

# **EXAM SPECIFICATIONS FOR CIVIL APPELLATE LAW**

**PURPOSE OF THE EXAM.** The purpose of the certification exam is to require an applicant to demonstrate substantial knowledge of significant legal concepts and corresponding skills in civil appellate law.

**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 required passing score is **350**. The essay portion of the exam may be taken by laptop (supplied by the examinee) or by writing. Answers to the multiple choice questions will be documented by the applicant on a scantron answer sheet supplied by TBLS.

**ESSAY QUESTIONS.** Essay questions consist of a fact pattern followed by a series of questions (usually 4-6) for an applicant to answer. Essays are designed to require an applicant 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. Applicants should make sure to provide the specific information each question asks for and to communicate as clearly as possible. An organized, clearly written answer using complete sentences will almost always receive a higher score than a choppy, disorganized one. In order to pass the exam, applicants 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 applicant to select the **best** available answer option.

**REQUIRED KNOWLEDGE, SKILLS AND ABILITIES.** An applicant in civil appellate law 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. The knowledge, skills and abilities required of a civil appellate law applicant are set out below.

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

- 1. Intentional Torts**
- 2. Negligence**
- 3. Breach of Contract**
- 4. Texas Deceptive Trade Practices Act**
- 5. 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
- 6. Texas Civil Practice and Remedies Code provisions regarding malice and punitive damages**
- 7. Texas Civil Practice and Remedies Code provisions relating to frivolous law suits**
- 8. Tex. R. Civ. P. 13**
- 9. 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
    - (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
  - (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)

**10. Trial Procedure**

- a. Parties/Pleadings
- b. Jurisdiction/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
- e. Federal Jurisdiction/Removal/Remand
- f. Expert Challenges
- g. Injunctive Relief
  - (1) TROs
  - (2) Temporary and Permanent Injunctions

**11. 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 applicant is advised to be familiar with all provisions of the TDRPC.

## **SKILLS.**

An applicant 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
- Invoke and utilize the procedures normally required in the area of specialty including pleadings and filings