

# EXAM SPECIFICATIONS FOR CRIMINAL 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 criminal appellate law.

**EXAM FORMAT.** The morning session of the exam consists of three **Essay Questions**. Each essay is worth 100 points (300 points total). The afternoon session consists of 100 **Multiple-Choice Questions** of which 10 of these questions cover professional ethics. Each multiple-choice question is worth 2 points (200 points total).

**ESSAY QUESTIONS.** Each essay consists of a fact pattern followed by a question or a series of questions 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. Essays typically involve issues such as identification of potential criminal charges in a given situation, pre-trial motions, procedural and evidentiary issues arising at trial, and preservation of error in the trial court. 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. 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.

**EXAM GRADING.** The required passing score is 350 points. 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 the exam but are not provided with their specific score. Unsuccessful examinees are notified of their exam score. Exams that score within 10 points below the passing grade are automatically regraded. Exam results are final.

**REQUIRED KNOWLEDGE, SKILLS, AND ABILITIES.** An applicant in criminal law is expected to understand the resolution of charges of criminal conduct in both state and federal court from the initiation of charges and pretrial proceedings through trials and appeals. Applicants should know the Texas Penal Code, Texas Code of Criminal Procedure, Texas Rules of Evidence, Federal Rules of Criminal Procedure, Federal Rules of Evidence, and common federal criminal statutes, including all major decisions from the Supreme Court of the United States and the Court of Criminal Appeals of Texas in at least the last two years, etc. 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
- Evaluate a case; develop pretrial strategy and proposals for disposition Draft pleadings; identify defenses
- Evaluate a case; develop pretrial strategy and proposals for disposition Draft pleadings; identify defenses
- Conduct investigation and discovery
- Draft pretrial 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 charges
- Draft post-trial motions

**EXAM TOPICS.** Following is a listing of topics on which essays and multiple-choice questions in the specialty area may be based on.

**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. Establishment of the attorney-client relationship**
  - a. Appointed, hired, payment of fees
- 2. Criminal Responsibility**
  - a. Substantive criminal offenses
  - b. Accomplice, party, and conspiracy culpability
  - c. Culpable mental states
  - d. Defenses, including jeopardy and statutes of limitations
  - e. Competency and sanity
- 3. Criminal Law Prior to Commencement of Formal Criminal Proceedings**
  - a. Arrest, search, and seizure
  - b. Police interrogation
  - c. Confessions
  - d. Pre-trial identification
- 4. Commencement of Formal Criminal Proceedings**
  - a. Pre-trial release
  - b. The role of the grand jury
  - c. Examining trials and preliminary hearings
  - d. Charging instruments
  - e. Venue
  - f. Joinder and severance
  - g. Speedy trial acts
  - h. Jurisdiction
  - i. Pre-trial writs of habeas corpus (jeopardy, bail, and others)
- 5. Resolution of Criminal Proceedings**
  - a. Pre-trial matters
  - b. Plea bargains, guilty pleas, and grants of immunity
  - c. Jury and non-jury trials

- d. Jury selection, jury conduct
- e. Evidence, objections, and preservation
- f. Procedure
- g. Punishment phase
- h. Charge to the jury
- i. Sentencing, including federal sentencing guidelines and parole
- j. Capital murder or death penalty cases
- k. Revocation or adjudication of community supervision
- l. Expunction and non-disclosure
- m. Asset seizure and forfeiture
- n. Motion for new trial and appeal

**6. Federal and State Constitutional Law Issues**

- a. Right to counsel
- b. Right to confrontation, compulsory process, and cross-examination
- c. Right to present a defense and due process
- d. Double jeopardy
- e. Arrest, search, and seizure
- f. Equal protection
- g. Speedy trial
- h. Public trial
- i. Cruel and unusual punishment

**7. New Legislation**

- 8. 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.