

# EXAM SPECIFICATIONS FOR CONSTRUCTION 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 construction 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.

**EXAM GRADING.** 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.

**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 questions involve situations you would likely encounter in your practice. Applicants 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. 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 option that represents the **best** available answer.

**REQUIRED KNOWLEDGE, SKILLS AND ABILITIES.** An applicant in construction law is expected to understand all aspects of transactions and relationships among contractors, subcontractors, suppliers, owners, architects, engineers, governmental entities, insurers, sureties and lenders regarding development, design and construction on public and private projects. This includes knowledge of construction-related law, including applicable statutes and common law principles and doctrines; drafting, negotiation, and operation of construction-related contract documents and provisions; knowledge of procurement and project delivery systems; construction lending, insurance and suretyship; construction claim development and presentation, including, but not limited to, the analysis of mechanic's lien claims, payment and performance bond claims, construction and design defect claims, contract claims, delay and special damages claims, construction specific statutory claims (*e.g.* Prompt Pay Act, Trust Fund Act), construction accident, injury and OSHA claims, administrative claims, private labor and wage claims (related to construction), judgment collection and enforcement, tort claims arising from design and construction activities, and equitable claims arising from design and construction activities; and construction dispute resolution through negotiation, litigation, arbitration, administrative hearings, mediation and other forms of dispute resolution. A more detailed list of the required knowledge, skills and abilities are set out on the following pages.

**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. **Licensing and Regulation of Design and Construction Industry Participants.**
2. **Construction Lending.**
3. **Construction contracts for private projects (delivery options and procurement, contract negotiation, preparation, and administration), including but not limited to statutory restrictions and requirements regarding contract terms and processes.**
4. **Construction contracts for public projects (delivery options and procurement, contract negotiation, bid protests, and administration), including but not limited to statutory restrictions and requirements regarding contract terms and processes.**
5. **Common industry contract documents.**
6. **Prompt payment procedures (public and private).**
7. **Texas mechanic's lien law.**
8. **Suretyship, including but not limited to Payment and Performance Bonds (private and public projects), Statutory Bonds, and the Federal Miller Act.**
9. **Insurance.**
10. **Warranties (express and implied).**
11. **Consumer protection in the construction context, including but not limited to the Trust Fund Act, Residential Construction Liability Act, and the Deceptive Trade Practices—Consumer Protection Act.**
12. **Procedural legal and arbitral matters for design and construction disputes, including but not limited to applicable rules and matters such as venue, governing law, and certificate of merit requirements.**
13. **Causes of action, defenses, and damages, including but not limited to theories of liability.**
14. **Collection and judgment enforcement procedures.**
15. **Sovereign and governmental immunity.**
16. **Construction dispute resolution through negotiation, litigation, arbitration, administrative hearings, mediation and other forms of dispute resolution.**
17. **Liens against Mineral Property.**
18. **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

**SUGGESTED STUDY MATERIALS.** There are no preparatory courses provided by TBLS. The following resources are some suggested materials to use for study; however, these resources are not intended to be definitive, but rather provide resources that cover many topics in construction law.

- **Texas Business and Commerce Code:**
  - Chapter 9: Secured Transactions
  - Chapter 56: Agreement for Payment of Construction Subcontractor
  - Chapter 58: Disaster Remediation Contracts
  - Chapter 272: Law Applicable to Certain Contracts for Construction of Repair of Real Property Improvements
- **Texas Civil Practice and Remedies Code:**
  - Chapter 12: Liability Related to a Fraudulent Court Record or a Fraudulent Lien or Claim filed against Real or Personal Property
  - Chapter 15: Venue
  - Chapter 16: Limitations
  - Chapter 32: Contribution
  - Chapter 33: Proportionate Responsibility
  - Chapter 34: Execution of Judgments
  - Chapter 38: Attorney's Fees
  - Chapter 43: Principal and Surety
  - Chapter 75: Limitation of Landowners' Liability
  - Chapter 95: Property Owner's Liability for Acts of Independent Contractors and Amount of Recovery
  - Title 5: Governmental Liability
  - Chapter 114: Adjudication of Claims Arising Under Written Contracts with State Agencies
  - Chapter 130: Indemnification in Certain Construction Contracts
  - Chapter 150: Licensed or Registered Professionals
  - Chapter 154: Alternative Dispute Resolution Procedures
  - Chapter 171: General Arbitration
- **Texas Constitution:**
  - Article XVI, § 37: Mechanic's Liens
  - Article XVI, §§ 50 & 51: Homestead

- **Texas Education Code:**
  - Chapter 51, Subchapter T: Construction and Repair of Permanent Improvements
  
- **Texas Government Code:**
  - Chapter 2251: Payment for Goods and Services - Prompt Pay (Public)
  - Chapter 2252: Contracts with Governmental Entity
  - Chapter 2253: Public Work Performance and Payment Bonds
  - Chapter 2254: Professional and Consulting Services
  - Chapter 2258: Prevailing Wage Rates
  - Chapter 2260: Resolution of Certain Contract Claims Against the State
  - Chapter 2267: Public and Private Facilities and Infrastructure
  - Chapter 2269: Contracting and Delivery Procedures for Construction Projects
  
- **Texas Insurance Code:**
  - Chapter 151: Consolidated Insurance Programs
  - Chapter 542: Processing and Settlement Claims
  - Chapter 3503 (Subchapter B): Surety Bonds and Related Instruments (Prompt Payment of Construction Payment Bonds)
  
- **Texas Labor Code:**
  - Chapters 406 – 408: Statutory Workers' Compensation
  
- **Texas Local Government Code:**
  - Chapter 262: Purchasing and Contracting Authority of Counties
  - Chapter 271: Purchasing and Contracting Authority of Municipalities, Counties, and Certain Other Local Governments
  
- **Texas Occupations Code:**
  - Title 6: Regulation of Engineering, Architecture, Land Surveying, and Related Practices
  - Title 8: Regulation of Environmental and Industrial Trades
  
- **Texas Penal Code:**
  - Chapter 37: Perjury and Other Falsification
  
- **Texas Property Code:**
  - Chapter 27: Residential Construction Liability
  - Chapter 28: Prompt Payment to Contractors and Subcontractors
  - Chapter 41: Exempt Property and Liens – Interests in Land
  - Chapter 53: Mechanic's, Contractor's, or Materialmen's Liens
  - Chapter 56: Liens against Mineral Interests
  - Section 82.119 – 82.120: Procedures for Filing Suit of Initiating Arbitration Proceedings for Defect or Design Claims for Certain Associations
  - Chapter 162: Construction Payments, Loan Receipts, and Misapplication of Trust Funds

- **Texas Tax Code:**
  - Chapter 151: Limited Sales, Excise, and Use Tax (provisions relating to tax on improvements to real property)
- **The Miller Act (40 U.S.C. §§1331 – 1334)**
- **Decisions from the Texas courts of appeals and the Texas Supreme Court concerning construction-related matters, doctrines, and interpretations**
- **Texas Rules of Civil Procedure**
- **Construction-related arbitral rules** (e.g., American Arbitration Association, JAMS)
- **Articles appearing in the Construction Law Journal** (previous five years)
- **Papers presented at the Annual Construction Law Conference** (The Construction Law Foundation of Texas) (previous five years)
- **Contract forms issued by major industry groups** (e.g., American Institute of Architects, ConsensusDocs, EJCDC, Design-Build Institute of America)