

EXAM SPECIFICATIONS FOR CIVIL TRIAL LAW

PURPOSE OF THE EXAM. The purpose of the certification exam is to require an examinee to demonstrate substantial knowledge of significant legal concepts and corresponding skills in the specialty area.

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 exam (essay and multiple-choice) must be taken by laptop (supplied by the examinee).

ESSAY QUESTIONS. Essay questions consist of a fact pattern followed by a series of questions (usually 4-6) for an examinee to answer. Essays are designed to require an examinee 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 in this area usually include litigation between a business and either another business, an ownership interest, or an employee, and sometimes litigation between a business and a consumer. It is also possible that an essay will deal with litigation between creditors and debtors or litigation between individuals involving contracts or non-personal injury torts. Examinees 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, examinees 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 examinee to select the option that represents the best available answer.

EXAM GRADING. The required passing score is 350. 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.

REQUIRED KNOWLEDGE, SKILLS, AND ABILITIES. An examinee is expected to understand the aspects of litigation of civil controversies in various areas of substantive law. This includes the assertion of claims, defenses, discovery, pre-trial matters, and the trial of cases, including presentation of, or objection to, evidence. Therefore, **an examinee should display a thorough knowledge of the Texas and Federal Rules of Evidence, the Civil Practices and Remedies Code, and the Texas and Federal Rules of Civil Procedure.** An examinee must also 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; including available remedies and elements of damages, 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;
- Opening and closing statements;
- 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.

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

NOTE: NOT ALL TOPICS LISTED BELOW WILL BE COVERED ON ANY GIVEN EXAM. EXAMINEES WILL BE TESTED ON RULES AND LAWS IN EFFECT AT THE TIME OF THE EXAM, UNLESS OTHERWISE SPECIFIED.

- 1. Litigation Between Businesses**
 - A. Contract disputes
 - B. Business torts, including negligence
 - C. Fraud and negligent misrepresentation
- 2. Litigation Between a Business and Ownership Interests**
 - A. Rights and liabilities of partners
 - B. Rights of shareholders
 - C. Fiduciary duties; self-dealing; corporate and partnership opportunity
 - D. Mismanagement
- 3. Creditor and Debtor Litigation, including Fair Debt Collection and Turnover Actions**
- 4. Litigation Between a Business and Its Employees**
 - A. Discrimination
 - B. Employment and non-competition contracts
 - C. Wrongful termination
 - D. Fiduciary duties owed to employer by employee
- 5. Litigation Between a Business and Consumers**
 - A. Contract disputes
 - B. Landlord and tenant
 - C. Deceptive Trade Practices Act
 - D. Insurance coverage issues and insurance code violations
- 6. Fiduciary Litigation**
 - A. Formal and non-formal fiduciary relationships
 - B. Obligations arising from fiduciary relationships
 - C. Remedies for violation of duty

- 7. Defamation, Slander and Texas Citizens Participation Act Claims**
- 8. Litigation Between Individuals**
 - A. Contract disputes
 - B. Non-personal injury torts
- 9. Litigation Pertaining to Real Property Interests and Disputes**
 - A. Trespass to Quite Title
 - B. Limitations and Adverse Possession
 - C. Real estate fraud
 - D. Lis Pendens
 - E. Receivership
 - F. Specific Performance
 - G. Actions and defenses pertaining to foreclosure
 - H. Partition Actions
- 10. Landlord Tenant Litigation**
 - A. Causes of action, defenses, and remedies
 - B. Litigation in the Justice Court
 - C. Appeals from Justice Court
 - D. Jurisdiction Issues in District Court
- 11. Actions for Declaratory Judgment (Texas and Federal)**
- 12. Equitable Actions and Defenses**
- 13. Defenses and Limitation of Actions**
- 14. Alternatives to Court Litigation**
 - A. Mediations including Trial by Special Judge, Mini-trial, Moderated Settlement Conference, Summary Jury Trials
 - B. Arbitration under the Texas and Federal Arbitration Acts
 - C. Settlement
- 15. Contribution, Subrogation, and Release and Indemnity**
- 16. Causation Standards**
- 17. Rules of Evidence (Texas and Federal)**
- 18. Presentation of Evidence**
 - A. Introduction of evidence
 - B. Presumptions
 - C. Mode and order
 - D. Impeachment, contradiction, and rehabilitation
 - E. Judicial Notice
 - F. Rulings on Evidence – Preserving error
- 19. Relevancy and Reasons for Excluding Relevant Evidence**
 - A. Probative value
 - B. Authentication and identification
 - C. Character and related concepts
 - D. Expert testimony and scientific evidence, including Daubert challenges to such evidence
 - E. Real, demonstrative, and experimental evidence

- 20. Privileges and Other Exclusionary Policies**
- A. Spousal immunity and marital communications
 - B. Attorney-client and work product
 - C. Physician/psychotherapist-patient
 - D. Other privileges
 - E. Insurance coverage
 - F. Remedial measures
 - G. Compromise, payment of medical expenses, and plea negotiations
 - H. Past sexual conduct
 - I. ADR Confidentiality
- 21. Writings, Recordings, and Photographs**
- A. Requirement of original/best evidence
 - B. Summaries
 - C. Completeness rule
- 22. Hearsay and Circumstances of Its Admissibility**
- A. Definition of hearsay
 - B. Present sense impressions and excited utterances
 - C. Statements of mental, emotional, or physical condition
 - D. Statements for purposes of medical diagnosis and treatment
 - E. Past recollection recorded
 - F. Business records
 - G. Public records and reports
 - H. Learned treatises
 - I. Former testimony; depositions
 - J. Statements against interest
 - K. Other exceptions to the hearsay rule
- 23. Rules of Civil Procedure (Texas and Federal)**
- 24. Jurisdiction and Venue**
- A. Subject matter jurisdiction
 - B. Jurisdiction over parties
 - C. Jurisdiction over property
 - D. Service of process and notice
 - E. Venue, forum non-conveniens, and transfer
 - F. Choice of venue provisions in contracts
- 25. Law Applied by Federal Courts**
- A. State law in federal court
 - B. Federal common law
 - C. Removal, grounds, and procedure
- 26. Injunctions, Provisional Remedies, and Contempt**
- 27. Pre-Trial Procedures**
- A. Pleading
 - B. Motions to dismiss
 - C. Abstention doctrines
 - D. Joinder of parties and claims
 - E. Discovery--Preserving Evidence
 - F. Adjudication without a trial, including summary judgments
 - G. Default judgments

- H. Pre-trial conference and order
- I. Class action/certification
- J. Abatement
- K. Mandamus

28. Damage Model Construction and Analysis

29. Damages and Statutory Limitations on Damages

30. The Trial Process

- A. Jury trials
- B. Non-jury trials
- C. Conduct of class action trials
- D. Directed verdicts and non-suits
- E. Jury instructions and questions
- F. Motions
- G. Declaratory judgments
- H. Texas Civil Practice and Remedies Code

31. Verdicts, Judgments, and Post-Trial Procedures (including deadlines)

- A. Jury verdicts
- B. Judicial findings and conclusions
- C. Directed verdicts and non-suits
- D. Motion for New Trial and Post-trial motions
- E. Effect; claim and issue preclusion
- F. Appealability and review

32. 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 examinee is advised to be familiar with all provisions of the TDRPC.