

# EXAM SPECIFICATIONS FOR FAMILY 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 family 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 fact patterns involve situations you would likely encounter in your practice. Essays typically involve suits affecting the parent-child relationship, marital property issues, and evidence and procedure. 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 family law is expected to understand all aspects of marriage dissolution, including conservatorship, child support, marital property, COBRA and ERISA. An applicant must have a complete understanding and working knowledge of Title 1, Title 2, Title 4 and Title 5 (subtitles A, B, and C, Chapter 201 A) of the Texas Family Code. An applicant is also expected to be familiar with the procedures for resolving family law cases under the Texas Family Code and the Texas Rules of Civil Procedure. The applicant should additionally have an understanding of the general application of the Texas Rules of Civil Procedure and Texas Rules of Evidence, provisions in the Texas Constitution and other Texas laws relating to family law. Finally, the applicant needs to know how certain federal laws impact Texas family law cases (tax; bankruptcy; HIPAA, COBRA). A more detailed list of 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. Establishing or contesting the validity of a marriage**
- 2. Establishing legal and procedural requirements for family law cases including jurisdiction, venue and transfer of cases involving dissolution of marriage and modification as well as Supreme Court cases dealing with the right to marriage**
- 3. Determining or contesting parentage**
- 4. Terminating parental rights**
- 5. Child Support**
  - a. Using or contesting the Child Support Guidelines set forth in Section 154 of the Texas Family Code
  - b. Calculating and applying child support
  - c. Enforcing or modifying child support
  - d. Drafting child support documents
  - e. Jurisdiction over child support matters, including UIFSA
  - f. Attorney General involvement in child support matters
  - g. Liens and levies on financial institution accounts
  - h. Support obligation by Trust
- 6. Conservatorship**
  - a. Securing or contesting conservatorship
  - b. Modifying conservatorship
  - c. Standing in suits affecting the parent-child relationship
  - d. Venue in suits affecting the parent-child relationship
  - e. Jurisdiction over conservatorship matters, including UCCJEA
  - f. Possession and/or access to child
  - g. Third party conservatorship and possession and/or access, including grandparents
- 7. Spousal Maintenance**
  - a. Eligibility for maintenance including factors used in determining eligibility
  - b. Determining duration and amount of maintenance
  - c. Basis for modification of maintenance order
  - d. Enforcement of order
  - e. Income withholding including modification, reduction or termination of withholding order
- 8. Marital Property**
  - a. Establishing the character of marital property, including the use of the principles of tracing
  - b. Reimbursement both common law and statutory
  - c. The standards of value for family law cases and effectively establishing the value of marital property

- d. Understanding and applying the factors used in property division
- e. Effectively applying the principles of spousal liability, third party creditors and liabilities on property owned by spouses
- f. Fraud, constructive fraud, and breach of fiduciary duty
- g. Determining the effect of bankruptcy proceedings on the disposition of marital property, spousal maintenance and alimony
- h. Retirement benefits
- i. Employee benefits (e.g. vested and unvested stock options, restricted stock, and other employee benefits)
- j. Premarital and Marital Property Agreements

**9. Tax Related Issues**

- a. Recognizing federal income tax issues relating to:
  - (1) Reporting income during the marriage
  - (2) Reporting income during the year of divorce
  - (3) Filing federal income tax returns during the pendency of the divorce and in the year of divorce
  - (4) The division of marital property upon divorce
  - (5) The homestead laws, liens, and exemptions on property division during and following the year of divorce
  - (6) Child support payments
  - (7) Post-divorce contractual alimony payments

**10. Negotiating and Drafting Settlement Agreements, including but not limited to, agreements between counsel and parties, Rule 11, Mediated Settlement Agreements, Informal Settlement Agreements, and other settlement agreements**

- a. Effectively negotiating the division of marital property
- b. Effectively negotiating and drafting marital property agreements (including premarital, post marital, partition and exchange agreements, agreements to convert, agreements incident to divorce, and all applicable contract law)

**11. Trial of Family Law Cases**

- a. Effectively trying the family case, including use of all applicable provisions of the Texas Rules of Civil Procedure and the persuasive presentation of evidence under the Texas Rules of Evidence
- b. Temporary orders
- c. Summary Judgments
- d. Discovery
- e. Effectively using the provisions of the Civil Practice and Remedies Code
  - (1) Frivolous pleading and claims
  - (2) Limitations
  - (3) Declaratory judgments
  - (4) Attorney fees

- (5) Receivership
- (6) Temporary Restraining Orders and Injunctions
- (7) Alternative Dispute Resolution, including Mediation and Arbitration
- f. Claims between spouses, including economic and non-economic torts and third party claims
- g. The Uniform Fraudulent Transfer Act under Chapter 24 of the Texas Business and Commerce Code

**12. Appeals and Bills of Review in Family Law Cases**

- a. Appeals of Associate Judge rulings
- b. Preserving error at trial
- c. Appeals from final judgments
- d. Interlocutory appeals
- e. Bills of Review
- f. Habeas Corpus
- g. Mandamus

**13. Protective Orders and Family Violence, including Chapter 25 of the Texas Penal Code concerning offenses against the family**

**14. State statutes involving harmful access by computer; Federal and State Wiretapping Act; Unlawful Intercepted, Use and Disclosure of Wire, Oral or Electronic Communications, Unlawful Access to Stored Communications; Breach of Computer Security, including harmful access by computer:**

- a. Federal Interception and Use of Communication Statute, 18 USC §2510 - 2522 (1968) (a/k/a The Federal Wiretap Act), as amended by the Federal Electronic Communication Privacy Act (1986) [a/ka the Intentional Interception and Disclosure of Wire, Oral, or Electronic Communications Prohibited (18 USC §2511)]: §USC 2511(1)(a) - Inception of Communications; §18 USC 2511(1)(c) - Use of Intercepted Communications; and 18 USC 2511 (1)(d) - Disclosure of Intercepted Communications
- b. Texas Penal Code Section 16.02 - Unlawful Interception, Use or Disclosure of Wire, Oral or Electronic Communications, including Texas Code of Criminal Procedure Article 18.20 - Detection, Interception and Use of Wire, Oral or Electronic Communications
- c. The Federal Stored Communications Act. 18 USC §2701
- d. The Texas Stored Communications Act, Texas Penal Code Section 16.05 - Unlawful access to stored communications
- e. Interception of Communication, CPRC §123.001
- f. Unauthorized Access to Computer
  - (i) Texas Penal Code §3302 - Breach of Computer Security
  - (ii) The Federal Unauthorized Computer Access Act, 18 USC §1030
- g. Harmful Access by computer, CPRC §143.001, 143.002 and Texas Penal Code §33.02 – Breach of Computer Security

**15. Online Impersonation (Texas Penal Code Section 33.07)**

16. **HIPAA, COBRA, and “The Texas Medical Records Privacy Act,” Texas Health & Safety Code, Chapter 181**
17. **The Texas Disciplinary Rules of Professional Conduct.** The ethics questions 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, you are 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 specialty area, including pleadings and filings

Specifically, an applicant must be able to:

- Evaluate a case; including theories of recovery and available remedies, elements of damages, if any, develop pre-trial strategy and proposals for settlement
- Draft pleadings; identify appropriate parties; identify causes of action and affirmative defenses
- Conduct discovery
- Draft pre-trial motions
- Conduct voir dire
- Examine and cross-examine lay and expert witnesses
- Present, and object to, evidence
- Use documentary evidence
- Compose arguments
- Preserve error
- Draft trial motions and briefs
- Draft jury instructions
- Draft post-trial motions
- Draft judgments and settlement agreements
- Enforce judgments and settlement agreements