

# **EXAM SPECIFICATIONS FOR ESTATE PLANNING AND PROBATE 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 estate planning and probate 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 typically involve estate planning issues, probate and administration of a decedent's estate, and the application of estate, gift and/or generation skipping transfer taxes to an estate or transaction by preparation of a federal tax return. 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 estate planning and probate law is expected to understand how to help a client conserve and manage assets by drafting appropriate documents to effectuate the client's wishes, by taking steps to limit or avoid applicable taxes, and by seeking appropriate actions in probate court. The knowledge, skills and abilities required of an estate planning and probate law applicant are set out below.

**NOTE:** **This notice is to inform you that the 2017 exam will not cover the revisions to the Estates Code which become effective on September 1, 2017. All exam questions will be based on the pre-September 1, 2017 law.**

**NOT ALL TOPICS LISTED BELOW WILL BE COVERED ON ANY GIVEN EXAM**

- 1. Estate Planning**
  - a. Community and separate property principles
  - b. Formalities of wills
  - c. Elements of trusts, including requirements of the Texas Trust Code
  - d. Asset protection
  - e. Choice of Entity
  - f. Use of gifts, including Texas Uniform Transfers to Minors Act

- g. Governmental benefits (e.g., Special Needs Trusts, Medicaid/SSI qualification, etc.)
- h. Planning for disability (property management, medical care, Natural Death Act)
- i. Non-probate assets (e.g., multiple party accounts, life insurance)
- j. Estate, Gift and Generation Skipping Transfer Taxes, including Chapter 14
  - (1) Applicable exemption amounts
  - (2) The marital deduction
  - (3) Transfers during life
  - (4) Powers of appointment
  - (5) Life insurance
  - (6) Annuities
  - (7) Jointly owned property
  - (8) Charitable deduction
  - (9) Special use valuation
  - (10) Elections (State Law and Tax Elections)
  - (11) Extended payments
  - (12) Disclaimers
  - (13) Portability/DSUE
  - (14) Federal estate, gift, fiduciary income tax, and generation-skipping transfer tax returns, including representation before the Internal Revenue Service in connection with such returns or related controversies

**2. Estate and Trust Administration**

- a. Probate and administration of decedent's estate including dependent and independent administrations, muniments of title, foreign wills, etc.
- b. Determinations of heirship and intestate succession
- c. Guardianship creation and administration
- d. Guardianship alternatives
- e. Administration of trusts, including Decanting and Directed Trusts
- f. Contested proceedings involving wills, trusts and guardianship (including standing, statutes of limitation, remedies, etc.)

**3. Income Taxation Related to Estates and Trusts**

- a. Income taxation of estates, trust, and beneficiaries
- b. Income taxation of employee benefits and other retirement accounts
- c. The income tax basis of property acquired by gift or from a decedent, including basis reporting rules

**4. 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