

EXAM SPECIFICATIONS FOR CIVIL APPELLATE LAW

PURPOSE OF THE EXAM. The purpose of the certification exam is to require an examinee to demonstrate substantial knowledge of significant legal concepts and corresponding skills in the specialty area.

EXAM FORMAT. The exam consists of a three-hour morning session with three essay questions each worth 100 points and a three-hour afternoon session with 100 multiple-choice questions (10 of which involve professional ethics) each worth 2 points. The exam (essay and multiple-choice) must be taken by laptop (supplied by the examinee).

ESSAY QUESTIONS. Essay questions consist of a fact pattern followed by a series of questions (usually 4-6) for an examinee to answer. Essays are designed to require an examinee to recognize and analyze issues in the fact pattern and explain how those issues should be resolved. The fact patterns will involve situations you would likely encounter in your practice. Essays in this area typically include issues concerning error preservation, post-judgment motion practice, appealable judgments and rulings, appellate jurisdiction, appellate standards of review, appellate court relief (appeals and original proceedings), preservation of error, perfecting appeals, and appellate court disposition. Examinees should ensure they provide the specific information each question requests and communicate their response as clearly as possible. An organized, clearly written answer using complete sentences will almost always receive a higher score than a choppy, disorganized one. To pass the exam, examinees must be able to clearly express answers in a manner that would be persuasive to the decision-maker in a case.

MULTIPLE-CHOICE QUESTIONS. These questions are designed to test a breadth of issues in the specialty area and require an examinee to select the option that represents the best available answer.

EXAM GRADING. The required passing score is 350. All exam materials are confidential and not available for review. Essay answers are graded anonymously and identified only by an assigned examinee number. Multiple-choice answers are computer graded. Successful examinees are notified that they passed but are not provided with their specific score. Unsuccessful examinees are notified of their exam score. Exams that score 10 points below the passing grade are automatically regraded. Exam results are final.

REQUIRED KNOWLEDGE, SKILLS, AND ABILITIES. An examinee is expected to understand all aspects of proceedings brought before civil appellate courts. This includes appeals from final judgments and from interlocutory orders as well as original proceedings in appellate courts. An examinee must demonstrate the ability to:

- Communicate effectively and persuasively to clients, counsel, and courts;
- Develop and evaluate strategies for solving a problem or accomplishing an objective;
- Analyze and apply legal rules and principles;
- Analyze, sort, and use facts, plan, and direct factual investigations;
- Organize and manage a legal task efficiently within time constraints;
- Represent a client consistent with applicable ethical standards; and
- Invoke and utilize the procedures normally required in the specialty area, including pleadings and filings.

EXAM TOPICS. The following is a listing of topics on which essays and multiple-choice questions for specialty area exam may be based on.

NOTE: NOT ALL TOPICS LISTED BELOW WILL BE COVERED ON ANY GIVEN EXAM. EXAMINEES WILL BE TESTED ON RULES AND LAWS IN EFFECT AT THE TIME OF THE EXAM, UNLESS OTHERWISE SPECIFIED.

- 1. Intentional Torts**
- 2. Negligence**
- 3. Texas Deceptive Trade Practices Act**
- 4. Pre-trial Procedures**
 - A. Appellate remedy provisions of the venue statute (Chapter 15 of the Civil Practice and Remedies Code)
 - B. Interlocutory appeals
 - C. Preserving appellate complaints
 - D. Perfecting appeal
 - E. Obtaining the record
 - F. Briefing in the Courts of Appeals
 - G. Briefing in the Texas Supreme Court
 - H. Re-hearings
 - I. Original proceedings in appellate court
 - J. Dismissals (Tex. R. Civ. P. 91a, Tex. Civ. Prac. & Rem. Code Ch. 27)
 - K. Arbitration
- 5. Texas Civil Practice and Remedies Code provisions regarding malice and punitive damages**
- 6. Texas Civil Practice and Remedies Code provisions relating to frivolous lawsuits**
- 7. Tex. R. Civ. P. 13**
- 8. Appellate Procedure/Preserving Error for Appeal**
 - A. Trial Level Preservation of Error (State and Federal)
 - (1) Pretrial
 - (2) Voir Dire/Trial/Charge
 - (3) Post-Verdict
 - (4) Post-Judgment
 - (5) Offer of Proof/Formal Bill of Exception
 - B. Default Judgment/DWOPS/Sanctions/Rule 76a Sealing of Court Records
 - C. Summary Judgments (State and Federal)
 - D. Appealable Rulings (State and Federal)
 - (1) Interlocutory Rulings/Appeals
 - (2) Final Judgments
 - E. Standards of Appellate Review (State and Federal)
 - F. Jurisdiction
 - (1) Trial Court plenary power
 - (2) Texas Courts of Appeals, Original, Appellate, Plenary
 - (3) Texas Supreme Court, Original, Appellate, Certified Questions
 - (4) U. S. Courts of Appeals (including diversity and federal question)
 - (5) U. S. Supreme Court

- G. Perfecting Appeal/Record on Appeal
 - (1) Perfecting (State and Federal), Notice of appeal, Affidavit of Indigence, Docketing Statement
 - (2) Clerk's Record
 - (3) Reporter's Record, General/Necessity, Partial, Agreed, Unavailable, Exhibits
- H. Appellate Timetables/Deadlines (State and Federal)
- I. Appellate Court Disposition
 - (1) Motions (recusals, extensions, stays, supersedeas, etc.)
 - (2) Opinions/Judgments/Mandates – Effect on subsequent proceedings
- J. Motions for Rehearing
 - (1) General Rule
 - (2) Second Motion/En-Banc Motion
 - (3) Federal Cases
- K. Petition for Review/Briefs/Motions for Rehearing/Other Texas Supreme Court Proceedings
- L. Petition for Cert/Proceedings in U. S. Supreme Court
- M. Original Proceedings
 - (1) Mandamus
 - (2) Prohibition
 - (3) Habeas Corpus
 - (4) The Record in Original Proceedings
- N. Miscellaneous
 - (1) Effects of Bankruptcy
 - (2) Superseding Judgment/Abstracting/Execution/Enforcement of Judgment
 - (3) Severance
 - (4) Trial and Appellate Proceedings after Remand
 - (5) Remittitur
 - (6) Restricted Appeals/Bills of Review
 - (7) Multi-party and Cross Appeals
 - (8) Harmless vs. Reversible Error
 - (9) Attorney's Fees
 - (10) Retroactivity of Court Decisions
 - (11) Standing to Appeal/Ripeness/Mootness
 - (12) Res Judicata/Law of the Case
 - (13) Standards for Appellate Conduct/Sanctions on Appeal
 - (14) Punitive Damages
 - (15) Jury Charge
 - (16) Judgment Interest (pre-, post-, calculating interest rates)
 - (17) Transfer of Cases on Appeals/Applicable Law and Stare Decisis

9. Trial Procedure

- A. Parties/Pleadings
- B. Jurisdiction (Personal and Subject Matter)/Venue
- C. Summary Judgments (State and Federal)
- D. Jury/Non-Jury
 - (1) Voir Dire, Strikes
 - (2) Jury Misconduct
 - (3) Charge/Jury Findings/Jury Verdict
 - (4) Findings of Fact/Conclusions of Law

- F. Expert Challenges
- G. Injunctive Relief
 - (1) TROs
 - (2) Temporary and Permanent Injunctions

10. The Texas Disciplinary Rules of Professional Conduct. The ethics questions regarding this topic will involve an array of hypothetical fact situations which will cover several different aspects of ethical issues that arise in the practice of law. The questions will not be limited to the practice of any one specialty area, and consequently, an examinee is advised to be familiar with all provisions of the TDRPC.