

Specialist Accreditation Scheme



2025 Family Law Assessment Requirements



THE LAW SOCIETY
OF NEW SOUTH WALES



Specialist Accreditation 2025 Family Law Assessment Requirements

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Performance Standard

Standard of Accredited Specialist

The standard of an Accredited Specialist in Family Law is that of a *specialty competent practitioner* in the core skills and practical capabilities in the selected area of practice, as assessed against the spectrum of capability of all practitioners in that area of practice.

This standard is to be distinguished from the idea that the Scheme requires the highest technical legal knowledge across all aspects of the selected area of practice.

Methods of Assessment

The program for Specialist Accreditation in Family Law consists of three assessments as set out below. To gain accreditation a candidate **must pass all three assessments**.

The law to be applied by candidates is the law as it stands on the date of assessment.

Legislation and Provisions

Candidates should be familiar with the relevant parts of legislation relating to the Core Knowledge Areas - Topics for Assessment, regulations and other materials listed in **schedules 4 and 5**.

Important

Candidates are advised to read and familiarise themselves with the [2025 Guide to Application and Assessment](#) which contains important information regarding application, process, resources and special consideration etc. This document can be found at: lawsociety.com.au/specialists

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Timetable

The shaded area below shows the core assessment period including the dates associated with each assessment.

Candidates need to focus on this core assessment timeframe and plan their workload well in advance.

Based on feedback reports from previous years, candidates are encouraged to dedicate and manage their time during this period to optimise their performance across all assessment tasks.

Candidates are reminded that participating in the Specialist Accreditation program requires a considerable level of commitment if candidates are to achieve their desired outcome.

Activity	Date
Question & Answer sessions for potential candidates	Mid - February 2025
Applications close	Early Bird: Friday, 28 February 2025 Standard: Sunday, 30 March 2025
Candidature confirmed	Friday, 9 May 2025
Mock file	Released: Thursday 22 May 2025 Due: Thursday 12 June 2025
Written examination	Saturday 26 July 2025
Simulated interview	Sunday 27 July 2025
Results released to candidates	Early October 2025
Reassessment and/or Appeal application close	14 days from notification of results
Reassessment results released	Mid November 2025
Appeal results released	Mid November 2025



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Schedule 1

Mock File

Release date: 10:00 am, Thursday 22 May 2025

Due date: 4:00 pm, Thursday 12 June 2025

The Mock File will be available for download from the online candidate portal.

Candidates will be provided with a fact situation and will be required to prepare a letter to a client, as well as prepare documents.

1. Letter to Client

Candidates are to assume that they have taken initial instruction in conference from the client.

Candidates will be required to prepare a letter to the client, which is to be read and understood by the client, and on which it is anticipated the client will, after reading the letter, provide instructions as to how they wish to proceed with the matter.

The standard required is to be distinguished from the idea that the Program requires the highest technical legal knowledge across this selected area of practice.

The letter will provide to the client advice as to the issues arising from the facts provided and the significance of these issues, including:

- a) The options available to the client to conclude the matter;
- b) The advantages and disadvantages of each option;
- c) What the client may have to consider, if any consideration is required, before giving further instructions;
- d) What additional information or documents, if any, are required from the client;
- e) Any evidentiary issues relevant to the matter that may arise, should the matter proceed to Court;
- f) The strengths and weaknesses of the client's case; and
- g) To provide for the client, any further relevant documents.

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Candidates are to assume that they are a solicitor working in a Family Law practice that has employed a solicitor whose sole job is to meet with all new clients before any initial conference is held, and to advise each new client on:

- a) The Firm's policy in respect to fees and costs agreements;
- b) The current FCFCOA rules and the Central Practice Direction, and the Pre-action Procedure brochures relevant to Parenting and to Property, and to provide copies of those documents to the client;
- c) The arrangement for payment for the initial conference being conducted; and
- d) The Firm's cost agreement, to be sent out upon an appointment being made for an initial conference.

The candidate shall therefore only advise on those documents if it is specifically necessary as part of the advice given. Footnotes are NOT to be used.

Assessment Criteria

Candidates will be assessed on their:

- a) Ability to identify relevant issues from the materials provided;
- b) Ability to provide practical, clear and accurate advice; and
- c) Ability to demonstrate an understanding of the relevant law and applying that knowledge to the facts.

2. Document Drafting

Candidates will be required to draft appropriate Court documents with respect to the various issues raised. This is likely to include an Initiating Application and relevant supporting Affidavit(s) but may also or alternatively require the drafting of:

- I. A Balance sheet, Financial Questionnaire, Parenting question and/or a Mediation outline and
- II. An agreement such as Binding Child Support Agreement, Financial Agreement or Parenting Plan.

The examiners will assess communication skills as well as understanding and application of the law to the given fact situation.

Assessment Criteria

Candidates will be assessed on their ability to draft relevant and admissible documents.

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Note:

- Candidates are not expected to provide any advice relating to costs agreements or disclosure statements.
- Candidates may use the resources of their offices in completing this exercise. However, consultation with any other person in completing the exercise is not permitted.
- Candidates must adhere to the word limit of 3,500 words, for the letter to the client.
- Candidates should not simply use precedent orders unless such orders are relevant and necessary on the facts provided.
- Candidates must **NOT** use footnotes.

Schedule 2

Written Examination

Examination date: Saturday, 26 July 2025

Venue: Online

The examination is divided into two sections:

Section A – 70%

Two essay answer questions in areas of family law commonly encountered in practice.

Section B – 30%

Short answer questions that will assess areas across family law that are encountered in the day-to-day practice of a specialist.

Note: In order to pass the examination, the candidate must achieve at least a 50% score on each of Section A and Section B.

Assessment Criteria

Candidates will be assessed on their:

- a) Ability to identify relevant issues from a given fact situation;
- b) Depth of knowledge of the law and skill in applying that knowledge to the given fact situation;



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- c) Knowledge of procedural rules and practices;
- d) Ability to provide practical, clear and accurate answers; and
- e) Ability to apply the practical knowledge and skills of a Specialist.

*All candidates will be notified of the examination time and venue in advance of the examination date.

Schedule 3

Simulated Interview

Interview date: Sunday, 27 July 2025

Venue: Online

The candidate will conduct a simulated first interview with a person acting in the role of a client. The exercise will take a maximum of 60 minutes and will be recorded for assessment purposes.

This simulated interview is intended to assess a wide range of performance standards, including those relating to interaction between the solicitor and client, taking instructions and giving advice, terms of engagement, assessing facts and legal options, canvassing the options with the client and developing the initial plan.

The candidate may (but is not required to) bring written material to the interview including instruction sheets or notes. Any file note prepared as part of the simulated interview will not form part of the final assessment for this component.

The candidate is expected to demonstrate a clear ability to structure and conduct the interview, to take and receive instructions, deliver preliminary advice and provide information to the "client" in a manner which satisfies the assessment criteria, core knowledge and the performance standard.

Candidates are to assume that they are a solicitor working in a Family Law practice that has employed a solicitor whose sole job is to meet with all new clients before any initial conference is held, and to advise each new client on:

- a) The Firm's policy in respect to fees and costs agreements;
- b) The current FCFCOA rules and the Central Practice Direction, and the Pre-action; Procedure brochures relevant to Parenting and to Property, and to provide copies of those documents to the client;
- c) The arrangement for payment for the initial conference being conducted; and



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- d) The Firm's cost agreement, to be sent out upon an appointment being made for an initial conference.

The candidate shall therefore only advise on those documents if it is specifically necessary as part of the advice given.

Assessment Criteria

Candidates will be assessed on the following performance standards:

- a) Ability to establish a rapport and empathy with the client, and to display a professional attitude to the client and the structure and management of the interview;
- b) Gathering the facts of the matter and assessing the instructions;
- c) Advising the client on the facts and the client's instructions;
- d) Communicating relevantly, clearly and appropriately with the client;
- e) Demonstrating a sound knowledge of the law, and the rules and procedures relevant to the matter; and
- f) Where appropriate, canvassing the options to conclude the matter, and advising of the advantages and disadvantages and likely cost of each option.

***All candidates will be notified of their interview time in advance.**

Schedule 4a

Topics for Assessment

Candidates will be expected to display a high standard of knowledge regarding:

- a. The *Family Law Act 1975* (Cth), The Federal Circuit and Family Court of Australia Act 2021, The Federal Circuit and Family Court of Australia (Family Law) rules 2021, the *Child Support (Assessment) Act 1989* (Cth), the *Child Support (registration and collection) Act 1988*, the *Federal Circuit and Family Court of Australia (Division 2) Rules 2021*, *The Central Practice Direction*, and other *Practice Directions* together with other relevant legislation and case law;
- b. The core knowledge areas set out in schedule 4 of the Assessment Requirements; and

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- c. State Legislation relating to domestic violence, children and child protection, medical procedures and professional responsibilities, and the intersection between state and federal legislation.

The contents of schedule 4 (updated November 2024) should not be taken as exhaustive. It is aimed at assisting candidates in their preparation for Specialist Accreditation.

Candidates will be assessed on the law as it stands on the date of assessment. It will be presumed that Candidates will have kept abreast of any proposed legislative or practice changes that may have come into effect prior to the due date of the first item of assessment.

Candidates will be expected to:

- a) Address complex issues that might arise in any of the core knowledge areas;
- b) Identify relevant issues and problems from the fact scenarios provided;
- c) Provide practical, clear and accurate advice;
- d) Draft documents in accordance with relevant procedural rules and Practise Directions and principles; and
- e) Demonstrate adherence to the ethical and professional “best practice” of family law.

Note:

- The sections of legislation are provided by way of guideline assistance only. In the event that any new legislative reforms become effective before the date of assessment or new cases delivered, practitioners will be required to be aware of the changes to the law resulting from that legislation or those cases.
- Parts, divisions, sections, orders and rules, if cited without legislative reference, are parts, divisions, sections, orders or rules of the Family Law Act 1975 (Cth), or The Federal Circuit and Family Court of Australia (Family Law) Rules 2021, unless otherwise stated.
- The case list will be provided in due course.

1. Divorce

- Jurisdiction
- Ground: Section 48
 - meaning of separation (including separation under one roof): Section 49
- a)
 - Effect of resumption of cohabitation: Section 50
 - requirements where marriage is less than two years: section 44 (1B).

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- b)
- Section 55A declaration – Children
 - Effect on wills
 - Time limits for property and maintenance applications: section 44(3)
 - Applications for leave to institute proceedings out of time
 - Effect of fraud

2. Nullity

Grounds for nullity and consequences of nullity decrees.

3. Children

3.1 Dispute resolution

- s10A-K and s10PA
- Confidentiality re: counselling and family dispute resolution - Section 10D and H.
- Admissibility of statement made in counselling and family dispute resolution: Sections 10E and 10J.
- Section 10F definition of “family dispute resolution” and s10G definition of “family dispute resolution practitioner”
- *Family Law (Family Dispute Resolution Practitioners) Regulations 2008* (Cth), regulation 25(2)
- Role of Family Relationship Centres
- Section 63DA and s60D obligations of advisors
- Section 60I - pre-filing dispute resolution requirements and exceptions
- Section 60J

3.2 Jurisdictional requirements and discretion to exercise jurisdiction

- Standing:
 - Section 65C
 - Section 69C
 - Part 3.1 FCFCA Rules 2021 Necessary parties
- Best interest of children s60CC FLA 1975 and forum

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- Family Law amendment bill and repealing the presumption of “equal shared parental responsibility” provisions in the [Family Law Act 1975](#).
- Definition of “Parent” - Section 60H, 60HA, 60HB
- Court’s power to make parenting order: Section 65D(1)
- Approach to making of parenting orders
- Meaning of “Parenting Order” and matters parenting orders can deal with: 64B
- Whom parenting orders may be made in favour of: Section 64C
- Types of children parenting orders can deal with: Section 65H
- Parenting orders may be subject to later parenting plans: Section 64D
- Effect of death on parenting orders: Section 65K

3.3 Parental responsibility – Part VII, Div 2

- *Family Law Amendment Act 2023* (Cth) Sections 61A to 61F
- Definition of “major long-term issues”: section 4;

3.4 Parenting orders: general principles – Part VII, Div 12A

- Pre-action procedures and exceptions: Rule 4.01 and Schedule 1 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth);
- Sections 60B, 60CA, 60CC
- Court’s power to make an order outside of what parties applied for
- Principles in child-related proceedings: sections 69ZN and 69ZQ.
- Other issues concerning Parenting Orders – stay of proceedings pending appeal
- Section 60CC(3)(a) and children’s views
- Ways in which views can be put before the court: section 60CD, 60CE.
- Admissibility of statements by children: *Family Court of Australia (Family Law) Rules 2021* (Cth) rule 8.10; section 100B
- How children’s views should be considered and weighed. Family Reports/Expert Evidence.
- Family Reports: Section 62G
- Independent Children’s Lawyer (ICL): Part VII, Division 10
- Child abuse:
definition of “abuse”: section 4(1)
- Unacceptable Risk Test
- Family violence and Intervention Orders Cases, Section 68P

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- Family Violence
- Definition of “family violence”: section 4AB(1)(3); .
- Long term Supervision Orders
- Other issues:
 - surrogacy
 - Schooling
 - travel
 - change of name
 - child’s passport
 - Vexatious proceedings section 102QB
 - Definition of “major long-term issues”: section 4:

3.5 Parenting orders: general principles – Part VII, Divisions 4 to 6

The parenting compliance provisions: Part VII, Division 13A.

- The precondition as a preliminary issue:
 - Section 65DAAA
 - When parenting order terminates:
 - Sections 65H, 65J and 65K.
- Registration of state, territory and overseas orders: Part VII, Division 13.
- Family Law (Child Abduction Convention) Regulations 1986.
- Location and Recovery of Children: Part VII, Division 8 – Subdivision C
- 1980 Hague Convention on the Civil Aspects of International Child Abduction.
- Part VII, Division 12, subdivisions D & E
presumptions
- Section 67ZC (1).
- Family Law Practice Direction – Medical procedure proceedings

3.6 Relocation

- Section 4 - definition of “major long-term issues”:

3.7 Family Violence

- *Final bias and interim hearings; s 61DA, s 60CG*

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3.8 Parenting plans and orders (particular issues)

- Part V11 Divisions 4 to 6

3.9 Contravention of parenting orders

- The parenting compliance provisions
- *Contravention list*

3.10 Alteration of parenting orders: Section 65D (2)

- s65DAAA
- The precondition of fresh circumstances: changed circumstances; undisclosed material facts
- The precondition as a preliminary issue
- When parenting order terminates:
 - *Family Law Act 1975* (Cth)
 - Subsection 65H

3.11 Abduction of children – within Australia and overseas

- Part VII Division 13: Registration of state, Territory and Overseas orders
- *Family Law (Child Abduction Convention) Regulations 1986*
- Part VII Division 8 - Subdivision C: Location and Recovery of Children

3.12 Child protection convention

- Division 4 of Part XIII AA
- *Family Law (Child Protection Convention) Regulation 2003* (Cth)
- Commonwealth Child Protection Measure s 111CD

3.13 Paternity

- Part VII Division 12 – Subdivisions D and E

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3.14 Reaching agreement

- Parenting plans and Consent Orders
- Section 63C

3.15 Court sanction of medical procedures

- Section 67ZC (1)

3.16 Children in detention

- *Minister for Immigration and Multicultural and Indigenous Affairs v B (No 3)* (2004) 219 CLR 365

4. Spousal Maintenance

- Establishing a claim
- Threshold finding under Section 72; lack of adequate support and capacity to pay:
- Consideration of "any other adequate reason" under section 72(1)(c):
- Consideration of Section 75(2) factors
- Consideration of Section 74: exercise of discretion
- "Adequately" and "properly"
- Relationship between spousal maintenance and property order
- Section 77A requirements:
- *In the Marriage of Clauson* (1995) FLC 92-595: Cessation of spousal maintenance orders

c)

- Registrable spousal maintenance liabilities
- Lump sum spouse maintenance
- Urgent v Interim orders

5. Child Maintenance and Support

5.1 Child maintenance

- Section 66C FLA – Primary duty to maintain children
- Section 66E FLA – Jurisdictional aspects
- Section 66L FLA – Adult Child Maintenance
- Section 66M FLA – Step Parents
- Section 66VA FLA – When Adult Child Maintenance stops & duty to inform

5.2 Child support

- Limited and Binding Child Support Agreements, section 86 of the Assessment Act
- Child (Section 24 *Assessment Act*)
- Parent (Section 25 *Assessment Act*)
- Non – parent carer (Section 25A *Assessment Act*)
- The Child Support Formula – Division 2
- Elements of the Child Support Formula
- Re-establishment income
- Section 117 Departures – Division 4 – Part 7:
 - General Grounds of departures: section 117(2) *Assessment Act*
 - Earning Capacity section 117 (4) (d), Section 117(7A), (7B)
 - Departures from Administrative Assessments section 98B section 98C(2), section 117(2) – grounds for departure

Section 106A

- Change of assessment:
 - Estimates
 - Section 60, 61, 62, 63, 64 *Child Support (Assessment) Act 1989* (Cth)
 - Objections to Registrar Decisions
 - Court Review
 - Administrative Appeals Tribunal Social Services and Child Support Division
 - Abolition of AAT and transition to a new Federal administrative review body.
- Court review:
 - Review of AAT decisions – see above
 - Part VIII Registration Act

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- *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*
- When another application is pending Section 116(1)(b) *Assessment Act*
- Complex applications Section 98E, Section 98R
- Disputed parentage – Section 106, 107 *Assessment Act*.
- Stay orders Section 111C *Child Support Registration Act*
- Time limit on backdating assessments: section 111(1) *Assessment Act*
- Non-periodic amounts Section 123 *Assessment Act*
- Urgent child support Section 139(1) *Assessment Act*
- Order for recovery of wrongly paid child support
- Section 143 *Assessment Act*
- Recovery, Enforcement and Penalties

Note:

- *Assessment Act – Child Support (Assessment) Act 1989 (Cth)*
- *Registration Act – Child Support (Registration and Collection) Act 1989 (Cth)*
- *Tribunals Amalgamation Act 2015 (Cth)*

6. Financial Agreements

6.1 Matters that a financial agreement can deal with (Subsection 90B, 90C, 90D, 90UB, 90UC and 90UD)

- Property
- Financial resources
- Spousal maintenance (see further Subsection 90E and 90UH for specific drafting requirements, and Subsection 90F and 90UI)
- Incidental or ancillary matters (including adult child maintenance)
- Superannuation – Sections 90XH and 90XHA. Interplay with section 90XJ(1)(a).
- Lifestyle clauses
- Agreements with third parties

6.2 Challenging a financial agreement

- Onus of proof
- Is the agreement binding (applying Subsection 90G and 90UJ)?
- Legal advice

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- If the agreement does not comply with section 90G(1), can it be “saved” pursuant to section 90G(1A)?
- Ought the agreement be set aside (applying Subsection 90K and 90UM)?
- Non -disclosure of assets:
 - Subsection 90K(1)(b) – legal and equitable principles that may render an agreement “void, voidable or unenforceable”.
- Unconscionable conduct and/or undue influence:
- Impracticability
- Material change in circumstances
- Uncertainty/incompleteness
- Mistake
- Use of equitable and contractual principles to render enforceable an agreement:
 - Part performance
 - Implied terms:
 - Estoppel.

6.3 Third parties and financial agreements

- Separation declarations: Australian Securities and Investments
- Agreements binding on third parties
- Applications by third parties to set aside Financial Agreements:

7. Property

- *Family Law Act 1975* (Cth) – Section 79, 78 and 90SM
- Part VIII & Part VIII AB of FLA, FCFCOA (Family Law) Rules 2021
- Corporatisation of de facto relationships

d)

7.1 PRELIMINARY STEP

It must be determined whether it is just and equitable to alter property interests – Section 79(2)FLA

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Step 1: Identifying and valuing property, liabilities and financial resources

- The court seeks to ascertain the net value of all property of the parties by deducting from their total gross property their liabilities, including unsecured liabilities
- Property is defined under Section 4 of the *Family Law Act*
- Financial resources and expectation do not constitute property but are relevant and should be identified and evaluated
- Duty of full disclosure of relevant financial circumstances: *FCFCOA Rules 2021* – chapter 6:
 - Principle of “full and frank disclosure”
 - Methods of obtaining financial information
 - Identify and value relevant property
 - Treating assets of company or trusts as assets of a party/discretionary trust
 - Interest in a partnership
 - Superannuation
 - Prepaid legal costs
 - Valuations and Expert Evidence
 - Liabilities
 - Notional property
 - Income tax, capital gains tax, stamp duty and GST
 - *Income Tax Assessment Act*
 - Stamp duty
 - Section 90
 - CGT
 - Add-backs – three categories
 - Inter family loans or gifts

Step 2: Identify and evaluate contributions of parties

- Section 79 (4) and section 90SM (4): No starting point of equality
- *Global v Asset by Asset* approach
- Court’s approach Section 79(4)(a)-(c)
 - direct financial contributions
 - indirect financial contributions
 - financial contributions by or on behalf of a child of the marriage
 - non-financial contributions
 - contributions to the welfare of the family.

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e)

- Special contributions or skills
- Financial contributions in short marriages, post separation contributions
- Third party contributions (gifts, loans etc)
- Gifts and inheritances
- Redundancy packages
- Windfalls
- Expectation of an inheritance
- Interest in a partnership
- Waste
- Vicissitudes of life
- Accident verdicts
- Relevance of domestic violence
- Pre-marriage property and contributions
- Big money cases
- Contribution to the welfare of children of the other party from a previous relationship
- Initial Contributions
- Post Separation Contributions

Step 3: Identify and assess the various relevant matters set out in Section 79(4) (d) to (g) which includes Section 75 (2) and Section 90SM(4)(d) to (g) which includes Section 90SF (3) Factors

- Approach recommended by the High Court
- The various factors set out in the sub paragraphs of Subsection 75(2) and 90SF(3) are to be applied to the extent that they are relevant
- It is not appropriate to consider and quantify each of the factors separately but to arrive at a decision of overall adjustment
- The weight given to each factor is a matter for judicial discretion
- The factors are prospective but are based on the roles the parties adopted during their relationship
- Age and state of health of the parties, health of one party — short life expectancy
- Income, property and financial resources of each party and capacity for gainful employment

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- Whether either party has the care of a child under 18,; large number of children in the care of one party, shared care
- Any fact or circumstance which the justice of the case requires to be taken into account:
 - non-disclosure of assets
- Contribution to post separation redundancy package
- Inheritances
- Allowance for CGT, health problems with children
- Power to make substituting order in relation to a taxation debt
- Effect of orders on earning capacity
- Lack of realisability of assets
- Violence, short marriage, impact of relationship on earning capacity; [NOTE: arduous nature of contributions due to family violence dealt with at Step 2]
- Proposed orders to be made with one party assuming significant liabilities
- Adjustment in favour of one party where estate is modest and one has much higher income earning capacity;
- Section 75(2): where one party killed the other
- Treatment of one party's interest in a trust – asset -v- resource
- In addition to the cases on income, property and financial resources of each party and capacity for gainful employment
- Care for an adult child with a disability
- Assessing s 75(2) factors when taking an asset by asset approach

Step 4: Consider matters of justice and equity

- Equally applicable to sections 90SM(3) and 90SM(8) in particular

7.2 Four Step Approach to Determining Property

- Development of the concept that the Four Step Process is merely a shorthand distillation of the legislation which illuminates the path and not a legislatively mandated decision process

7.3 Adjournment of proceedings Section 79(5)

7.4 Section 106B – transaction to defeat claims

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7.5 Consideration of third-party interests

7.6 Effect of death on property proceedings

- Section 79(8) FLA

7.7 Execution of instruments by order of court Section 106A

7.8 Leave to initiate property proceedings out of time

7.9 De Facto Relationship

- De Facto financial cause; s 39B
- Jurisdiction: *Jurisdiction of Courts (Cross Vesting) Act 1987* (Cth) and (NSW)
- Geographical requirements, s 90SK
- S90SB further requirements- length of relationship, child, substantial contributions;

7.10 Effect of bankruptcy

- *Bankruptcy Act 1966* (Cth) – Section 35 and 35A
- Rights of creditors

7.11 Equitable estoppel

8. Injunctions

- Section 68B and Section 114
- Section 90SS re: de facto relationships
- Relevant principles (re: power and exercise of discretion):
 - Circumstances arising out of marital relationship
 - Personal protection/non-molestation (Section 68B)
- To restrain dealings in property:
 - Personal rights v legal or equitable interests
 - Merits of claim and degree of danger of prejudice

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- Real danger of prejudice
 - Prejudice to third parties
 - Ordinary business dealings
 - Minimum restrictions imposed
 - Undertakings
- Injunctions and third parties:
 - Part VIII AA FLA
 - Injunctions which affect third parties
 - Injunctions directly against third parties
 - Sham/puppet/alter ego
 - Power no wider for interlocutory injunctions than for permanent injunctions
 - Injunctions against third parties in Section 106B proceedings
 - Jurisdictional questions
 - Circumstances in which the Court may make final orders in property proceedings against a third party, and what must be satisfied for the Court to exercise this power under the *Family Law Act 1975 (Cth)*.
- Exclusive Use and Occupation:
 - Relevant matters to consider
- Ex Parte Applications:
 - *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* Part 5.3 Applications without notice
 - Real and urgent need to protect
 - Duty of full disclosure
 - Preservation of Evidence: Anton Piller Orders
 - Preservation of Property: Mareva Orders; (Interlocutory)
 - Rule 10.18 – Usual Undertaking as to Damages

9. Evidence

- Relevant Legislation:
 - *Family Law Act 1975 (Cth)*
 - *Evidence Act 1995 (Cth)*
 - *The Federal Circuit and Family Court of Australia Act 2021 (Cth)*
 - *The Federal Circuit and Family Court of Australia (Family Law) Rules 2021*

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- *Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules 2021*
- Evidence - Opinion – Expert Evidence – Admissibility / Basis of Opinion / Valuation
- Evidence - Opinion – Expert Evidence – Single Experts / Other Experts
- Fresh evidence on Appeal
 - Evidence in state court proceedings, refer to applicable Evidence Act in relevant State.
 - Unlawfully or Improperly obtained Evidence; *s138 Evidence Act*
 - Certificates under *s128 Evidence Act*
 - leave to appeal required from a declaration

10. Enforcement

- Part VII FLA – Division 13 A – Children
- *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* Chapter 11 – Financial Orders

11. Costs

- Lawyer-client costs governed by State or Territory in which lawyer practises e.g. *Legal Profession Uniform Law Application Act 2014* or *Legal Profession Act* of the relevant state for cases commenced after 1 July 2008 and in other limited circumstances
- *Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules 2021* ruling 21.09
Federal Circuit and Family Court of Australia (Family Law) Rules 2021 Chapter 12 and Practice Directions.
- Requirement to provide cost notices prior to each Court event.
- Section 117
- Reasons for the making of Costs Orders
- Contracting out with client
- Conduct or parties in relation to proceedings as a litigant and conduct as parent
- Party-party costs are ordered by the Court where appropriate:
 - Section 117
 - *Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules 2001*, rule 21.09

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Federal Circuit and Family Court of Australia (Family Law) Rules 2021

Chapter 19.

- Interim costs
- Section 117C offers
- Written offers of settlement
- Costs Orders against Case Guardians: s116(6) (Since October 2018) acts or omissions must be unreasonable or delayed proceedings unreasonably, r 6.13
- Costs ordered due to pre-action offer to settle
- Costs orders against legal representatives
- Executors of deceased estate Ordered to pay costs
- Set aside financial agreements
- Costs in arbitration

12. Reviews/Appeals/Transfers

- Appeals from Court of Summary Jurisdiction:

- Federal Circuit Court / Magistrates Court of Westerns Australia appeals and need for leave to appeal generally: section 94AAA and section 94AA *Family Law Act*.

- Appeals from Interlocutory Decree:

f)

- Leave to appeal
- Appeals to the Full Court: Chapter 22 *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*
- Fresh evidence
- Stays:
 - Pending Appeal *Federal Circuit and Family Court of Australia (Family Law) Rules 2021 22.11*
 - Pending a Review *Federal Circuit and Family Court of Australia (Family Law) Rules 2021 18.09.*
 - Parenting Cases:
 - Financial Cases:

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- g)
 - Summary dismissal:
- h)
 - Fresh evidence and
 - Nature of appeals generally
 - McKenzie Friend
 - Appeal Pathway from Magistrates Court of WA to the Court of Appeal (WA)
- i)
 - Appeal Family Court of Western Australia: Full Court considered powers of FCWA:
- j)
 - Senior Judicial Registrar Reviews

13. Inherent, Associated and Accrued Jurisdiction

- Associated jurisdiction
- Section 33 *Family Law Act 1975* (Cth)
- Limited Statutory Jurisdiction
- *Corporations Act 2001* (Cth)
- Inherent
- Slip Rule
- Cross-vesting
- Accrued

14. Family Violence

- Definitions: section 4AB, section 4 definitions of 'abuse' subparagraph (c), 'exposed', 'family violence', 'family violence order'
- Part II, Division 2, Family Counselling, section 10D(4)(c), exceptions to confidentiality of communications in family counselling
- Part II, Division 3, Family Dispute Resolution, section 10H(4)(c), exceptions to confidentiality of communications in family dispute resolution
- Part V, Division 3, Section 43(1)(ca), Principles to be applied by the Courts

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- Part VII, Division 1, Section 60CF, Obligation to inform the Court of Family Violence Orders
- Part VII, Division 8, Subdivision D, Sections 67Z to 67ZBB, Allegations of family violence
- Part VII, Division 11, Sections 68N to 68T, Inconsistencies between Family Violence Orders and Other Orders
- Part VII, Division 12, Subdivision C, Section 69H, Jurisdiction of Courts
- Part VII, Division 12A, Subdivision B, Section 69ZN(5), and Subdivision C, Section 69ZQ and Duties of the Court in conducting child related proceedings
- Part VII, Division 12A, Section 69ZW, Evidence relating to family violence
- Amendments to the Family Law Act 1975 (Cth) relating to Family Violence:
 - *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth) – Act 189 of 2011
 - *Family Law Amendment (Family Violence and Other Measures) Act 2018* (Cth) – Act 97 of 2018
 - *Family Law Amendment (Family Violence and Cross-Examination of Parties) Act 2018* (Cth) – Act 159 of 2018 (commenced 11 March 2019)
- National Domestic and Family Violence Bench Book, (June 2017) Australasian Institute of Judicial Administration, online at <http://www.dfvbenchbook.aija.org.au>
- Royal Commission into Family Violence (Victoria), (2016), Summary and Recommendations Volume, see: <http://www.rcfv.com.au/ReportRecommendations>
- *Not Now, Not Ever – Putting an End to Domestic and Family Violence in Queensland*, Special Task Force on Domestic and Family Violence in Queensland, see: <https://www.justice.qld.gov.au/initiatives/end-domesticfamily-violence/about/not-now-not-ever-report>
- State Family Violence Acts

15. Individual State Jurisdictions

- Domestic Violence
- Children
- Medical Procedures
- Professional responsibilities and obligations

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16. Court Processes

- Steps to include:
 - Interim hearings
 - Conciliation conferences
 - Trials
 - Central Practice Direction
 - Case Management Pathway
 - Anticipated length of time
 - Likely costs (financial or otherwise)
 - Allocation between divisions

17. Alternative to Court Processes

- FDR (parenting matters)
- Mediation
- Arbitration
- Collaborative practice
- Agreements:
 - BFA or consent orders (financial matters)
 - Orders or parenting plans (parenting).

Schedule 5

Related Legislation and Regulations

Legislation and other Materials

This is not necessarily an exhaustive list. Candidates will be assessed on the law as it stands on the date of assessment.

Commonwealth Legislation

- *Bankruptcy Act 1966* (Cth)
- *Child Support (Assessment) Act 1989* (Cth)
- *Child Support (Registration and Collection) Act 1988* (Cth)
- *Child Support (Assessment) Regulations 2018* (Cth)
- *Child Support (Registration and Collection) Regulations 2018* (Cth)
- *Corporations Act 2001* (Cth)
- *Evidence Act 1995* (Cth)
- *Family Law Act 1975* (Cth)
- *Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Act 2020* (Cth)
- *Federal Circuit and Family Court of Australia Act 2021* (Cth)
- *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021* (Cth)
- *Marriage Act 1961* (Cth)
- *Family Law Amendment Act 2023*
- *Family Law Amendment (Information Sharing) Act 2023*
- *Trans-Tasman Proceedings Act 2010* (Cth)
- *Superannuation Industry (Supervision) Regulations 1994* (Cth)
- *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth)
- *Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules 2021* (Cth)
- *Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Rules 2021* (Cth)
- *Family Law (Child Protection Convention) Regulations 2003* (Cth)
- *Family Law (Child Abduction Convention) Regulations 1986* (Cth)

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- *Family Law (Family Dispute Resolution Practitioners) Regulations 2008 (Cth)*
- *The Hague Convention on the Civil Aspects of International Child Abduction, 25 October 1980*

Commonwealth Bills

- *Family Law Amendment Bill (No. 2) 2023 - Property Reform*

Related Procedures Federal Circuit and Family Court of Australia.

- *Central Practice Direction: Family Law Case Management*
- *Family Law Practice Direction – Corporations Act proceedings*
- *Family Law Practice Direction – Medical procedure proceedings*
- *Family Law Practice Direction – National Contravention List*
- *Family Law Practice Direction – National COVID-19 List*
- *Family Law Practice Direction – Nullity and validity of marriage proceedings*
- *Family Law Practice Direction – Parenting proceedings*
- *Family Law Practice Direction – Passport proceedings*
- *Family Law Practice Direction – Priority Property Pools under \$500,000*
- *Family Law Practice Direction – Surrogacy proceedings*
- *Family Law Practice Direction – Trans-Tasman Proceedings Act proceedings*
- *Family Law Practice Direction – Appeals*
- *Family Law Practice Direction – Arbitration*
- *Family Law Practice Direction – Bankruptcy Act proceedings*
- *Family Law Practice Direction – Child support and child maintenance proceedings*
- *Family Law Practice Direction – Critical Incident List*
- *Family Law Practice Direction – Divorce proceedings*
- *Family Law Practice Direction – Evatt list*
- *Family Law Practice Direction – Financial proceedings*
- *Family Law Practice Direction – Lighthouse Project and Evatt List*
- *Family Law Practice Direction – Major Complex Financial Proceedings List*
- *FCFCOA Practice Direction – Revocation of Practice Directions and Information Notices*
- *FCFCOA Practice Direction – Transitional Arrangements*

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- *FCFCOA Special Measures Information Notice - COVID-19 Electronic Subpoena Inspection*
- *FCFCOA Special Measures Information Notice – Hearing protocol*
- *FCFCOA Information Notice: Applications for Review*
- *FCFCOA Information Notice: Court Record*
- *FCFCOA Information Notice: Subpoenas and the Department of Fairness Families and Housing Victoria*

New South Wales Legislation

- *Crimes (Domestic and Personal Violence) Act 2007 (NSW)*
- *Children and Young Persons (Care and Protection) Act 1998 (NSW)*
- *Duties Act 1997 (NSW)*
- *Legal Profession Uniform Law and Legal Profession Uniform Law Application Act 2014 (NSW)*
- *Property (Relationships) Act 1984 (NSW)*
- *Status of Children's Act 1996 (NSW)*
- *Suitors Fund Act 1951 (NSW)*
- *Surrogacy Act 2010 (NSW)*
- *Victims Rights and Support Act 2013 (NSW)*

Queensland Legislation

- *Child Protection Act 1999 (QLD)*
- *Childrens Court Act 1992 (QLD)*
- *Domestic and Family Violence Protection Act 2012 (QLD)*
- *Duties Act 2001 (QLD)*
- *Land Title Act 1994 (QLD)*
- *Legal Profession Act 2007 (QLD)*
- *Powers of Attorney Act 1998 (QLD)*
- *Property Law Act 1974 (QLD)*
- *Status of Children Act 1978 (QLD)*
- *Succession Act 1981 (QLD)*
- *Surrogacy Act 2010 (QLD)*
- *Transplantation & Anatomy Act 1979 (QLD)*

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South Australian Legislation

- *Children and Young People (Safety) Act 2017 (SA)*
- *Family Relationships Act 1975 (SA)*
- *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*
- *Legal Practitioners Act 1981 (SA)*
- *Stamp Duties Act 1923 (SA)*

Victorian Legislation

- *Assisted Reproductive Treatment Act 2008 (Vic)*
- *Births Deaths and Marriages Registration Act 1996 (Vic)*
- *Children Youth and Families Act 2005 (Vic)*
- *Duties Act 2000 (Vic)*
- *Family Violence Protection Act 2008 (Vic)*
- *Legal Profession Uniform Law Application Act 2014 (Vic)*
- *Personal Safety Intervention Orders Act 2010 (Vic)*
- *Property Law Act 1958 (Vic)*
- *Relationships Act 2008 (Vic)*
- *Status of Children Act 1974 (Vic)*

Western Australian Legislation

- *Adoption Act 2008*
- *Duties Act 2008 (WA)*
- *Evidence Act 1906 (WA)*
- *Family Court Act 1997*
- *Family Provisions Act 1972*
- *Family Court Rules 2021*
- *Family Violence Legislation Reform Act 2019 (WA) – passed July 2020*
- *Interpretation Act 1984*
- *Limitation Act 2005 (WA)*
- *Property Law Act 1969 (WA)*
- *Restraining Orders Act 1997 (WA)*



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- *Residential Tenancies Legislation Amendment (Family Violence) Act 2018 – assent Feb 2019*
- *Surrogacy Act 2008*
- *Surveillance Devices Act 1998 (WA)*
- *Transfer of Land Act 1893 (WA)*
- *Wills Act 1970 (WA)*

Related Guidelines

- Australian Solicitors Conduct Rules and relevant legislation in States and Territories
- Ethical Guidelines
- Family Court and Federal Circuit Court, *Family Violence Best Practice Principles* (2015)
- Family Law Council and Family Law Section of the Law Council of Australia, *Best Practice Guidelines for lawyers doing Family Law Work* (2nd ed) (Note: These are currently under review)

END OF DOCUMENT