedure Act 2009 (Vic)*
 - *Evidence Act 2008 (Vic)*
 - *Family Violence Protection Act 2008*

Method of assessment

A range of assessment methods should be used to assess practical skills and knowledge. The following assessment methods are appropriate for this unit:

- research project and/or project work
- case studies and scenarios
- direct questioning
- examinations and tests
- presentations

Guidance information for assessment

Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended.

VU21642 Practise in a legal environment

Unit Descriptor

This unit describes the skills and knowledge required to support the work of a legal office, practice or associated context, by operating according to legislative protocols and organisational policies and procedures in order to: initiate client files; take instructions and provide required legislative information; consult with internal/external specialist/s, and prepare, develop and manage legal documents to ensure that all necessary information is obtained and that documentation accurately reflects the clients' needs.

No licensing, legislative, regulatory or certification requirements apply to this unit at the time of publication.

Employability Skills

This unit contains Employability Skills.

Application of the Unit

This unit supports the work of personnel engaged in the operation of a legal office or associated fields within public and/or corporate sectors.

ELEMENT

Elements describe the essential outcomes of a unit of competency.

PERFORMANCE CRITERIA

Performance criteria describe the required performance needed to demonstrate achievement of the element. Where ***bold italicised*** text is used, further information is detailed in the required skills and knowledge and/or the range statement. Assessment of performance is to be consistent with the evidence guide.

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| 1. Open client file, take instructions and provide required legislative information | <p>1.1 Determine risk acceptance criteria and establish acceptable risk levels based on evaluation of exposure for <i>area of legal interest</i></p> <p>1.2 Open and prepare the <i>client file</i>, based on relevant enterprise and <i>legislative requirements</i></p> <p>1.3 Take client instructions and record them accurately</p> <p>1.4 Establish and record essential details to meet legislative requirements and risk acceptance criteria</p> <p>1.5 Provide client with accurate <i>legislative information</i> as instructed by the enterprise and answer client questions accurately, completely and in language appropriate to the client</p> |
| 2. Consult appropriate specialist/s | <p>2.1 Identify and consult with <i>appropriate specialist/s</i> in a timely manner and according to appropriate protocol</p> <p>2.2 Provide to, and obtain from, complete and accurate information specialist/s as required</p> <p>2.3 Follow-up and complete appropriate action/s, resulting from consultation with the specialist/s</p> |

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| 3. Obtain, prepare and manage legal documentation on the instructions and under the supervision of a solicitor or barrister | <p>3.1 Obtain legal documentation from appropriate source/s within appropriate timeframes</p> <p>3.2 Prepare and check legal documentation in accordance with statutory requirements, legal and organisational specifications and format</p> <p>3.3 Undertake management of legal documentation according to legal and organisational timeframes and guidelines</p> <p>3.4 Upon completion of the project, file and store legal documentation according to legal and organisational requirements</p> |
| 4. Maintain communication with the client | <p>4.1 Inform the client on the progress of the file at appropriate and regular intervals</p> <p>4.2 Consult the client on decision-making matters and/or legislative requirements when required</p> <p>4.3 Check the database to ensure that there is no conflict with the existing client and inform the client of the consequences and procedures should conflict arise</p> |
| 5. Identify and apply legal ethics and practice | <p>5.1 identify and describe the main duties of legal practitioners and others employed in the legal profession</p> <p>5.2 Identify legislative and other sources of information on legal ethics and practice and assess for application</p> <p>5.3 Identify potential ethical conflicts, including conflicts of interest between clients</p> <p>5.4 When required, report complete and appropriate responses to ethical conflicts and review them according to legislative and organisational requirements</p> <p>5.5 Identify and discuss confidentiality requirements in the legal profession</p> |

REQUIRED SKILLS AND KNOWLEDGE

This describes the essential skills and knowledge, and their level, required for this unit.

Required Skills

- interpersonal communication skills to work with a wide range of internal and external professionals, barristers and solicitors, legal executive officers, and relevant specialist personnel and clients, under direction, independently or within a team

- written and interpersonal communications skills in to build and manage relationships with clients and their representatives
- identifying and evaluating business opportunities.
- research and analysis skills in relation to working in an area of legal interest
- general financial and accounting skills to recognise legislative and management issues in relation to trust accounts
- information and budget management skills to manage workflow progress, time accounting (billable) status reports, analysis of information and rectification of problem areas or issues
- technological skills to operate office equipment and legal-related software
- business, analytical and presentation skills to identify, communicate and evaluate business opportunities and develop promotional strategies
- professional skills to adhere to legal industry code of conduct related to ethics, integrity, professionalism, confidentiality and risk management
- team leadership skills to motivate team members to achieve organisational goals or outcomes, within reasonable timeframes
- negotiation and organisational skills to negotiate and manage settlements
- analytical, literacy, organisational and technical writing skills to interpret information, prepare documents and reports, keep and maintain hard- and softcopy records and files

Required Knowledge

Please note: It is possible that over the five year accreditation period of this document, some legislation may become superseded. Teachers are encouraged to check the currency of legislation cited in this course at:

For Commonwealth Legislation: <http://www.comlaw.gov.au/>

For Victorian State Legislation: <http://www.legislation.vic.gov.au/>

- organisational vision/mission and culture
- knowledge in the areas of Law of Torts, Contract Law, Evidence and Legal Processes and/or other area(s) of legal interest, and legal ethics
- knowledge of the theory and practice related to legal ethics and area/s of legal interest
- relevant Federal and State and local government legislative and statutory provisions
- interpersonal communication and customer service strategies that allow for customers' needs to be assessed and responded to in legal situations
- relevant organisational technology to produce legal documents
- organisational file management systems including file storage and retrieval
- procedures and timelines in relation to appropriate legal actions
- understanding of roles, responsibilities and powers of senior law clerks including:
 - management, accountability and reporting requirements and decision-making processes
 - setting and achieving organisational goals / targets / objectives
 - limitation of personal authority, for example, in giving legal advice to clients
 - development and implementation of organisational policies and procedures

- products and services offered by the organisation, and fees attached
- development and application of the professional code of conduct across the legal industry including:
 - ethics
 - integrity
 - professionalism
 - confidentiality
 - risk management
- legal and administrative requirements for managing a business, including WorkCover, superannuation and group tax.
- OH&S policies and guidelines for workers with supervisory responsibilities, relevant to the organisation.

RANGE STATEMENT

The Range Statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. ***Bold italicised*** wording in the performance criteria is detailed below.

Areas of legal interest may refer to:

- probate law
- property and conveyancing law including leasing, mortgages
- family law
- administration law including tribunals
- medico legal
- criminal law
- international law including shipping/air transport
- commercial law
- immigration law
- company law
- industrial law including employee relations
- taxation law
- litigation law including class actions
- defamation
- environmental law
- intellectual property law, such as copyright
- alternate dispute resolutions - mediation

Client file may contain information such as:

- general client details
- details of the service required by the client
- file processes

- timelines
- Legislative requirements** may include:
 - preparation of legal documents and legal correspondence
- Legislative information** may refer to:
 - costs and/or fees associated with the service
 - officer with management responsibilities of the file
 - complaints avenue for the client
- Appropriate specialist(s)** may include:
 - lawyers/solicitors
 - financiers/ financial institutions
 - accountants/tax agents
 - medical /occupational therapists
 - estate agent representatives
 - internal and external experts
- Legal documentation** may include:
 - leasing/ real estate contracts
 - probate /letters of administration
 - caveat document
 - writ
 - defences/replies/notices/counter claim/set off
 - associated court documents
- Management of legal documentation** may refer to:
 - checking documents for legal implications and complications to ensure content is accurate, complete and signature/s are obtained
 - documents are executed or their execution is arranged
 - identifying precedent
 - varying precedent to suit circumstances
 - managing documents to completion of process
 - lodging, filing, exchanging documents
- Legal ethics** may refer to:
 - confidentiality
 - privilege
 - duty to the court
 - undertakings
 - practice rules
 - liens
 - legislation and common law governing the provision of legal advice

EVIDENCE GUIDE

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, Range Statement and the Assessment Guidelines of this qualification.

Critical aspects for assessment and evidence required to demonstrate competency in this unit

A person who demonstrates competency in this unit must provide evidence of:

- taking instructions to open a client file and provide legislative information
- maintaining a client file according to instruction and applying relevant organisational technology and procedures to produce, file, store, and retrieve legal documents
- consulting with appropriate specialist/s to obtain information and complete documentation necessary to meet and reflect a client's needs
- Knowledge of the theory and practice related to the areas of Law of Torts, Contract Law, Evidence and Legal Processes and/or other areas of legal ethics
- Knowledge of and the application of relevant organisational technology to produce legal documents, and file management systems to store and retrieve files
- Knowledge of professional code of conduct in the legal industry

Context of and specific resources for assessment

Assessment must ensure:

- activities are related to a legal practice context
- activities are related to laws, regulations and procedures currently operating across the jurisdictions relevant to this qualification
- activities and assessments will be undertaken on the basis that only Australian Legal Practitioners (Solicitors/Barristers) may engage in legal practice (which includes providing legal advice and services and doing legal work); and that others must work on the instructions and under the supervision of an Australian Legal Practitioner

Resources implications for assessment include access to:

- suitable simulated or real workplace opportunities
- relevant Commonwealth and State legislation and regulations
- precedents, workplace manuals and reference material such as company policy, procedural manuals and checklists

Method of assessment

A range of assessment methods should be used to assess practical skills and knowledge. The following assessment methods are appropriate for this unit:

- research project and/or project work
- case studies and scenarios
- direct questioning

- examinations and tests
- presentations

**Guidance information
for assessment**

Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended.

VU21643 Evaluate and apply concepts and principles of cyber law

Unit Descriptor

This unit describes the skills and knowledge required to employ the provisions under cyber legislation, including rules of evidence, in order to support the work of a legal office, practice or associated context.

No licensing, legislative, regulatory or certification requirements apply to this unit at the time of publication.

Employability Skills

This unit contains Employability Skills.

Application of the Unit

This unit supports the work of personnel engaged in the operation of a legal office or associated fields within public and/or corporate sectors.

ELEMENT

Elements describe the essential outcomes of a unit of competency.

PERFORMANCE CRITERIA

Performance criteria describe the required performance needed to demonstrate achievement of the element. Where ***bold italicised*** text is used, further information is detailed in the required skills and knowledge and/or the range statement. Assessment of performance is to be consistent with the evidence guide.

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|--|--|
| 1. Determine the legal framework for cyber law | <p>1.1 Identify and describe the production of information and the communication systems of <i>digital channels and platforms</i></p> <p>1.2 Research and discuss the development and aims of Australian and international cyber law in response to use of digital communications with reference to relevant vocabulary and legal terminology</p> <p>1.3 Research and discuss emerging legal issues pertaining to digital communications with reference to the need for, and nature of, changes to legislation</p> <p>1.4 Identify <i>cyber offences</i> under applicable State and Federal law and outline and discuss the role of criminal and civil jurisdictions</p> |
| 2. Identify and apply cyber privacy law | <p>2.1 Describe the scope of privacy law applicable to digital information technology with reference to sexting, sexual and other harassment, bullying, stalking and vilification</p> <p>2.2 Outline the scope of privacy law applicable to digital technology with reference to fraud, scams, identity theft and defamation</p> <p>2.3 Research and describe how relevant evidence of contravention of privacy laws are obtained from local and international social media and data storage sources</p> |

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|---|--|
| 3. Identify and apply cyber law pertaining to business and commerce | <p>3.1 Outline and apply legal provisions for businesses using digital communications with reference to:</p> <ul style="list-style-type: none">• online contracts• intellectual property in the digital age• copyright• trademarks• domain names• content ownership <p>3.2 Outline and debate issues of cyber ethics</p> <p>3.3 Research cyber-squatting, and other breaches intellectual property protection, with reference to relevant legal provision and apply relevant remedies</p> <p>3.4 Identify regulatory and policy issues for online business and commerce with reference to:</p> <ul style="list-style-type: none">• digital marketing and marketing privacy• regulation of content• consumer protection laws |
| 4. Research and apply law pertaining to cyber crime | <p>4.1 Discuss the meaning of the phrase <i>new ways to break old laws</i> with reference to availability of anonymity, spread of pornography and other criminal issues</p> <p>4.2 Identify and discuss the impact of new crimes and civil breaches unique to e-commerce and digital communications</p> <p>4.3 Identify and discuss the role and powers of investigative agencies and evaluate for application to practice</p> <p>4.4 Identify and apply reporting mechanisms for breaches of law, with reference to mandatory reporting</p> |
| 5. Research computer forensics and apply rules of evidence | <p>5.1 Research the development of computer (digital) forensics, with reference to private industry and public agency initiatives</p> <p>5.2 Research processes of computer forensics and with reference to process of investigation, obtaining concealed information, uncovering chains of custody of data and security breaches and discuss for application</p> <p>5.3 Review and apply rules of evidence appropriate to breaches of cyber law</p> |

REQUIRED SKILLS AND KNOWLEDGE

This describes the essential skills and knowledge, and their level, required for this unit.

Required Skills

- communication skills to work with clients, colleagues, management, relevant specialist personnel under direction, independently or within a team
- research and analytical skills to identify and debate the extent of, and opportunities for criminal and civil offences committed through digital communication channels and platforms
- research to identify and source legislation and provisions relevant to the digital communications
- critical analysis skills to research and evaluate the history and development of relevant legislation
- analytical and critical analysis skills to evaluate forensic investigation and determine application of rules of evidence across a range of relevant circumstances
- analytical, literacy and technical writing skills to interpret information, prepare documents and reports

Required Knowledge

Please note: It is possible that over the five year accreditation period of this document, some legislation may become superseded. Teachers are encouraged to check the currency of legislation cited in this course at:

For Commonwealth Legislation: <http://www.comlaw.gov.au/>

For Victorian State Legislation: <http://www.legislation.vic.gov.au/>

- relevant Federal and State and local government legislative and statutory provisions pertaining to cyber law
- general functions and features of digital channels and platforms
- general nature of civil and criminal offences committed through digital communications
- forensic methods of obtaining evidence of breaches of cyber law
- processes and provisions for accessing stored communications
- international responses and approaches to cyber offences
- principles, aims and provisions of cyber law, including:
 - privacy, harassment, fraud and defamation
 - ethics
 - online business operations and e-commerce
 - criminal and civil offences
 - rules of evidence

RANGE STATEMENT

The Range Statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. ***Bold italicised*** wording in the performance criteria is detailed below.

Digital channels and platforms refer to:

- channel refers to digital information delivery systems, such as:
 - mobile
 - internet
 - social media
 - radio and television
- platform is the framework in which the information is constructed and sits within the channels. Platforms may include:
 - online interactive accessible and scalable communication techniques
 - integration of social media services via social network aggregation platforms
 - software frameworks linking social media and websites

Cyber offences may refer to:

- high tech crime, such as:
 - computer intrusions, including malicious hacking
 - unauthorised modification of data, including destruction of data
 - denial-of-service attacks
 - distributed-denial of-service attacks using botnets
 - creation and distribution of malicious software, such as:
 - viruses, worms, trojans
- internet fraud and scams, such as:
 - internet banking fraud (mobile banking, phishing, mule recruitment)
 - shopping and auction site fraud
 - scams involving *illegal advance fee*
 - spam – attempts to obtain banking details
 - identity theft
- pornography and sexual abuse
- child pornography, abuse and exploitation
- other harassment
- offensive and prohibited internet content

Computer (digital) forensics may refer to

- on-site assistance for the identification, examination and preservation of electronic data during search warrant execution
- laboratory examination of electronic devices and data
- sophisticated electronic data recovery
- document examination (PDF, 1MB)

EVIDENCE GUIDE

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, Range Statement and the Assessment Guidelines of this qualification.

Critical aspects for assessment and evidence required to demonstrate competency in this unit

A person who demonstrates competency in this unit must provide evidence of:

- researching, evaluating, discussing and employing concepts and principles of underlying the application of cyber law within a legal office, or related, environment
- knowledge of relevant international, Federal, State and local government legislative and statutory requirements, regulations and provisions pertaining to cyber law
- knowledge of digital communication channels and platforms
- knowledge of the application of cyber law to civil and criminal offences including private individuals and groups and commercial and business operations
- knowledge of the growth of illegal practice through digital communications and development of responsive legislation which may include the international convention as well as Australian initiatives.

Context of and specific resources for assessment

Assessment must ensure:

- activities are related to a legal practice context
- activities are related to laws, regulations and procedures currently operating across the jurisdictions relevant to this qualification

Resources implications for assessment include access to:

- suitable simulated or real workplace opportunities
- research publications on legality issues of digital communications
- relevant legislation, such as:
 - *Crimes Act 1958 s21(A)*
 - *Mutual Assistance in Criminal Matters Act 1987 (Cth)*
 - *Criminal Code Act 1995 (Cth)*
 - *Telecommunications (Interception and Access) Act 1979 (Cth)*
 - *Telecommunications Act 1997 (Cth)*
 - *Cybercrime Legislation Amendment Act 2012 (Cth)*

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| Method of assessment | <p>A range of assessment methods should be used to assess practical skills and knowledge. The following assessment methods are appropriate for this unit:</p> <ul style="list-style-type: none">• research project and/or project work• case studies and scenarios• direct questioning• examinations and tests• presentations |
| Guidance information for assessment | <p>Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended. Suggested units may include but are not limited to:</p> <ul style="list-style-type: none">◦ <i>VU21631 Investigate and apply legal process</i>◦ <i>VU21635 Define and evaluate law of evidence</i>◦ <i>VU21640 Analyse and apply civil procedure</i>◦ <i>VU21641 Analyse and evaluate concepts and principles of criminal law</i> |

VU21644 Examine and apply land contract law

Unit Descriptor

This unit describes the skills and knowledge required to apply particulars of land contract law, including conveyancing duties of care; investigation of title; parties and procedures; small business transactions, and, subdivision rules, in order to support the work of a legal office, or associated context.

No licensing, legislative, regulatory or certification requirements apply to this unit at the time of publication.

Employability Skills

This unit contains Employability Skills.

Application of the Unit

This unit supports the work of personnel engaged in the operation of a legal office, legal aid provider, government department, financial institution including bank loans or mortgage departments, or, associated fields within public and/or corporate sectors.

ELEMENT

PERFORMANCE CRITERIA

Elements describe the essential outcomes of a unit of competency.

Performance criteria describe the required performance needed to demonstrate achievement of the element. Where ***bold italicised*** text is used, further information is detailed in the required skills and knowledge and/or the range statement. Assessment of performance is to be consistent with the evidence guide.

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| 1. Analyse the duties of a conveyancer and real estate agent under the law of contract and the law of tort | 1.1 Distinguish the <i>various parties to different contracts</i> 1.2 Identify and apply <i>the basis of liability at tort</i> 1.3 Assess and apply the <i>basis of liability at contract</i> 1.4 Outline, determine and apply the <i>remedies available to the aggrieved party</i> arising from a breach |
| 2. Examine the various types of property subdivision and determine and apply the typical clauses incorporated in certain contracts of the sale of land | 2.1 Identify the characteristics of <i>types of property subdivisions</i> 2.2 Specify the nature of drafting contracts and apply factors that must be considered when drafting contracts for various types of property/land sale 2.3 Identify and discuss the advantages and disadvantages of ownership of the different types of property subdivisions 2.4 Examine the rules in the Subdivision (Body Corporate) Regulations and determine their application 2.5 Determine and discuss the circumstances which require <i>special clauses in contracts</i> 2.6 Assess and apply the provisions of <i>contract terms</i> provided by statute |

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| 3. | Determine and apply conditions and procedures related to title. | 3.1 Identify, describe and apply the <i>elements of a General Law title</i> |
| | | 3.2 Identify and detail the <i>procedures for investigating a Torrens title</i> |
| | | 3.3 Distinguish and assess the conveyancing <i>procedures that are common to both the General Law and Torrens titles systems analysis</i> |
| | | 3.4 Analyse and apply the procedure/s for the investigation of the title held by the vendor in the sale of land |
| | | 3.5 Assess whether the vendor has given good title |
| 4. | Analyse government office procedures relevant to the conveyancing process | 4.1 Identify and describe the principles and <i>requirements of Duties Act</i> |
| | | 4.2 Outline the <i>procedures commonly encountered</i> at the Land Registry Office. |
| | | 4.3 Discuss the <i>role of the local council</i> for application to conveyancing practice |
| 5. | Analyse and assess special actions to be taken when a party to a contract is other than the registered owner | 5.1 Describe and debate for application to practice the powers, obligations and responsibilities of the different parties to a contract including: <ul style="list-style-type: none"> • <i>powers and responsibilities of executors and trustees of deceased estates</i> • <i>powers and responsibilities of the trustees of bankrupt estates</i> • <i>powers and responsibilities of corporations under the corporations law</i> • <i>powers and responsibilities of corporations under a Special Act of Parliament and other incorporated bodies</i> |
| | | 5.2 Determine other relevant legislation and assess, for application to practice, its impact on the capacity of <i>certain parties</i> |
| 6. | Analyse and assess conveyancing procedures and duties for a sale and purchase of a small business | 6.1 Determine the <i>provisions and area of operation of the Estate Agents Act</i> relevant to the sale and purchase of a small business, with reference to general conditions, special conditions and particulars of sale |
| | | 6.2 Specify and apply the <i>special duties and considerations</i> imposed on a conveyancer in the sale and purchase of a small business |

REQUIRED SKILLS AND KNOWLEDGE

This describes the essential skills and knowledge, and their level, required for this unit.

Required Skills

- communication skills to work with clients, colleagues, management, relevant specialist personnel under direction, independently or within a team
- research and analytical skills to identify and debate a wide range of land contracts and land contract conditions
- research, analytical and organisational skills to identify and evaluate the duties and responsibilities of a conveyancer in applying the principles and processes of land contract law
- analytical and problem-solving skills to determine appropriate application of principles of land contract law and to determine appropriate remedies for breach of contract
- analytical, literacy and technical writing skills to interpret information, correctly prepare and format documents, contracts and reports
- computer software technology skills to contract electronically

Required Knowledge

Please note: It is possible that over the five year accreditation period of this document, some legislation may become superseded. Teachers are encouraged to check the currency of legislation cited in this course at:

For Commonwealth Legislation: <http://www.comlaw.gov.au/>

For Victorian State Legislation: <http://www.legislation.vic.gov.au/>

- relevant international, Federal, State and local government legislative and statutory requirements and provisions pertaining to land contracts
- the terms, conditions and procedures of land contracts, including:
 - duties of care owed by the conveyance and real estate agent
 - appropriate contracts for the sale of different land interests
 - investigation of the vendor's title
 - Land Registry Office and local council procedures
 - dealing with specific parties to contracts for the sale of land
 - subdivisions and body corporate
 - sale of small businesses

RANGE STATEMENT

The Range Statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. ***Bold italicised*** wording in the performance criteria is detailed below.

Various parties to different contracts may include:

- agent and vendor/principal
- vendor and purchaser
- solicitor and client

- Basis of liability at tort*** may include:
- duties of care owed by real estate agents and conveyancers
 - failure to comply to the required standard
 - foreseeability
 - causation
 - assessment of loss
- Basis of liability at contract*** may include:
- express terms
 - implied terms
 - conditions and warranties
 - breach of the contract
- Remedies available to the aggrieved party*** may refer to:
- damages
 - effect on the contract of sale
 - relevant case law
- Types of property subdivision*** may refer to:
- conventional lots
 - company share flats
 - stratum estates
 - strata estates
 - cluster estates
 - Subdivisions Act, 1988
- Special clauses in contracts*** may include:
- purchasers finance
 - admitting the identity of land
 - requiring the release of deposits requiring the purchaser to assume liability for all charges
 - adjustment for land tax
 - auction contracts
 - pre selling clauses
 - terms contracts
 - nominee clauses and substitution
 - individual and unique fact situation examples
 - tax implications
- Contact terms*** may refer to:
- implied conditions
 - ability to exclude or amend Table A clauses
 - examination of general conditions of the contract of sale
 - subdivision filing process
 - owners corporation

Elements of a General**Law** may include:

- perusing the abstract of the vendor's general law deeds.
- searching the general law chain back 30 years
- identifying the relevant Property Law Act and Transfer of Land Act provisions
- conversion of a general law title to Torrens title

Procedures for**investigating a Torrens****title** may include:

- searching at the Land Titles Office
- analysing the results of title searches
- mortgages, caveats and other encumbrances
- different formats for the certificate of title
- obtaining a plan of the land
- other related Land Titles Office searches

Procedures which are common to both the General Law and Torrens

may include:

- the duty to provide good title
- analysis of the vendor's statement
- enquires of statutory bodies
- physical inspection of the land sold.
- requisitions enquires and objections to the vendors title
- acceptance of title

Requirements of Duties**Act** may include:

- The Duties Act
- liability
- rates
- exemptions
- penalty interest
- opinions
- appeals
- aggregation
- forms

Procedures commonly**encountered** may

include:

- lodgement for registration
- regulations under the *Transfer of Land Act*
- Titles Office practice
- orders to register
- control orders
- stopped dealings
- rectifications
- lost titles
- new titles

Role of the local council

may include:

- provisions of certificates
- building permits
- building inspections
- subdivision process

Powers and responsibilities of Executors and Trustees of Deceased Estates may include:

- proof of power to sell by grant of probate or letters of administration
- power of trustee to sell by transmission application
- power of surviving joint proprietor to sell
- transmission application
- survivorship application
- power to sell by way of a limited grant of probate
- effect on contract of death of party
- examination and analysis of the appropriate documents

Powers and responsibilities of the trustees of Bankrupt Estates may include:

- meeting of creditors to approve sale in some cases
- proof of power of sale by production of court order by trustee in bankruptcy
- proof of power of sale by production of court order by the sheriff
- proof of power of sale by production of Family Court order by a spouse or by an officer of that court
- effect on contract of bankruptcy

Powers and responsibilities of corporations under the Corporations Law may include:

- power to sell or to buy set out in the Constitution
- authority to execute binding contracts set out in the Constitution
- authority to execute may be delegated by a meeting of the directors
- obtaining of directors guarantees
- execution clauses used by corporations

Powers and responsibilities of corporations under a Special Act of Parliament and other incorporated bodies may include:

- non-profit associations and clubs
- statutory bodies
- the source of the power to sell
- ministerial consent and delegation of consent

Certain parties may include:

- persons of unsound mind
- infants
- parties in family law proceedings

- foreign nationals purchasing Victorian land

Provisions and area of operation of the Estate Agents Act may refer to:

- definition of a small business
- Consideration of section 52 of the *Estate Agents Act*
- who may prepare the statement
- the contents of the statement
- the effect of a false statement being given

Special duties and considerations may include:

- the need to search the title and obtain mortgages consent to a lease
- statutory and planning enquiries
- assignment of lease and any licences
- assignment of the business name
- special requisitions
- value of chattels and taxation implications for the vendor

EVIDENCE GUIDE

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, Range Statement and the Assessment Guidelines of this qualification.

Critical aspects for assessment and evidence required to demonstrate competency in this unit

A person who demonstrates competency in this unit must provide evidence of:

- investigating and applying appropriate procedures to meet requirements for a range of land contract contexts
- using correct format and protocols for relevant documentation and forms
- knowledge of the land contract law including conveyancing duties of care, investigation of title, parties and procedures, sale of small business and subdivision rules
- knowledge of the powers, obligations and responsibilities of the different parties to the contract
- research into roles and duties of Land Registry Office and local council for conveyancing / land contracts

Context of and specific resources for assessment

Assessment must ensure:

- activities are related to a legal practice context
- activities are related to laws, regulations and procedures currently operating across the jurisdictions relevant to this qualification

Resources implications for assessment include access to:

- suitable simulated or real workplace opportunities
- relevant legislation, such as:
 - *Duties Act, 2000*
 - *Estate Agents Act 1995*

- o *Sale of Land Act 1962*
- o *Subdivision Act, 1988*
- o *Transfer of Land Act 1958*
- o *Subdivision (Body Corporate)Regulations 2001*

Method of assessment

A range of assessment methods should be used to assess practical skills and knowledge. The following assessment methods are appropriate for this unit:

- research project and/or project work
- case studies and scenarios
- direct questioning
- examinations and tests
- presentations

Guidance information for assessment

Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended. Suggested units may include but are not limited to:

- o *VU21631 Investigate and apply legal process*
- o *VU21633 Analyse and apply law of contract*
- o *VU21637 Employ property law principles and concepts*
- o *VU21638 Apply conveyancing process*
- o *VU21645 Apply land contract law to mortgages, leases and building contracts*

VU21645 Apply land contract law to mortgages, leases and building contracts

Unit Descriptor

This unit describes the skills and knowledge required to apply particulars of land contract law pertaining to law of mortgages and the appropriate rules relating to commercial leases and building contracts in order to support the work of a legal office, or associated context.

No licensing, legislative, regulatory or certification requirements apply to this unit at the time of publication.

Employability Skills

This unit contains Employability Skills.

Application of the Unit

This unit supports the work of personnel engaged in the operation of a legal office, legal aid provider, government department, financial institution including bank loans or mortgage departments, or, associated fields within public and/or corporate sectors.

Co-requisite Unit(s) (if applicable; otherwise delete row)

| ELEMENT | PERFORMANCE CRITERIA |
|--|---|
| Elements describe the essential outcomes of a unit of competency. | Performance criteria describe the required performance needed to demonstrate achievement of the element. Where <i>bold italicised</i> text is used, further information is detailed in the required skills and knowledge and/or the range statement. Assessment of performance is to be consistent with the evidence guide. |
| 1. Research and apply the concept of an equitable interest in land | <p>1.1 Define the term <i>equitable interest</i> and examine the concept and principles of equitable interests pertaining to land and protection of an equitable interest</p> <p>1.2 Determine the nature and effect of a <i>caveat with regard to land</i></p> <p>1.3 Analyse and distinguish the <i>law applicable when equities compete with regard to land</i></p> <p>1.4 Distinguish and apply legislative and case law determine which equity will take priority in the event of a conflict occurring</p> |
| 2. Analyse and apply a mortgage at common law and under the Transfer of Land Act | <p>2.1 Analyse the contents of a mortgage and the relevant documentation</p> <p>2.2 Describe and discuss the application of a mortgage as giving secured creditors priority over unsecured or unregistered interests</p> <p>2.3 Distinguish the mortgage from other forms of security</p> <p>2.4 Differentiate between legal and equitable mortgages</p> <p>2.5 Determine and assess the <i>effect of a mortgage under General Land Law</i></p> |

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|---|-----|--|
| | 2.6 | Differentiate between the <i>effect of a mortgage over General Land Law and under the Transfer of Land Act</i> |
| | 2.7 | Account for the different methods of mortgage creation by recognition in a relevant fact situation. |
| 3. Analyse the rights and obligations of both the mortgagee and the mortgagor | 3.1 | Outline the <i>mortgagee's rights under the provisions of a mortgage and the applicable law</i> , and demonstrate by use of example. |
| | 3.2 | Specify, discuss and apply the <i>mortgagee's obligations</i> |
| | 3.3 | Specify, discuss and apply <i>mortgagor's rights and obligations</i> |
| | 3.4 | Determine standard common provisions of a mortgage and identify relevant mortgage and mortgage obligations and duties |
| 4. Examine the case law regarding the priority between mortgages and the law, and the procedure involved in a variation of the priorities | 4.1 | Examine the <i>provisions of the Transfer of Land Act requiring registration and its effect</i> |
| | 4.2 | Scrutinize the facts and decision in the Claytons Case and determine the need for caution when allowing later mortgages |
| | 4.3 | Analyse the nature of an accommodation mortgage and its application |
| | 4.4 | Use priority agreements to solve the consequences of Clayton's Case and accommodation mortgages |
| | 4.5 | Analyse the mortgagee relationships |
| 5. Determine and apply considerations when making a mortgage for commercial purposes | 5.1 | Outline the <i>related considerations when making a commercial mortgage</i> |
| | 5.2 | Define the types of commercial mortgages |
| | 5.3 | Determine the considerations in the provision of development mortgages |
| | 5.4 | Differentiate between a mortgage for commercial and residential purposes for application to practice |
| 6. Research the commercial lease as a commercial negotiation between the lessor and the lessee and apply relevant statutory provisions | 6.1 | Differentiate between <i>conditions and warranties in commercial leases</i> for application to practice |
| | 6.2 | Outline and apply the <i>provisions of the Retail Leases Act 2003</i> |
| | 6.3 | Analyse and apply, as appropriate, the common terms in a commercial lease, including terms from the following criteria: <ul style="list-style-type: none"> • some usual terms as conditions and warranties • some special terms for industrial, agricultural or commercial usage |

- options for further terms
 - the danger of the perpetual option
 - common terms and schedule terms
- 6.4 Identify and apply the various ***circumstances resulting in termination of a lease***
- 6.5 Determine and apply the main features of the assignment of a commercial or retail lease
7. Analyse and evaluate the provisions of the Standard building contract to ascertain the rights of the builder and the landowner
- 7.1 Analyse the features, format and role of the ***building contracts***
- 7.2 Determine and apply the ***main terms within a contract***
- 7.3 Determine the relevance of *Domestic Building Contracts Act 1995*
- 7.4 Determine the rights of the builder and landowner in the provision of the standard building contract

REQUIRED SKILLS AND KNOWLEDGE

This describes the essential skills and knowledge, and their level, required for this unit.

Required Skills

- communication skills to work with clients, colleagues, management, relevant specialist personnel under direction, independently or within a team
- research and analytical skills to identify and debate a wide range of mortgages, leases and building contract issues
- research, analytical and organisational skills to identify and evaluate the rights and obligations of parties involved in mortgages, leases and building contracts
- analytical and problem-solving skills to determine appropriate application of principles of land contract law and to determine appropriate remedies for breach of contract
- analytical, literacy and technical writing skills to interpret information, correctly prepare and format documents, contracts and reports
- computer software technology skills to contract electronically

Required Knowledge

- relevant international, Federal, State and local government legislative and statutory requirements and provisions pertaining to mortgages, leases and building contracts
- the terms, conditions and procedures of mortgages, leases and building contracts, including:
 - competing equitable interests in land
 - the nature of a mortgage as a security
 - mortgagees and mortgagors rights and obligations
 - priorities amongst mortgagees
 - commercial mortgage transactions

- o leases for commercial premises
- o typical building contracts for premises on land

RANGE STATEMENT

The Range Statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. ***Bold italicised*** wording in the performance criteria is detailed below.

Caveat with regard to land may refer to:

- transfer of land act provisions
- caveat document
- procedure for the removal of a caveat
- objection by the registered proprietor
- effect of subsequent dealings
- lapsing of caveats

Law applicable when equities compete with regard to land may refer to:

- first in time takes priority rule
- rule as to postponement of priority
- effect of caveats on priority
- relevant case examples
- advising a purchaser of land

Effect of a mortgage under General Land Law may refer to:

- conveyance of the legal estate
- subsequent mortgages as being enforceable in equity only
- re-conveyance as a discharge
- statutory receipt

Effect of a mortgage over General Land Law and under the Transfer of Land Act may refer to:

- effect of the mortgage under the transfer of land act
- mortgage as a statutory charge
- requirement for registration
- subsequent mortgages may be registered
- unregistered mortgages enforceable in equity
- relevant statutory provisions

Mortgagee's rights under the provisions of mortgage and the applicable law may include:

- to have the terms of the mortgage observed
- to require the payment of interest and principal
- to obtain possession in the event of default
- to exercise the power of sale
- to foreclose

Mortgagee's obligations may include:

- to allow quiet possession until default
- to give notice before exercising any rights
- not to clog the equity of redemption

- to give a discharge upon completion
 - to have due regard to the interests of the mortgagor on sale
 - the application of case law examples
- Mortgagor's rights*** may include:
- to obtain a discharge
 - to quiet possession
 - mortgagee having due regard to his/her interests
- Mortgagor's obligations*** may include:
- to observe the terms of the mortgage
 - to maintain and insure the premises
 - to allow inspection.
 - deliver up quietly on default
 - not to interfere with the due process of sale
- Provisions of the transfer of Land Act requiring registration and its effect*** may refer to:
- requirement for registration
 - legislative requirements for variation of the terms of a mortgage
 - requirements for the variation of priority as between registered mortgages
 - nature of the unregistered mortgage and process of registration in the event of opposition by a prior mortgagee
 - application of appropriate case law
- Mortgagee relationships*** may include:
- relationship of a first mortgagee to subsequent mortgagees
 - relationship of subsequent mortgagees to the first mortgagee
 - distribution of funds on sale when more than one mortgage exists
 - requirement of one mortgagee to give notice to others before exercising certain rights
 - relevant statutory provisions and common law rules
- Considerations when making a commercial mortgage*** may include:
- ability to negotiate the terms
 - commercial considerations as to interest and security
 - commercial risk as compared to domestic risk
- Types of commercial mortgages*** may include:
- accommodation mortgage
 - all advances mortgage
 - progressive advances mortgage
 - fixed term fixed interest mortgage
 - short term mortgage
- Considerations in the provision of***
- progressive advance of funds
 - problem of valuation of partially completed buildings

- development mortgages** may include:
- progressive discharge of the mortgage on part payments of debt
 - apportionment of the mortgage debt on subdivision
- Conditions and warranties in commercial leases** may include:
- reason to distinguish between conditions and warranties.
 - effect of the breach of a warranty
 - effect of the breach of a condition
 - examination of lease sample conditions
- Provisions of the Retail Leases Act 2003** may include:
- operation of the act and the types of premises covered
 - protection given to a tenant
 - obligations of the landlord - the right to a minimum term
 - right to review the rent
 - disclosure statement and failure to produce
 - tribunal
- Circumstances resulting in termination of a lease** may include:
- forfeiture for breach of a condition.
 - equitable action available for relief against forfeiture
 - by passage of time.
 - by destruction of the subject matter
 - by negotiation and agreement
- Main features of the assignment of a commercial or retail lease** may include:
- assignment form
 - assignors remain liable
 - restrictions upon the lessor's ability to prohibit assignments
- Building contracts** may refer to:
- standard form
 - other forms
 - form relationship to the type of works being performed
- Main terms within a contract** may include:
- prime cost items
 - variation in prime cost items in relation to a fixed price contract
 - builders security for outstanding money
 - liquidated penalty for late payments
 - liquidated penalty for delay in construction
 - non-liquidated damages still available as a remedy

EVIDENCE GUIDE

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, Range Statement and the Assessment Guidelines of this qualification.

Critical aspects for assessment and evidence required to demonstrate competency in this unit

A person who demonstrates competency in this unit must provide evidence of:

- knowledge of Law of Mortgages and the rules relating to commercial leases and building contracts
- knowledge of the concept of an equitable interest in land and the equity which will take priority in the event of a conflict occurring
- analysing the effect of a mortgage at common law and under the Transfer of Land Act and determining the relevant documentation
- determining the mortgagee's rights and obligations under the provisions of mortgage and the applicable law
- knowledge of the appropriate rules relating to commercial leases and building contracts
- determining the rights of the builder and landowner in relation to the provisions of the Standard building contract

Context of and specific resources for assessment

Assessment must ensure:

- activities are related to a legal practice context
- activities are related to laws, regulations and procedures currently operating across the jurisdictions relevant to this qualification

Resources implications for assessment include access to:

- suitable simulated or real workplace opportunities
- relevant legislation, such as:
 - *Domestic Building Contracts Act 1995*
 - *Retail Leases Act 2003*
 - *Transfer of Land Act 1958*

Method of assessment

A range of assessment methods should be used to assess practical skills and knowledge. The following assessment methods are appropriate for this unit:

- research project and/or project work
- case studies and scenarios
- direct questioning
- examinations and tests
- presentations

**Guidance information
for assessment**

Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended. Suggested units may include but are not limited to:

- o *VU21631 Investigate and apply legal process*
- o *VU21634 Analyse and apply law of torts*
- o *VU21638 Apply conveyancing process*
- o *VU21644 Examine and apply land contract law*

VU21646 Assess the application of consumer protection law

Unit Descriptor

This unit describes the skills and knowledge required to determine and apply areas of the consumer law relevant to legal requirements of consumers, sellers and manufacturers.

No licensing, legislative, regulatory or certification requirements apply to this unit at the time of publication.

Employability Skills

This unit contains Employability Skills.

Application of the Unit

This unit supports the work of personnel engaged in the operation of a legal office, a Legal Aid provider, government department, financial institution, other area/s dealing with consumers, suppliers of goods or services or manufacturers or associated fields within public and/or corporate sectors.

ELEMENT

Elements describe the essential outcomes of a unit of competency.

PERFORMANCE CRITERIA

Performance criteria describe the required performance needed to demonstrate achievement of the element. Where ***bold italicised*** text is used, further information is detailed in the required skills and knowledge and/or the range statement. Assessment of performance is to be consistent with the evidence guide.

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| 1. Identify the rationale for, and the main areas covered by, consumer protection laws | 1.1 Define the term <i>consumer</i> and identify persons who may be considered consumers pursuant to S.3 <i>Australian Consumer Law</i> 1.2 Determine and discuss the factors that result in consumers requiring legal protection 1.3 Assess the <i>areas of conduct regulated</i> by consumer protection laws 1.4 Analyse the relationship between <i>Commonwealth and State consumer protection laws</i> |
| 2. Analyse and apply the legislative controls that protect consumers | 2.1 Analyse the circumstances amounting to unconscionable conduct 2.2 Analyse the liability for <i>misleading and deceptive conduct</i> 2.3 Determine the circumstances amounting to <i>false or misleading representation</i> and determine the legal consequences that apply 2.4 Determine <i>other types of unfair practices</i> prohibited in Chapter 3, Part 3-1 <i>Australian Consumer Law</i> and apply to practice |

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| | 2.5 | Evaluate the term <i>unfair contract terms</i> , including the consequences of unfair terms in consumer contracts, and apply to practice |
| | 2.6 | Evaluate the meaning and use of the consumer guarantees pursuant to S.51 <i>Australian Consumer Law</i> |
| | 2.7 | Analyse, for application to practice, the various penalties imposed and remedies available under the law |
| 3. | Analyse and apply the legal obligations of suppliers of goods or services | <p>3.1 Assess the implications of the law of contract for the sale of goods and services, with specific reference to the consumer guarantees</p> <p>3.2 Evaluate the use of exclusion clauses, including the requirements in relation to notice and the rules relating to interpretation of clauses</p> <p>3.3 Analyse and apply Part 3-2 <i>Australian Consumer Law</i> and Part 2A <i>Fair Trading Act 1999 (Vic)</i>, with specific reference to the definition of consumer, consumer guarantees relating to the supply of goods and services, together with remedies</p> <p>3.4 Analyse and apply Part I <i>Goods Act 1958</i> with specific reference to the definition of a sale of goods, rules as to delivery of goods, remedies and transfer of ownership.</p> <p>3.5 Analyse the meaning and use of unfair contract terms in relation to standard form contracts</p> |
| 4. | Analyse and apply the obligations of manufacturers and the rights of consumers to compensation under the law of tort and the <i>Australian Consumer Law</i> in relation to faulty products | <p>4.1 Analyse the situations in which a manufacturer can be liable for a faulty product under the law of torts</p> <p>4.2 Assess and apply Chapter 3, Part 3-5 <i>Australian Consumer Law</i>, with specific reference to persons entitled to compensation, types of goods covered, definition of manufacturer and circumstances in which rights to compensation arise</p> <p>4.3 Determine the grounds on which a consumer is entitled to compensation under the Act.</p> <p>4.4 Determine and consider any exclusions from the right to compensation and limitation of liability</p> <p>4.5 Assess and apply sellers' indemnity from the manufacturer</p> |
| 5. | Analyse and apply the liability of manufacturers for unsafe products under Part 3-3 | <p>5.1 Determine the reasons Chapter 3 <i>Australian Consumer Law</i> was enacted</p> <p>5.2 Outline the circumstances where manufacturer is liable, with specific reference to definition of manufacturer and situation where manufacturer is unknown</p> |

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| Australian Consumer Law. | <p>5.3 Analyse the circumstances under which goods will be found defective, with specific reference to definition of defect and circumstances to be taken into account</p> <p>5.4 Specify, for application to practice, the types of injury loss or damage for which a manufacturer may be liable</p> <p>5.5 Outline, for application to practice, the legislated defences available to a manufacturer</p> <p>5.6 Identify and apply the time limits on claims for compensation</p> |
| 6. Analyse legislation improving product safety and product information standards | <p>6.1 Analyse and discuss the reasons for imposing product safety and product information standards</p> <p>6.2 Research and describe the product safety and product information scheme established under Chapter 3, Part 3-3, 3-4 and 3-5 <i>Australian Consumer Law</i> and Part 3 <i>Fair Trading Act 1999(Vic)</i></p> <p>6.3 Outline and specify the role and powers of the Minister</p> <p>6.4 Evaluate the requirements in relation to publication of draft notices and conferences, with specific reference to advertisements or notice to suppliers, conferences and situation where goods are declared dangerous</p> <p>6.5 Identify and outline, for application to practice, the consequences of failing to comply with a product safety notice, with specific reference to offences and civil actions</p> <p>6.6 Determine the authority conferred by <i>Competition and Consumer Act 2010</i> to make regulations prescribing product safety</p> <p>6.7 Demonstrate the powers conferred by Part 3 <i>Fair Trading Act 1999(Vic)</i> in relation to product safety with specific reference to interim orders, permanent orders and product safety regulations</p> |
| 7. Identify and analyse the types of credit available, their relative advantages and disadvantages, and the requirements on the part of the credit | <p>7.1 Identify types of consumer credit, evaluating the advantages and disadvantages of each for application to practice</p> <p>7.2 Analyse the key changes brought about by the <i>National Consumer Credit Protection Act 2009 (Cth)</i></p> <p>7.3 Analyse the provisions of the National Credit Code</p> <p>7.4 Analyse the provision of security for credit by a mortgage over goods and apply to practice</p> |

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| provider and the consumer | 7.5 Determine and specify, for application to practice, the <i>courses of action open to a consumer</i> if the consumer fails or is unable to repay credit |
| | 7.6 Outline the role of the Financial Ombudsman Service and the Australian Securities and Investments Commission |
| | 7.8 Determine and specify when the old state-based laws and the Consumer Credit Code apply to consumer credit contracts |
| 8. Identify the bodies available to protect the rights of the consumer for application to practice | 8.1 Outline the composition, operations and provided services of the Consumer Affairs Victoria (Vic) and the Australian Competition and Consumer Commission (Cth) |
| | 8.2 Analyse the composition, jurisdiction and operations, including the process of making a claim, of the Victorian Civil and Administrative Tribunal (VCAT) |
| | 8.3 Evaluate the relevant provisions of the Victorian Civil and Administrative Tribunal Act 1998(Vic) with specific reference to the tribunal, its areas of operation, procedure and orders |

REQUIRED SKILLS AND KNOWLEDGE

This describes the essential skills and knowledge, and their level, required for this unit.

Required Skills

- communication skills to work with clients, colleagues, management, relevant specialist personnel under direction, independently or within a team
- research and analytical skills to investigate and debate the need for, and development of, consumer protection legislation
- research and analytical skills to identify and debate a wide range of consumer protection conditions and issues
- analytical and problem-solving skills to determine appropriate application of principles and provisions under *Australian Consumer Law* and other relevant legislation
- analytical, literacy and technical writing skills to interpret information, prepare documents and reports

Required Knowledge

Please note: It is possible that over the five year accreditation period of this document, some legislation may become superseded. Teachers are encouraged to check the currency of legislation cited in this course at:

For Commonwealth Legislation: <http://www.comlaw.gov.au/>

For Victorian State Legislation: <http://www.legislation.vic.gov.au/>

- relevant international, Federal, State and local government legislative and statutory requirements and provisions pertaining to consumer protection
- principles, aims and provisions of Australian consumer protection law, including:

- o the need for protection of consumers
- o obligations of suppliers of goods and services
- o liabilities of manufacturers for faulty products
- o liabilities of manufacturers for unsafe products
- o product safety and product information
- o consumer credit
- o redress for consumer complaints
- role and power of the relevant State and Federal Ministers
- bodies and agencies that protect consumer rights

RANGE STATEMENT

The Range Statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. ***Bold italicised*** wording in the performance criteria is detailed below.

Areas of conduct

regulated may refer to:

- contracts for the supply of goods or services
- manufacturer's liability
- occupational regulation
- provision of credit

Commonwealth and State consumer protection laws

may include:

- constitutional powers of the Commonwealth
- S. 109 of the Commonwealth Constitution
- Competition and Consumer Act 2010
- Development of intergovernmental agreement resulting in the *Australian Consumer Law (2011)*

Misleading and deceptive conduct

may refer to:

- meaning of misleading and deceptive conduct
- standard for determining whether conduct is misleading
- relevant section of the public likely to be misled

False or misleading representation

may refer to:

- meaning of representation
- distinction between false and misleading representations
- types of representations prohibited

Other types of unfair practices prohibited

may include:

- offering gifts or prizes without supplying
- bait advertising
- referral selling
- accepting payment without being able to supply
- harassment or coercion of consumer
- unsolicited sales (old door to door sales)
- issuing unsolicited credit cards
- asserting a right to payment

- pyramid selling

Grounds on which a consumer is entitled to compensation may include:

- fitness for purpose
- correspondence with description
- goods supplied by sample
- provision of repairs or parts
- consumer guarantees

Types of injury loss or damage for which a manufacturer may be liable may include:

- personal injury
- loss suffered through the injury or death of another person
- damage to goods
- damage to land or buildings

Legislated defences available to a manufacturer may include:

- defences pursuant to S.142 and S.148 Australian Consumer Law and s.137A Competition and Consumer Act, 2010
- the defect not existing at time of supply
- compliance with mandatory standard
- state of scientific or technical knowledge
- design of finished goods
- contributory negligence

Role and powers of the Minister may include:

- titles and portfolios of State and Federal Ministers responsible for consumer affairs
- responsibility of the minister/s for the administration of the product safety and product information scheme
- powers of administration, including:
 - warning notices
 - notices declaring goods unsafe
 - product recall notices

Types of consumer credit may include:

- credit sales
- loans
- continuing credit

Provisions of the National Credit Code to include:

- contracts regulated and excluded
- disclosure requirements
- contract formalities

Provision of security for credit by a mortgage over goods may include:

- nature of mortgages
- formalities in relation to mortgages
- ownership of mortgaged goods
- hire purchase agreements
- repossession of goods subject to mortgage

Courses of action open to a consumer may include:

- variations
- deferrals
- re-financing
- extension or moratorium
- the basis for consumers to apply for a consumer credit contract to be declared unjust

EVIDENCE GUIDE

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, Range Statement and the Assessment Guidelines of this qualification.

Critical aspects for assessment and evidence required to demonstrate competency in this unit

A person who demonstrates competency in this unit must provide evidence of:

- assessing consumer protection issue/s for consumers, sellers and manufacturers, and appropriately applying relevant consumer protection law
- knowledge of current bodies and agencies that protect consumer rights
- knowledge of *Australian Consumer Law* principles relating to consumers, sellers and manufacturers, including the role and powers of the Minister/s for consumer affairs
- identifying the areas covered under the Consumer Protection Law
- evaluating the Competition and Consumer Act 2010 in relation to the legislative controls on unconscionable conduct, misleading or deceptive conduct, false or misleading representations and other unfair practices
- analysing the Law of Tort and the Competition and Consumer Act 2010 with regard to the obligations and liabilities of manufacturers and the rights of consumers to compensation
- analysing the legislation with regard to improving product safety and product information standards
- identifying the types of credit available and the requirements on the part of the credit provider and the consumer

Context of and specific resources for assessment

Assessment must ensure:

- activities are related to a legal practice context
- activities are related to laws, regulations and procedures currently operating across the jurisdictions relevant to this qualification

Resources implications for assessment include access to:

- suitable simulated or real workplace opportunities
- relevant legislation, such as:

- o *National Consumer Credit Protection Act 2009*
- o *Goods Act 1958 (Vic)*
- o *Legal Profession Act 2004*
- o *Motor Car Traders Act 1986 (Vic)*
- o *Victorian Civil and Administrative Tribunal Act 1998 (Vic)*
- o *Competition and Consumer Act 2010 (Cth)* called Australian Consumer Law

Method of assessment

A range of assessment methods should be used to assess practical skills and knowledge. The following assessment methods are appropriate for this unit:

- research project and/or project work
- case studies and scenarios
- direct questioning
- examinations and tests
- presentations

Guidance information for assessment

Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended. Suggested units may include but are not limited to:

- o *VU21631 Investigate and apply legal process*
- o *VU21633 Analyse and apply law of contract*

VU21647 Research the application of administrative law

Unit Descriptor

This unit describes the skills and knowledge required to research the major areas of administrative law including the structure of government in Australia, the legal restraints on the use of governmental power, methods of review of government decisions and access to government information in order to support the work of a legal office, government department or agency, or organization having dealings with government departments or agencies.

No licensing, legislative, regulatory or certification requirements apply to this unit at the time of publication.

Employability Skills

This unit contains Employability Skills.

Application of the Unit

This unit supports the work of personnel engaged in the operation of a legal office, government department or agency, or organisation having dealings with government departments and/or agencies, or associated fields within public and/or corporate sectors.

ELEMENT

Elements describe the essential outcomes of a unit of competency.

PERFORMANCE CRITERIA

Performance criteria describe the required performance needed to demonstrate achievement of the element. Where ***bold italicised*** text is used, further information is detailed in the required skills and knowledge and/or the range statement. Assessment of performance is to be consistent with the evidence guide.

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| 1. Research the functions of the Australian legal framework | 1.1 Research and discuss the <i>development of the constitutional and legal framework</i> of Australia 1.2 Review the <i>structure of government in Australia</i> and the jurisdictions of the <i>Victorian and Federal court hierarchies</i> 1.3 Distinguish between the executive functions of government from the legislative and judicial functions 1.4 Examine and describe the nature of <i>quasi-judicial bodies</i> 1.5 Identify the nature of decisions forming the subject matter of administrative law |
| 2. Research subordinate legislation and the principles governing delegation of legislative power | 2.1 Define the term <i>subordinate legislation</i> and outline its operation 2.2 Examine and discuss the reasons for delegation of legislative power and explain the legal restraints on the delegation of legislative power 2.3 Describe the nature of parliamentary supervision and the control of subordinate legislation |

3. Analyse judicial review of decisions
 - 3.1 Research the historical background and features of judicial review, and debate the legal basis for intervention and the effect of a successful application for judicial review
 - 3.2 Assess the distinguishing features of **review on the merits**
 - 3.3 Compare and contrast judicial review of decisions and review on the merits
 - 3.4 Examine and apply the common law grounds for judicial review of administrative decisions including those made by subordinate legislative bodies and quasi-judicial bodies
 - 3.5 Evaluate and apply the statutory provisions relevant to judicial review of decisions, including the Commonwealth Constitution, the *Judiciary Act 1903 (Cth)*, the *Administrative Decisions (Judicial Review) Act 1977 (Cth)* and the *Administrative Law Act 1978 (Vic)*
 - 3.6 Compare and debate the grounds for judicial review at common law with the grounds specified in the *Administrative Decisions (Judicial Review) Act*
 - 3.7 Examine and discuss legal considerations regarding statutory exclusion of judicial review
 - 3.8 Analyse lack of procedural fairness as a ground for judicial review in relation to the historical development, the hearing rule, the rule against bias and applicability to private bodies
4. Determine the preconditions and apply remedies for an application for judicial review at common law or under legislation
 - 4.1 Analyse and apply the requirement of establishing standing with reference to the nature of standing and the effect of a lack of standing
 - 4.2 Identify and apply the possible **remedies available** in the event of an administrative decision maker acting wrongly, or outside their powers
5. Identify and apply the process of review on the merits undertaken by merits review tribunals
 - 5.1 Assess the possible means of obtaining a reconsideration of an administrative decision on the merits with reference to informal review and review by specialist tribunals
 - 5.2 Examine, for application, the following features of the *Administrative Appeals Tribunal Act 1975 (Cth)*:
 - the role, composition and powers of the Tribunal
 - reviewable decisions
 - standing requirements
 - procedural aspects

- the relevance of government policy to decisions by the tribunal
 - the enforcement of the tribunal's decisions
- 5.3 Analyse the *Victorian Civil and Administrative Appeals Tribunal Act, 1998 (Vic)*, with reference to the original jurisdiction of the tribunal and review jurisdiction of the tribunal
6. Compare for appropriate application, review by the Ombudsman as an alternative to review by an administrative tribunal or judicial review
- 6.1 Assess the legal basis for review by the Ombudsman at Federal and State levels with reference to the historical development of the office of the Ombudsman, the *Ombudsman Act 1974 (Cth)* and the *Ombudsman Act 1973 (Vic)*
- 6.2 Evaluate the role of the Ombudsman in reviewing administrative decisions with reference to scope of investigative power, procedures adopted and remedies available
- 6.3 Analyse the advantages and disadvantages of review by the Ombudsman for application to practice
7. Evaluate and apply Commonwealth and State legislative provisions for obtaining information on administrative decisions
- 7.1 Review for application the Commonwealth legislation providing access to reasons for and documents on administrative decisions, with reference to:
- Freedom of Information Act 1982 (Cth)
 - Administrative Decisions (Judicial Review) Act 1977 (Cth)
 - Administrative Appeals Tribunal Act 1975 (Cth)
- 7.2 Review for application the Victorian legislation providing access to reasons for and documents on administrative decisions, with reference to
- Freedom of Information Act 1983 (Vic)
 - Administrative Law Act 1978 (Vic)
 - Victorian Civil and Administrative Tribunal Act 1998 (Vic)
- 7.3 Distinguish the parameters of, and principles governing access to, reasons and documents on administrative decisions at Commonwealth and Victorian levels, with reference to:
- uses of freedom of information legislation
 - entitlement
 - exemptions and exclusions
 - requirements of the statutory duty to provide reasons
 - requirements as to form

REQUIRED SKILLS AND KNOWLEDGE

This describes the essential skills and knowledge, and their level, required for this unit.

Required Skills

- communication skills to work with clients, colleagues, management, relevant specialist personnel under direction, independently or within a team
- research and analytical skills to identify and debate a wide range of administrative law provisions and issues
- research, analytical and organisational skills to identify and evaluate sources of legal information
- research and analytical skills to determine appropriate processes and actions particular to a range of administrative law circumstances and contexts
- analytical and problem-solving skills to determine appropriate remedies and avenues of review
- analytical, literacy and technical writing skills to interpret information, prepare documents and reports

Required Knowledge

Please note: It is possible that over the five year accreditation period of this document, some legislation may become superseded. Teachers are encouraged to check the currency of legislation cited in this course at:

For Commonwealth Legislation: <http://www.comlaw.gov.au/>

For Victorian State Legislation: <http://www.legislation.vic.gov.au/>

- Federal, State and local government legislative and statutory requirements and provisions pertaining to administrative law
- Australian governmental system and structure, including:
 - historical development of the organs of government in Australia
 - constitutional and legal framework
 - subordinate legislation and delegation of legislative power
 - judicial and merits review of administrative decisions
 - Ombudsman functions and duties
 - access to reasons for administrative decisions
 - access to Freedom of Information

RANGE STATEMENT

The Range Statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. ***Bold italicised*** wording in the performance criteria is detailed below.

Development of the constitutional and legal framework may include:

- adoption of the English legal system
- development of organs of responsible and representative government

- constitutions of the Australian colonies
- background to federation and the concept of federalism
- models of federation
- federation process

Structure of government in Australia may refer to:

- framework of the Australian Constitution
- legislative, executive and judicial arms of government
- separation of powers
- concept of ministerial and cabinet responsibility
- structure of the Federal Parliament
- structure of the Victorian Parliament
- respective roles and powers of Commonwealth, State, Territory and local governments
- referral of power to the Commonwealth by the States
- changing the Australian Constitution

Victorian and Federal court hierarchies may include:

- the Magistrates' Court
- the County Court
- the Supreme Court
- the Federal Court
- the High Court

Quasi-judicial bodies may include:

- investing State courts with Federal jurisdiction
- constitutional impediments to vesting Federal Courts with jurisdiction to deal with matters arising under State legislation
- administrative tribunals

Review on the merits may refer to:

- the statutory basis
- the legality/merits distinction
- de novo hearing
- scope of remedies available

Remedies available may include:

- the prerogative writs
- equitable remedies
- statutory remedies

EVIDENCE GUIDE

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, Range Statement and the Assessment Guidelines of this qualification.

Critical aspects for assessment and evidence required to

A person who demonstrates competency in this unit must provide evidence of:

demonstrate competency in this unit

- investigating and applying methods of review of administrative decisions across a range of administrative law contexts
- investigating and applying methods of accessing government information on administrative decisions
- knowledge of the Australian governmental system and structure and examination of the legal restraints on the use of government power
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- knowledge of historical development of the functions, structure and legislative powers of the Australian government and judicial system
- aspects and functions of Administrative Law, such as the application of common law and statutory grounds for review
- the advantages and disadvantages of review by the Ombudsman

Context of and specific resources for assessment

Assessment must ensure:

- activities are related to a legal practice context
- activities are related to laws, regulations and procedures currently operating across the jurisdictions relevant to this qualification

Resources implications for assessment include access to:

- suitable simulated or real workplace opportunities
- The Constitution of the Commonwealth of Australia
- relevant Federal legislation, such as:
 - *Administrative Appeals Tribunal Act 1975*
 - *Administrative Decisions (Judicial Review) Act 1977*
 - *Freedom of Information Act 1982*
 - *Judiciary Act 1903*
 - *Ombudsman Act 1974*
- relevant Victorian legislation, such as:
 - *Administrative Law Act 1978*
 - *Constitution Act 1975*
 - *Freedom of Information Act 1983*
 - *Ombudsman Act 1973*
 - *Victorian Civil and Administrative Tribunal Act 1998*

Method of assessment

A range of assessment methods should be used to assess practical skills and knowledge. The following assessment methods are appropriate for this unit:

- research project and/or project work
- case studies and scenarios

- direct questioning
- examinations and tests
- presentations

**Guidance information
for assessment**

Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended. Suggested units may include but are not limited to:

- *VU21631 Investigate and apply legal process*

VU21648 Research the application of intellectual property and business law

Unit Descriptor

This unit describes the skills and knowledge required to apply particular areas of intellectual property and business law in order to support relevant operations of a legal office, private or public sector organisation or other area requiring a specialised knowledge of business and intellectual property law principles.

No licensing, legislative, regulatory or certification requirements apply to this unit at the time of publication.

Employability Skills

This unit contains Employability Skills.

Application of the Unit

This unit supports the work of personnel engaged in the operation of a legal office or associated fields within public and/or corporate sectors.

ELEMENT

Elements describe the essential outcomes of a unit of competency.

PERFORMANCE CRITERIA

Performance criteria describe the required performance needed to demonstrate achievement of the element. Where ***bold italicised*** text is used, further information is detailed in the required skills and knowledge and/or the range statement. Assessment of performance is to be consistent with the evidence guide.

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| 1. Research and apply basic Common Law and legislative controls in the law of insurance | 1.1 Define an insurance contract and distinguish between a contract of insurance and a contract of assurance 1.2 Detail and apply the formation of an insurance contract 1.3 Identify and evaluate the <i>general principles of insurance law</i> 1.4 Distinguish between the <i>types of insurance</i> that exist and assess each in relation to the law 1.5 Evaluate and apply the <i>contractual considerations required in the law of insurance</i> 1.6 Evaluate and apply the effects of legislation upon insurance law |
| 2. Research and apply the essential characteristics of the law in relation to negotiable instruments | 2.1 Define the terms <i>negotiable instrument</i> and <i>negotiability</i> 2.2 Distinguish between bills of exchange and cheques 2.3 Investigate and discuss the <i>bank-customer relationship</i> 2.4 Compare and contrast the <i>types of cheques</i> for application to practice |

- 2.5 Analyse and evaluate the effects of crossing a cheque with reference to general crossings, not negotiable crossing and apply
- 2.6 Analyse and discuss the position of both the bank and customer if there are ***irregularities in respect to a cheque*** and apply to practice
- 2.7 Analyse and apply the ***circumstances where a bank's authority to pay on a cheque is revoked***
3. Determine and apply the legislative controls against engaging in misleading and deceptive conduct, and false and misleading representations
- 3.1 Define ***misleading and deceptive conduct*** and investigate the legal considerations that apply, including the standard for determining whether conduct is misleading and the relevant section of the public likely to be misled
- 3.3 Define ***false or misleading representation*** and determine the legal consequences that apply with reference to meaning of representation and types of representation prohibited
- 3.4 Analyse and evaluate the various penalties imposed and remedies available under the legislation, including specific remedy penalty
4. Identify and apply intellectual property rights within the Australian legal system
- 4.1 Evaluate and apply ***intellectual property rights at Common Law***
- 4.2 Research the ***development of intellectual property laws in Australia*** and debate for application to practice
5. Identify and apply the main legislative provisions for copyright
- 5.1 Define the term ***copyright*** and identify and apply the provisions of the ***Copyright Act***
- 5.2 Evaluate and discuss the International Convention on Copyright Law
- 5.3 Determine the application of copyright protection with reference to:
- literacy, dramatic, musical and artistic works
 - sound recordings, films, broadcasts and published editions
 - computer programs
- 5.4 Identify and apply mechanics of obtaining copyright protection with reference to the meaning of substantial adaptation and proof of ownership or creation
- 5.5 Identify ***works eligible for copyright protection***
- 5.6 Analyse and apply the duration of copyright in works, with reference to:
- from date of publication

- from date of death
 - other considerations
- 5.7 Assess the nature of infringements in relation to copyright and identify and discuss, for application, ***acts not constituting copyright infringement***
- 5.8 Determine and apply the various ***remedies*** available when copyright is infringed.
6. Identify and apply the main provisions of the *Trade Marks Act*
- 6.1 Define the term *trade mark* and identify and apply the ***provisions of the Trade Marks Act*** and apply to a specific example
- 6.2 Identify and apply the process of registration required under the *Trade Marks Act*, including the effects of registration on creation of monopoly rights in holder and actions the holder may take for infringement
- 6.3 Analyse and apply the ***characteristic marks capable of registration under the Trade Marks Act with reference to a specific case***
- 6.4 Analyse and apply the grounds for the rejection of a mark by the registrar and the grounds for opposition to a mark with reference to a specific case study
- 6.5 Analyse and apply the law relating to breaches of the Trade Marks Acts with reference to a specific case study,
- Distinguish the ***various remedies available for breaches of the Trade Marks Acts***
7. Identify and apply the main provisions of the *Designs Act*
- 7.1 Analyse the ***provisions of the Designs Act*** and apply to a specific example
- 7.2 Identify and apply the process of registration required under the *Design Act* and apply these to a specific example, including the effects of registration on creation of exclusive rights of the owner and actions owner may take
- 7.3 Analyse the ***designs capable of registration under the Designs Act*** and apply with reference to a specific example
- 7.4 Analyse a ***breaches of the Designs Acts***, with reference to specific case studies, including the various remedies available for breaches
- 7.5 Analyse the overlap between the provisions of the Designs Act and the Copyright Act

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| 8. Identify and apply passing off and confidential information | <p>8.1 Define the nature and characteristics of the term <i>passing off</i> and apply to the relevant tort</p> <p>8.2 Investigate the expansion of the tort, including actions applicable to <i>get up</i> and <i>character merchandising</i></p> <p>8.3 Define and apply the main <i>remedies for passing off</i></p> <p>8.4 Compare and contrast actions based on Australian Consumer Law with passing off and infringements of trade marks and debate for application to practice</p> <p>8.5 Define the term <i>confidential information</i>, and examine and apply this Common Law duty</p> <p>8.6 Assess the <i>requirements for proving a breach of confidentiality</i> and identify and apply the relevant <i>remedies for breach of confidentiality</i></p> |
| 9. Identify and apply the main provisions of the Patents Act | <p>9.1 Analyse the provisions of the <i>Patents Act</i> and apply to a specific example</p> <p>9.2 Compare and contrast standard and innovation patent</p> <p>9.3 Outline the <i>characteristics of the system of registration under the Patents Act</i> and identify and apply <i>protection given by registration</i></p> <p>9.4 Identify and distinguish <i>the types of inventions</i> that may be the subject of a patent by reference to specific examples</p> <p>9.5 Evaluate and apply the <i>remedies and defences relating to breaches of the Patents Act</i></p> |

REQUIRED SKILLS AND KNOWLEDGE

This describes the essential skills and knowledge, and their level, required for this unit.

Required Skills

- communication skills to work with clients, colleagues, management, relevant specialist personnel under direction, independently or within a team
- research and analytical skills to investigate and discuss the development of intellectual property protection and business law in Australia
- research and analytical skills to identify and debate a wide range of business and intellectual property laws issues
- analytical and problem-solving skills to determine appropriate application of principles and provisions under business law and intellectual law and other relevant legislation

- analytical, literacy and technical writing skills to interpret information, prepare documents and reports

Required Knowledge

Please note: It is possible that over the five year accreditation period of this document, some legislation may become superseded. Teachers are encouraged to check the currency of legislation cited in this course at:

For Commonwealth Legislation: <http://www.comlaw.gov.au/>

For Victorian State Legislation: <http://www.legislation.vic.gov.au/>

- relevant international, Federal, State and local government legislative and statutory requirements and provisions pertaining to Intellectual Property and business
- principles, aims and provisions of Business law and Intellectual Property law, including:
 - insurance law
 - negotiable instruments
 - misleading and deceptive conduct
 - false or misleading representations
 - intellectual property rights
 - law relating to copyright
 - law relating to trade marks
 - law relating to designs
 - passing off and confidential information
 - law of patents and inventions

RANGE STATEMENT

The Range Statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. ***Bold italicised*** wording in the performance criteria is detailed below.

General principles of

insurance law may refer to:

- applicability of general contract law
- insurable interest under Common Law
- insurable interest under legislation
- utmost good faith
- indemnity
- subrogation

Types of insurance may include:

- public risk and public liability
- accident insurance
- life insurance
- fire insurance

Contractual considerations required

- double insurance, misrepresentations, warranties
- harsh, unconscionable and unfair insurance contracts

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- in the law of insurance*** may include:
- insurance business legislation
 - insurance agents and brokers
- Bank-customer relationship*** may include:
- parties to a cheque transaction
 - liability of parties
 - duties and obligations of parties
- Types of cheques*** may include:
- bearer and order cheques
 - crossed and uncrossed cheques
- Irregularities in respect to a cheque*** may include:
- fraudulently altered cheques
 - forged signature
 - unauthorised/irregular crossing
 - paying contrary to a crossing
- Circumstances where a bank's authority to pay on a cheque is revoked*** may include:
- stale cheques
 - countermand of payment
 - post-dated cheques
 - notice of drawers death
 - bankruptcy
 - drawer's insanity
 - garnishee orders
- Intellectual property rights at Common Law*** may include:
- definition of intellectual property
 - definition of proprietary rights
 - definition of infringement of property rights
 - remedies available at Common Law
- Development of intellectual property laws in Australia*** may refer to:
- constitutional power to make intellectual property laws
 - statutory regimes
 - role of Common Law
- Works eligible for copyright protection*** may include:
- unpublished
 - published
 - original
 - tangible
- Acts not constituting copyright infringement*** may include:
- library photocopying
 - education
 - critical evaluation
 - fair dealing

- Remedies** (applicable to copyright infringement) may include:
- injunction
 - damages
 - account for profits
 - Anton Piller order
- Provisions of the Trade Marks Act** may include:
- trade mark
 - mark
 - requirement for use or intended use
 - trade mark register and classes of registration
 - protection given to various classes of registration
- Characteristic marks capable of registration under the Trade Marks Act** may include:
- not previously used
 - must differ in material detail from commonly used signs and marks
 - adaptations of marks
- Various remedies available for breaches of the Trade Marks Act** may include:
- damages
 - account of profits
 - injunction
- Provisions of the Designs Act** may include:
- definition of design
 - registration in the designs office
 - period of protection given
- characteristic marks capable of registration under the Trade Marks Act** may include:
- requirement of new and distinctive
 - adaptations of current designs
 - any limitations of registrability
- Breaches of the Designs Acts** may include:
- damages
 - account of profits
 - injunction
- Remedies for passing off** may include:
- injunction
 - damages
 - account of profits
 - Anton Pillar order
 - John Doe order
- Requirements for proving a breach of confidentiality** may include:
- what the plaintiff must prove
 - duties of employees
 - type of information protected

Remedies for breach of confidentiality may include:

- injunction
- damages
- account of profits
- delivery up
- seizure of evidence

Characteristics of the system of registration under the Patents Act may include:

- making of an application
- completed specification or provisional specification
- owner or assignee of patent must be applicant
- novel-anticipation and rule against mosaics, and inventive step
- useful
- not secretly used before
- manner of manufacture

The types of inventions may include:

- mechanical inventions
- products
- micro organisms
- process of generation of human beings
- other inventions (medical treatment and software)

Protection given by registration may refer to:

- time limit for which a patent remains protected
- payment of annual fees
- creation of a monopoly

Remedies and defences relating to breaches of the Patents Act may include:

- injunction
- damages
- account for profits
- defences to proceedings for breach of patents

EVIDENCE GUIDE

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, Range Statement and the Assessment Guidelines of this qualification.

Critical aspects for assessment and evidence required to demonstrate competency in this unit

A person who demonstrates competency in this unit must provide evidence of:

- knowledge of basic Common Law and legislative controls in insurance law and the application of negotiable instruments in a case study
- knowledge of legislative control against engaging in misleading and deceptive conduct, and false or misleading representation

- interpreting intellectual property rights and its functions within the Australian legal system
- evaluating the main provisions of Copyright protection, Trade Marks and Design Acts, the registration systems and the remedies for breaches
- investigating the passing off and confidential information
- evaluation of the main provisions of the Law of Patents and Inventions including the registration system and the protection afforded

Context of and specific resources for assessment

Assessment must ensure:

- activities are related to a legal practice context
- activities are related to laws, regulations and procedures currently operating across the jurisdictions relevant to this qualification

Resources implications for assessment include access to:

- suitable simulated or real workplace opportunities
- relevant legislation, such as:
 - *Cheques Act 1986 (Cth)*
 - *Copyright Act 1968 (Cth)*
 - *Designs Act 2003 (Cth)*
 - *Insurance Contracts Act 1984 (Cth)*
 - *Patents Act 1990 (Cth)*
 - *Trade Marks Act 1995 (Cth)*
 - *Trade Practices Act 1974 (Cth)*

Method of assessment

A range of assessment methods should be used to assess practical skills and knowledge. The following assessment methods are appropriate for this unit:

- research project and/or project work
- case studies and scenarios
- direct questioning
- examinations and tests
- presentations

**Guidance information
for assessment**

Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended. Suggested units may include but are not limited to:

- o *VU21631 Investigate and apply legal process*
- o *VU21633 Analyse and apply law of contract*

VU21649 Define and research the application of corporations law

Unit Descriptor

This unit describes the skills and knowledge required to apply areas of company and associations law in order to support relevant operations of a legal office, financial institution, accounting office, government department or authority or corporate section.

No licensing, legislative, regulatory or certification requirements apply to this unit at the time of publication.

Employability Skills

This unit contains Employability Skills.

Application of the Unit

This unit supports the work of personnel engaged in the operation of a legal office, financial institution, accounting office, government department or authority, or associated fields within public and/or corporate sectors.

| ELEMENT | PERFORMANCE CRITERIA |
|---|--|
| Elements describe the essential outcomes of a unit of competency. | Performance criteria describe the required performance needed to demonstrate achievement of the element. Where <i>bold italicised</i> text is used, further information is detailed in the required skills and knowledge and/or the range statement. Assessment of performance is to be consistent with the evidence guide. |
| 1. Research the development of company law | <p>1.1 Define a company and compare and contrast it with other types of business organisations with reference to sole proprietorship, partnership and trust</p> <p>1.2 Analyse the development of company law in Australia, including the development of supplementary legislation and regulations</p> <p>1.3 Analyse the administration of company law and the role of the Australian Securities and Investments Commission</p> <p>1.4 Identify and distinguish the <i>types of companies</i></p> <p>1.5 Determine the nature of the types of companies and identify main <i>differentiating features of types of companies</i></p> |
| 2. Analyse and apply the concept of corporate liability | <p>2.1 Assess, and discuss for application, the extent of liability to outsiders of companies and members of companies under the principle of separate corporate personality</p> <p>2.2 Evaluate and discuss the significance of the corporate veil principle and its application by the courts</p> <p>2.3 Research and discuss the advantages and disadvantages of the corporate veil principle in corporate and commercial practice, and contrast these from the legal positions of unincorporated businesses</p> |

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| 3. | Determine and apply the procedure to register a company | 3.1 | Resolve the authority, duties and liabilities of a promoter of a company and discuss the law governing pre-registration contracts |
| | | 3.2 | Identify the steps relevant to the registration of a company, and associated requirements concerning: <ul style="list-style-type: none"> • application for registration • the company name • constitution or the replaceable rules • consent to act as director • registered office • certificate of registration / certificate of incorporation |
| | | 3.3 | Apply the procedure necessary to register a company and complete the steps required by ASIC |
| | | 3.4 | Analyse the nature of a company's internal governance rules, including the question of whether a company should adopt a constitution or utilise the replaceable rules |
| 4. | Identify and apply the regulation of shares and shareholdings | 4.1 | Specify the nature and regulation of shares and shareholdings with reference to: <ul style="list-style-type: none"> • acquiring and ceasing membership • share capital • classes of shares • issue, allotment, transfer and transmission of shares • dividends • capital maintenance |
| | | 4.2 | Analyse the role and regulation of members' meetings, including the power to initiate a meeting, notice, voting and resolutions |
| | | 4.3 | Identify the rights, obligations and remedies of members |
| 5. | Examine and apply the regulation of company finance | 5.1 | Specify and apply the nature and regulation of the sources of company finance, and compare their advantages and disadvantages |
| | | 5.2 | Analyse and apply the <i>nature and regulation of capital raising</i> through debentures and public securities |
| | | 5.3 | Identify the nature of raising capital from the public through the issue of company securities and describe and apply the disclosure requirements that govern their issue |

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| 6. Analyse and apply the regulation of company management | 6.1 | Outline and evaluate the role and regulation of company directors |
| | 6.2 | Analyse and discuss the role and regulation of board meetings, including the power to initiate a meeting, notice, voting and resolutions |
| | 6.3 | Specify the role and duties of company secretaries and company's other officers |
| | 6.4 | Identify the role of a company auditor |
| 7. Analyse the regulation of company takeovers | 7.1 | Specify when an acquisition of shares is prohibited or regulated |
| | 7.2 | Identify the purposes for the regulation of takeovers |
| | 7.3 | Classify the valid methods of share acquisition |
| 8. Examine the reasons for external administration of a company | 8.1 | Identify the nature of, and rationale for, a company being subject to a creditors' scheme of arrangement |
| | 8.2 | Analyse why and when a receiver, receiver and manager, or controller may be appointed and the consequences for the company and other affected parties |
| | 8.3 | Analyse why a company may undergo voluntary administration and the consequences for the company and other affected parties |
| 9. Analyse and apply the processes of liquidation and/or winding up of a company | 9.1 | Specify and discuss the reasons for winding up a company |
| | 9.2 | Classify the different types of winding up and how they are initiated, with particular analysis of winding up in insolvency |
| | 9.3 | Assess the process and effects of winding up a company |
| | 9.4 | Identify and ensure the rights of secured and unsecured creditors under a winding up |
| | 9.5 | Identify the manner of appointment of a company liquidator, their qualifications powers, duties and liabilities |
| 10. Analyse the legal nature of incorporated associations | 10.1 | Specify and discuss the legal nature of unincorporated associations and distinguish these from companies and incorporated structures |
| | 10.2 | Analyse the powers, duties and liabilities of members and office bearers of unincorporated associations |

10.3 Analyse the legal consequences of *incorporating an association*

REQUIRED SKILLS AND KNOWLEDGE

This describes the essential skills and knowledge, and their level, required for this unit.

Required Skills

- communication skills to work with clients, colleagues, management, relevant specialist personnel under direction, independently or within a team
- research and analytical skills to investigate and discuss the development of company law
- research and analytical skills to identify and discuss a wide range of corporation law issues
- analytical and critical thinking skills to determine appropriate application of regulations and provisions to a wide range of companies
- analytical, literacy and technical writing skills to interpret information, prepare documents and reports

Required Knowledge

Please note: It is possible that over the five year accreditation period of this document, some legislation may become superseded. Teachers are encouraged to check the currency of legislation cited in this course at:

For Commonwealth Legislation: <http://www.comlaw.gov.au/>

For Victorian State Legislation: <http://www.legislation.vic.gov.au/>

- relevant international, Federal, State and local government legislative and statutory requirements and provisions pertaining to corporation law
- nature and regulations of a range of corporation law issues, including:
 - types of companies and development of company law
 - companies and alternative business structures
 - regulation of companies
 - company promoters and pre-registration contracts
 - company constitution/replaceable rules
 - corporate governance
 - a company's dealings with outsiders
 - registration of a company
 - corporate liability and the corporate veil
 - membership – rights, obligations and remedies
 - capital raising by a company
 - nature and regulation of company management
 - regulation of company takeovers
 - external administration of a company

- o liquidation and winding up of a company
- o legal nature of incorporated associations

RANGE STATEMENT

The Range Statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. ***Bold italicised*** wording in the performance criteria is detailed below.

- Types of companies*** may include:
- public companies including the distinction between listed and unlisted public companies
 - proprietary companies
 - small and large proprietary companies
 - foreign companies
- Differentiating features of types of companies*** must include:
- limited by shares
 - limited by guarantee
 - no liability
 - unlimited liability
- Nature and regulation of capital raising*** may refer to:
- debentures and trust deeds
 - company charges, including fixed and floating charges
 - identifying interests in public share and securities schemes, and their regulation
- Company directors*** may refer to:
- definition, qualification and appointment
 - types of directors
 - powers and duties
 - conflict of interest and the duties and liabilities associated with these
 - rights and liabilities
 - removal, resignation and retirement
- Other company officers*** may refer to:
- definition of *officer*
 - powers, duties and liabilities of company officers
- Incorporating an association*** may refer to:
- nature of the association
 - procedural steps for incorporation
 - powers, duties and liabilities of members and office bearers

EVIDENCE GUIDE

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, Range Statement and the Assessment Guidelines of this qualification.

Critical aspects for assessment and evidence required to demonstrate competency in this unit

A person who demonstrates competency in this unit must provide evidence of:

- knowledge of corporate liability, including the principles of separate corporate personality and the corporate veil
- knowledge of authority, duties and liabilities of company promoters and pre-registration contracts legal requirements
- knowledge of the regulation of company finance in terms of shares and shareholding
- knowledge of powers, responsibilities and liabilities of parties involved in an external administration of a company
- assessing issues of company registration and governance and applying relevant regulations and provisions
- assessing issues of company takeovers, external administration and winding up, and applying relevant regulations and provisions
- knowledge of types of companies, registration, governance and liabilities
- knowledge of regulations concerning company takeovers, external administration, liquidation and winding-up
- knowledge of legal nature of incorporated associations
- knowledge of the nature and principles of relevant Corporations Law

Context of and specific resources for assessment

Assessment must ensure:

- activities are related to a legal practice context
- activities are related to laws, regulations and procedures currently operating across the jurisdictions relevant to this qualification

Resources implications for assessment include access to:

- suitable simulated or real workplace opportunities
- relevant international, Federal, State and local government legislative and statutory requirements and provisions pertaining to corporations law
- legal and workplace documents on the registration, governance and liabilities of companies and other relevant corporations law implementation

Method of assessment A range of assessment methods should be used to assess practical skills and knowledge. The following assessment methods are appropriate for this unit:

- research and/or project work
- case studies and scenarios
- direct questioning
- examinations and tests
- presentations

Guidance information for assessment Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended. Suggested units may include but are not limited to:

- *VU21631 Investigate and apply legal process*

VU21650 Define and research the application of employment law

Unit Descriptor

This unit describes the skills and knowledge required to apply laws relating to employment in order to support relevant operations of a legal office, government department or allied context.

No licensing, legislative, regulatory or certification requirements apply to this unit at the time of publication.

Employability Skills

This unit contains Employability Skills.

Application of the Unit

This unit supports the work of personnel engaged in the operation of a legal office or associated fields within public and/or corporate sectors.

ELEMENT

Elements describe the essential outcomes of a unit of competency.

PERFORMANCE CRITERIA

Performance criteria describe the required performance needed to demonstrate achievement of the element. Where ***bold italicised*** text is used, further information is detailed in the required skills and knowledge and/or the range statement. Assessment of performance is to be consistent with the evidence guide.

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| 1. Identify the legal rights and obligations in the employment relationship | <p>1.1 Identify and discuss the historical and current application by the Federal Parliament of <i>sections of the Australian Constitution</i>, relevant to the establishing of a national workplace relations system and to the definition of a <i>constitutional corporation</i></p> <p>1.2 Distinguish between Common Law and Contract Law in the employment relationship</p> <p>1.3 Distinguish between the rights, responsibilities and legal implications of contractual relationship between employers and employees in the workplace</p> <p>1.4 Analyse <i>employment contracts</i> and identify the express, implied and statutory terms in employment contracts</p> <p>1.5 Examine the implications of restrictive trade clauses in employment contracts and their impact on the employee's rights in regard to future employment</p> |
| 2. Research, analyse and apply Australian industrial relations legislation and provisions | <p>2.1 Research and discuss <i>contemporary issues affecting Australian industrial relations</i> and identify and describe key stakeholders</p> <p>2.2 Analyse the main provisions in the <i>Workplace Relations Act, 1996</i> and the controversy surrounding, and High Court challenges to, <i>Workplace Relations Amendment (Work Choices) Act 2005</i></p> |

- 2.3 Define and examine the relevance of Awards in the agreement making process
- 2.4 Distinguish between Certified Agreements and Australian Workplace Agreements and determine the regulations and the law with regard to establishing formal workplace agreements
- 2.5 Examine the process of establishing Certified Agreements and determine the role of the Australian Industrial Relations Commission (AIRC) in the process of establishing Certified Agreements
- 2.6 Examine the process of establishing Australian Workplace Agreements and determine the role of the Employment Advocate in the process of establishing Australian Workplace Agreements
3. Research and apply contemporary provisions for industrial dispute resolution
- 3.1 Analyse and discuss the **main provisions on the Fair Work Act 2009 (Cth)** and the role of the Fair Work Commission and Fair Work Australia (FWA)
- 3.2 Research the historical roles of the Australian Industrial Relations Commission (AIRC), the Workplace Authority and Workplace Ombudsman and discuss the implication of their replacement with Fair Work Commission, including the Office of Fair Work Ombudsman
- 3.3 Describe the establishment of Fair Work Division of the Federal Court and the discuss the Federal Magistrates Court powers to deal with breaches of:
- awards
 - National Employment Standards (NES)
 - registered workplace agreements
- 3.4 Examine and debate the impact of the absence of lawyers in dispute resolution
4. Analyse and apply the legal provisions for termination of employment in *Fair Work Act 2009*
- 4.1 Examine the previous role of the AIRC in the termination of employment
- 4.2 Examine the legal responsibilities pertaining to continuity of employment in the transmission (sale) of a business
- 4.3 Identify and describe legal provisions that address termination of contract as a result of: death; dissolution of business; abandonment of employment; termination by notice; termination without notice; redundancy, and, constructive dismissal

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| | 4.4 | Analyse the grievance procedure relevant to the process of termination of employment |
| 5. Analyse and apply the laws relating to antidiscrimination, equal opportunity and human rights in the workplace | 5.1 | Examine Federal and Victorian human rights and equal opportunity legislation including the Equal Opportunity Act, 1995 (Vic) and identify various types of discrimination |
| | 5.2 | Review and discuss Equal Opportunity Act, 1995 (Vic) with reference to sexual harassment, victimisation and bullying |
| | 5.3 | Describe, for application, the roles of the Victorian Civil and Administrative Appeals Tribunal (VCAT) and the Human Rights and Equal Opportunity Commission (HREOC) in dispute resolution |
| | 5.4 | Develop a workplace policy in order to minimise the impact of a discrimination/harassment claim in the workplace |
| 6. Analyse and apply legislation relating to accident compensation and OHS/WHS in the workplace | 6.1 | Examine the role of the Victorian WorkCover Authority |
| | 6.2 | Determine the rights and responsibilities of employers and employees under OHS/WHS and Accident Compensation legislation |
| | 6.3 | Identify the penalties for breaches of the OHS/WHS and Accident Compensation Acts |
| | 6.4 | Determine entitlement to compensation for employees |
| 7. Analyse and apply privacy law in the workplace | 7.1 | Analyse and apply the provisions of the <i>Privacy Act, 1988 (Cth)</i> with reference to : <ul style="list-style-type: none"> • types of private information regulated under the Act • rights of employers and employees in relation to e-mail and surveillance • powers of the Federal Privacy Commissioner |
| | 7.2 | Analyse and apply the provisions of the Victorian <i>Information Privacy Act, 2000</i> |

REQUIRED SKILLS AND KNOWLEDGE

This describes the essential skills and knowledge, and their level, required for this unit.

Required Skills

- communication skills to work with clients, colleagues, management, relevant specialist personnel under direction, independently or within a team
- research and critical analysis skills to investigate and discuss the history of employment law and the implications of the development of contemporary employment law and other issues affecting Australian industrial relations

- research and analytical skills to describe a range of employment contracts, including rights and responsibilities of parties to those contracts
- research and analytical skills to identify and discuss a range of employment law issues, including dispute resolution, termination of employment, privacy, equal opportunity and OHS/WHS
- analytical and critical thinking skills to determine appropriate application of regulations and provisions to a range of employment law contexts
- analytical, literacy and technical writing skills to interpret information, prepare documents and reports

Required Knowledge

Please note: It is possible that over the five year accreditation period of this document, some legislation may become superseded. Teachers are encouraged to check the currency of legislation cited in this course at:

For Commonwealth Legislation: <http://www.comlaw.gov.au/>

For Victorian State Legislation: <http://www.legislation.vic.gov.au/>

- relevant Federal, State and local government legislative and statutory requirements and provisions pertaining to employment law
- terms, conditions and provisions of employment law, including:
 - rights and obligations of the parties in the employment relationship
 - contract law as applied to employment contracts
 - provisions of the *Fair Work Act 2009*
 - dispute resolution process and legal provisions
 - termination of employment and the legal provisions in the Fair Work Act 2009
 - anti-discrimination, equal opportunity, and human rights law in the workplace
 - OHS/WHS including claims and compensation
 - workplace privacy
- functions and role of the relevant courts, tribunals, commissions and authorities in the management of industrial relations in Australia
- contemporary issues in Australian industrial relations

RANGE STATEMENT

The Range Statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. ***Bold italicised*** wording in the performance criteria is detailed below.

Sections of the Australian Constitution may refer to:

- s.51(20) for establishing of national workplace relation system
- s.51(35) for historical use
- s. 51(20) for definition of constitutional corporation

Employment contracts may refer to:

- contract of service and contract for service
- common law tests of contracts of service and contracts for service

Contemporary issues affecting Australian industrial relations may refer to:

- legislation, such as:
 - *Workplace Relations Amendment Act 2008*
 - *Fair Work Act 2009*
 - *replacement of Workplace Relations Act 2009*
- terms and conditions of work

Main provisions of Fair Work Act 2009 (Cth) may include:

- bargaining
- representatives in bargaining
- application to constitutional corporations
- structure and decisions
- National Employment Standards (NES)
- no disadvantage test
- unfair dismissals

Legal provisions that address termination of employment may refer to:

- Fair Work Act 2009 (Cth) provisions relating to:
 - unlawful dismissal
 - unfair, unjust and unreasonable termination
 - summary dismissal

Legislation relating to accident compensation and occupational health and safety in the workplace may refer to:

- Accident Compensation Act 1985 (Vic)
- Occupational Health and Safety Act, 1985 (Vic)

EVIDENCE GUIDE

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, Range Statement and the Assessment Guidelines of this qualification.

Critical aspects for assessment and evidence required to demonstrate competency in this unit

A person who demonstrates competency in this unit must provide evidence of:

- Assessing issues of employment law related to employment contracts and applying relevant regulations, provisions and/or services
- Assessing issues of employment law related to a dispute resolution, anti-discrimination, privacy, accident compensation and OHS/WHS, equal opportunity and human rights, termination of employment and apply relevant regulations, provisions and/or services
- knowledge of contemporary issues in Australia's industrial relations
- knowledge of Federal, State and local government legislative and statutory requirements and provisions pertaining to employment law

- knowledge of role of Australian Federal and State departments, agencies and courts in the management of workplace relations

Context of and specific resources for assessment

Assessment must ensure:

- activities are related to a legal practice context
- activities are related to laws, regulations and procedures currently operating across the jurisdictions relevant to this qualification

Resources implications for assessment include access to:

- suitable simulated or real workplace opportunities
- relevant legislation, such as:
 - *Workplace Relations Act, 1996 (Cth)*
 - *Workplace Relations Act, 1996*
 - *Workplace Relations Amendment (Work Choices) Act 2005*
 - *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008*
 - *Replacement of Workplace Relations Act 2009*
 - *Privacy Act, 1988 (Cth)*
 - *Fair Work Act 2009*
 - *Accident Compensation Act, 1985 (Vic)*
 - *Occupational Health and Safety Act, 1985 (Vic)*
 - *Information Privacy Act, 2000 (Vic)*
 - *Equal Opportunity Act, 1995 (Vic)*

Method of assessment

A range of assessment methods should be used to assess practical skills and knowledge. The following assessment methods are appropriate for this unit:

- research project and/or project work
- case studies and scenarios
- direct questioning
- examinations and tests
- presentations

Guidance information for assessment

Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended. Suggested units may include but are not limited to:

- *VU21631 Investigate and apply legal process*
- *VU21633 Analyse and apply law of contract*

VU21651 Evaluate the concepts and principles of family law

Unit Descriptor

This unit describes the skills and knowledge required to assist in the application of family law concepts and provisions including those relating to de facto relationships, enforcement of family court orders and other relevant matters, in order to support the work of a legal office, practice or associated context.

No licensing, legislative, regulatory or certification requirements apply to this unit at the time of publication.

Employability Skills

This unit contains Employability Skills.

Application of the Unit

This unit supports the work of personnel engaged in the operation of a legal office, support agency, citizen's advice bureau or associated fields within public and/or corporate sectors.

ELEMENT

Elements describe the essential outcomes of a unit of competency.

PERFORMANCE CRITERIA

Performance criteria describe the required performance needed to demonstrate achievement of the element. Where bold italicised text is used, further information is detailed in the required skills and knowledge and/or the range statement. Assessment of performance is to be consistent with the evidence guide.

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| 1. Analyse the legal definition of marriage | 1.1 Identify <i>conditions under which a marriage is considered valid under the law</i> |
| | 1.2 Analyse the <i>Marriage Act</i> , including the Common Law position with reference to marriage as a contract, citing the duties, rights and responsibilities of the parties to the marriage with the obligation to support each other |
| | 1.3 Research and describe situations in which a <i>marriage is considered illegal</i> , and the penalties should a void marriage take place, |
| | 1.4 Research and discuss the legal implications of same sex unions, polygamous unions, sexual reassignment cases and monogamous unions |
| 2. Analyse the development of the Family Law Act | 2.1 Research and describe the main elements of the historical development of the Australian Divorce Law with reference to the Christian belief and the operation of the ecclesiastical courts |
| | 2.2 Compare and contrast fault-based dissolution of marriage with no-fault dissolution |
| | 2.3 Research and analyse the <i>development of the Family Law Act</i> |

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| | 2.4 | Identify the <i>jurisdiction of the Family Court of Australia</i> , with reference to the Federal Circuit Court and the Magistrates' Court |
| | 2.5 | Identify the <i>powers given to Courts by the Family Law Act</i> to penalise those who do not comply with its orders and debate for application |
| 3. | Identify the grounds upon which the Family Court of Australia and the Federal Circuit Court will dissolve a marriage | <p>3.1 Determine the need to prove that there is a valid marriage for the court to have jurisdiction, with reference to:</p> <ul style="list-style-type: none"> • what constitutes jurisdiction • what constitutes a valid marriage in Australia and overseas • the distinction between dissolution and annulment of marriage • the position of void marriages in Australia <p>3.2 Establish the <i>requirements that must be satisfied before the court will grant a decree nisi for the dissolution of a marriage</i></p> <p>3.3 Identify and describe the <i>requirements that must be met for a decree nisi to become a decree absolute</i></p> |
| 4. | Analyse and apply the legal aspects of the welfare of children | <p>4.1 Identify the <i>range of children</i> that fall within the jurisdiction of the <i>Family Law Act</i></p> <p>4.2 Define the <i>terms in the context of the Family Law Act</i> and analyse for application</p> <p>4.3 Identify procedures required before a party may seek orders in relation to children and analyse for application</p> <p>4.4 Identify and describe the <i>main considerations exercised under the Family Law Act</i> when making an order in relation to children</p> <p>4.5 Research and discuss the <i>types of orders</i> that may be made in relation to children</p> <p>4.6 Research and discuss the <i>situations in which the Court will vary orders</i> relating to children</p> |
| 5. | Analyse and apply the provisions of the Family Law Act with reference to Partner's Maintenance | <p>5.1 Identify the <i>parties who are eligible to receive maintenance</i></p> <p>5.2 Identify and describe the <i>pre-requisites to the making of a maintenance order</i></p> <p>5.3 Describe the <i>factors considered in the assessment of</i> and analyse for application</p> |

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| | 5.4 | Describe the factors that may lead to termination or variation of a maintenance order and analyse for application |
| 6. Analyse and apply the provisions for paying of child support | 6.1 | Research and discuss the child support legislation |
| | 6.2 | Identify the range of children who are subject to the provisions of the Acts |
| | 6.3 | Describe the method of calculation of the amount of child support to be paid and the provisions for deviations from the prescribed formula and analyse for application |
| | 6.4 | Assess the procedure for the enforcement of child support payments with reference to civil action and other action |
| | 6.5 | Research and analyse the fairness, effectiveness and justice of the maintenance system, from the points of view of the paying party, receiving party and child |
| 7. Analyse and apply the distribution of property under the Family Law Act | 7.1 | Identify parties who may apply for property orders under the Family Law Act and determine property available for distribution |
| | 7.2 | Compare declarations of property rights and orders altering property rights |
| | 7.3 | Identify the criteria used by the court to determine property orders and analyse for application |
| | 7.4 | Identify the property orders available to the court and the grounds for setting aside property orders and analyse for application |
| | 7.5 | Assess pre-action procedures in the court and consent orders as they relate to the distribution of property |
| | 7.6 | Analyse the principles relating to financial agreements and identify those who may apply for property orders under the Family Law Act |
| 8. Analyse the constitutional and legislative provisions relating to domestic relationships other than marriage | 8.1 | Identify and describe the legislative provisions applicable to domestic relationships |
| | 8.2 | Assess and discuss the criteria for dividing property between parties to a domestic relationship to which the Family Law Act and the Relationships Act do not apply |
| 9. Assess the operation of the Family Law Act and Family Violence Protection Act in | 9.1 | Identify the operation of the urgency provisions of the Family Law Act and analyse for application |
| | 9.2 | Research and describe the types of orders that the court might make |

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| relation to the making of orders | 9.3 | Outline the area of operation of the <i>Family Violence Protection Act</i> , including Family Violence Safety Notices |
| | 9.4 | Research and discuss the protection given by the Family Violence Protection Act with reference to: <ul style="list-style-type: none"> • the parties to the relationship or other family members • the property, both real and personal, of the parties • the powers of members of the police force • the powers of the court |
| | 9.5 | Evaluate and determine the consequences for a party in the event of breaching an order and the effectiveness of the consequences as a deterrent |
| | 9.6 | Research and describe the circumstances in which a party may wish to proceed before the court on an ex-parte procedure |
| 10. Evaluate the main provisions of the Adoption Act | 10.1 | Assess the main provisions of the <i>Adoption Act</i> |
| | 10.2 | Identify the parties who may adopt and be adopted, and the parties who must give consent for an adoption to take place |
| | 10.3 | Identify the effect of an adoption in relation to the consequences for the parties involved |
| | 10.4 | Analyse the process for appealing against an adoption order, or the revocation of an adoption order |
| | 10.5 | Research the effectiveness of procedures to gain access to adoption records and debate for application to practice |
| 11. Identify and evaluate organisations that offer help to parties in a relationship which is under stress | 11.1 | Identify the main benefits available from Federal Government sources, and the parties eligible to receive them |
| | 11.2 | Research the operations of a variety of counselling services and evaluate for relevance to a range of contexts |
| | 11.3 | Research the availability and operation of emergency accommodation, refuges and shelters and evaluate for relevance to a range of contexts |
| 12. Analyse the basis upon which an appeal may be made against the decision of a judge | 12.1 | Research and explain the basis for, and prerequisite of, an appeal to the Family Court from the decision of a Magistrate |
| | 12.2 | Research and explain the basis upon which a party may appeal against the decision of a Family Court judge |

or magistrate and apply the procedure required before the court on the hearing of an appeal

- 12.3 Specify and apply the ***procedure when making an appeal to the Full Family Court***
- 12.4 Research and apply the basis on which appeals may be made to the High Court of Australia, with reference to appeal or judicial review on a question of constitutionality and leave to appeal

REQUIRED SKILLS AND KNOWLEDGE

This describes the essential skills and knowledge, and their level, required for this unit.

Required Skills

- communication skills to work with clients, colleagues, management, relevant specialist personnel under direction, independently or within a team
- research, analytical and organisational skills to identify and evaluate the application of rules and provisions under the Family Law Act and other relevant legislation
- research and analytical skills to determine relevance of particular aspects of family law to wide range of particular circumstances and contexts, including child welfare
- analytical and problem-solving skills and ethics to determine appropriate procedures and processes for a range of family law matters, such as: divorce; property distribution and maintenance; accessing help and support for relationships under stress, and appeals against orders
- analytical, literacy and technical writing skills to interpret information, prepare documents and reports

Required Knowledge

Please note: It is possible that over the five year accreditation period of this document, some legislation may become superseded.

Teachers are encouraged to check the currency of legislation cited in this course at:

For Commonwealth Legislation: <http://www.comlaw.gov.au/>

For Victorian State Legislation: <http://www.legislation.vic.gov.au/>

- relevant international, Federal, State and local government legislative and statutory requirements, regulations and provisions pertaining to family law
- general principles of family law, including:
 - legal definition of marriage
 - Family Law Act and Family Court
 - dissolving of a marriage
 - custody and guardianship
 - spousal maintenance
 - child support
 - property distribution
 - *Family Law Act* and *Family Violence Protection Act* in relation to orders

- o adoption act
- o organisations which help parties in a relationship under stress
- o appeals against judges' decisions

RANGE STATEMENT

The Range Statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. ***Bold italicised*** wording in the performance criteria is detailed below.

- Conditions under which a marriage is considered valid under the law*** may refer to:
- the union of a man and woman to the exclusion of all others
 - the marriage ceremony requirements
 - appropriate consent in the marriage of minors
 - meaning of the terms *a man* and *a woman*
- (Situations in which a) ***Marriage is considered illegal*** may refer to:
- *Marriage Act* prohibitions
 - marriage between blood relatives
 - polygamous marriages
 - proxy marriages
- Development of the Family Law Act*** may refer to:
- the desire for legislative change
 - community attitudes requiring change
 - constitutional considerations
 - the Family Court
 - the powers of the Family Court
 - the Family Court, Federal Circuit Court and Magistrates' Court
 - the powers of the Family Court Federal Circuit Court and Magistrates' Court
- Jurisdiction of the Family Court of Australia*** may include:
- dissolution of marriage
 - children
 - child support
 - spousal maintenance
 - property orders
- Powers given to the Family Court by the Family Law Act*** may include:
- injunctions, fines and custodial orders
 - interim orders
 - variation of orders
 - parental compliance provisions
- Requirements that must be satisfied before the court will grant a decree nisi for the dissolution of a marriage*** may include:
- destruction of the consortium vitae
 - living separately and apart
 - the household test
 - twelve months separation

- no likelihood of reconciliation
- satisfactory arrangements are made for dependent children

- Requirements that must be met for a decree nisi to become a decree absolute** may include:
- legislative provisions
 - exercise of discretion by judge to shorten or lengthen time
 - position where there are *children of the marriage*
 - who constitutes the *children of the marriage* for dissolution purposes
- Range of children** may include:
- children of a marriage
 - ex nuptial children
 - children within the household
 - children conceived through assisted reproductive technologies
- Terms in the context of the Family Law Act** may include:
- live with order
 - spend time with order
 - rights of third parties to spend time with children
- Main considerations exercised by the Family Court** may include:
- rights of the child
 - preservation of the status quo
 - parental responsibility
 - statutory considerations
- Types of orders** may include:
- live with order
 - spend time with order
 - specific issues order
 - parenting plans
- Situations in which the Family Court will vary orders** may include:
- significant change in circumstances
 - relocation
 - family violence
- Parties who are eligible to receive maintenance** may include:
- the parties to a valid marriage
 - parties to a void marriage
 - other domestic partners
- Pre-requisites to the making of a maintenance order** may include:
- the provisions of the *Family Law Act*, including need for maintenance and the ability to pay
 - the duration of a maintenance order
 - conduct of the parties involved
- Factors considered in the assessment of maintenance** may include:
- the provisions of the *Family Law Act*
 - the duration of a maintenance order
 - conduct of the parties involved

- Factors that may lead to termination or variation of a maintenance order** may include:
- remarriage or re-partnering of either party
 - change in circumstances of either party
 - death of a party
- Current child-support legislation** may include:
- The Child Support (Assessment) Act
 - The Child Support (Registration and Collection) Act
 - The Family Law Act
 - The role of the Child Support Agency
- Method of calculation** may refer to:
- the meaning of assessable income
 - the formula for assessment
 - effect of recipients income on assessment
- Provisions for deviations from the prescribed formula** may refer to:
- when deviations are permitted
 - considerations in fixing amount of deviation
- Criteria used by the court to determine property distribution** may include:
- general principles, such as:
 - orders to be just and equitable
 - court's duty to end financial relations
 - past contributions and future needs
 - specific issues
 - case law precedents
- Legislative provisions applicable to domestic relationships** may include:
- Family Law Act
 - Relationships Act (Vic)
 - and other relevant legislation
- Operation of the urgency provisions of the Family Law Act** may include:
- the requirement to comply with the regulations
 - the Family Court regulations
 - oral applications
 - Family Court procedures
 - Contents of Affidavits
- Types of orders that the court might make** may include:
- for the protection of a party on a child of a relationship
 - for the protection of the property of parties
 - injunctions and other orders
- Circumstances in which a party may wish to proceed before the court on an ex-parte procedure** may include:
- one party cannot be located
 - possibility of assault, threats and other intimidation
 - possibility of proposed action precipitating action by the other party.

Operations of a variety of counselling services may refer to:

- Marriage Guidance Council and Relationships Australia
- Family Court Counselling service
- Citizens Advice Bureaux
- Family Relationships Centre
- private counselling professionals and psychologists

Basis upon which a party may appeal against the decision of a Family Court judge may refer to:

- failure to attach sufficient weight
- failure to admit certain evidence
- wrong in law
- bias and other grounds

Procedure when making an appeal to the Full Family Court may refer to:

- the appeal process
- hearing only in relation to appeal materials
- possible decisions of the Full Court

EVIDENCE GUIDE

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, Range Statement and the Assessment Guidelines of this qualification.

Critical aspects for assessment and evidence required to demonstrate competency in this unit

A person who demonstrates competency in this unit must provide evidence of:

- knowledge of Family Law and the related fields of de facto relationships, and the enforcement of Family Law Court orders
- identifying the provisions of the Family Law in relation to dissolving of a marriage, custody and guardianship of children after parental separation, spousal maintenance and children maintenance
- identifying the property rights and orders under the Family Act with regards to altering property rights and determining the property order used by the Family Court
- knowledge of constitutional and legislative provisions under the domestic partnerships order than marriage
- analysing the Family Violence Protection Act in relation to protection given and the consequences of breaching the order
- evaluating the provisions of the Adoption Act and the consequences for the parties involved in the event of an adoption order
- identifying the organisations which help parties in a relationship under stress
- determining the basis upon which an appeal may be made, and identify the appeal procedures when making an appeal to the Family Court

Context of and specific resources for assessment

Assessment must ensure:

- activities are related to a legal practice context
- activities are related to laws, regulations and procedures currently operating across the jurisdictions relevant to this qualification

Resources implications for assessment include access to:

- suitable simulated or real workplace opportunities
- relevant legislation, such as:
 - *Adoption Act (Victoria)*
 - *Child Support (Assessment) Act*
 - *Child Support (Collection) Act*
 - *Commonwealth Marriage Act*
 - *Crimes (Family Violence) Act*
 - *Family Law Act 1975* with Regulations and Rules, CCH Australia
 - *Family Law Relationships Act 2008 (Vic)*
 - *Property Law Act 1958 (Vic)* and *Family Law Amendment (De facto Financial Matters and other measures) Act 2001*

Method of assessment

A range of assessment methods should be used to assess practical skills and knowledge. The following assessment methods are appropriate for this unit:

- research project and/or project work
- case studies and scenarios
- direct questioning
- examinations and tests
- presentations

Guidance information for assessment

Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended.

