

# **EXAM SPECIFICATIONS**

## **FOR**

### **CONSUMER AND COMMERCIAL 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 consumer and commercial 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 the specific score. Unsuccessful examinees are notified of the 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 will involve situations you would likely encounter in your practice. Essays typically involve issues such as the application of state and federal statutes to transactions between individuals and businesses, common law rights and defenses, and the initiation and resolution of claims of this nature. 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 consumer and commercial law is expected to understand the rights and obligations of individuals and businesses in transaction for goods, services, and real property, as well as those in commercial transactions between businesses. The knowledge, skills and abilities required of a consumer and commercial 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. Residential and Commercial mortgages, including application of the Texas Property Code, the Texas Constitution (especially as it applies to home equity lending), statutes and common law

2. Debt collection law, including but not limited to the federal Fair Debt Collections Practices Act, the Texas Debt Collection Practices Act, the Telephone Consumer Protection Act, and fraudulent transfers
3. Consumer law in connection with the Texas Trade Practices – Consumer Protection Act (DTPA) and corresponding “tie-in” statutes.
4. Texas Insurance Code, Chapters 541 (Unfair Methods of Competition and Unfair or Deceptive Acts or Practices), Sections 542.001-061 (Unfair Claim Settlement Practices and Prompt Payment of Claims, and Chapter 554 (Burden of Proof and Pleading); the Stowers doctrine; the complaint allegation rule; and common law rules of construction of insurance policies
5. Texas Business and Commerce Code, Chapters 2 (Sales), 3 (Negotiable Instruments) and 9 Subchapter F (Secured Transactions-Default: §§9.601-9.628) and Chapters 26-27, and 581-33(A)(2) Texas Securities Act
6. State and Federal consumer regulations governing consumer transactions such: the Truth in Lending Act, the Fair Credit Reporting Act, RESPA, Dodd-Frank, Equal Credit Opportunity Act, the Servicemembers Civil Relief Act, and the Federal Trade Commission Holder Rule.
7. Federal consumer protection statutes and regulations governing consumer transactions such as:
  - a. The Truth and Lending Act (TILA)
  - b. The Fair Credit Reporting Act (FCRA)
  - c. The Real Estate Settlement Procedures Act (RESPA)
  - d. The Equal Credit Opportunity Act (ECOA)
  - e. The Servicemembers Civil Relief Act
  - f. The Federal Trade Commission Holder Rule
  - g. The Telemarketing Consumer Fraud and Abuse Prevention Act and the Telemarketing Sales Rule (TSR)
  - h. The Telephone Consumer Protection Act (TCPA)
8. Texas Finance Code, Title 4, Regulation of Interest, Loans and Finance Transactions
9. Commercial and residential real estate transactions, including landlord tenant law
10. Texas and Federal Civil Procedure and Rules of Evidence and Civil Practice and Remedies Code
11. Recent or significant cases or legislation related to consumer and commercial law matters, including but not limited to enforcement actions taken by the Consumer Financial Protection Bureau and the Consumer Protection Division of the Texas Attorney General.

12. 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 specialty area, including pleadings and filings