

EXAM SPECIFICATIONS FOR CIVIL TRIAL 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 civil trial 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 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. 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 civil trial law is expected to understand the aspects of litigation of civil controversies in various areas of substantive law as well as **Texas and federal procedure and evidence**. 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. 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's and Debtor's Litigation, including Fair Debt Collection**
- 4. Litigation Between a Business and Its Employees**
 - a. Discrimination
 - b. Employment contracts
 - c. Wrongful termination
- 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. Litigation Between Individuals**
 - a. Contract disputes
 - b. Non-personal injury torts
- 7. Litigation pertain to Real Property Interests and Disputes**
 - a. Trespass to Quite Title
 - b. Limitations
 - c. Real estate fraud
 - d. Lis Pendens
 - e. Receivership
 - f. Specific Performance
- 8. Mediations, Texas and Federal Arbitration Acts, Settlement, Contribution, Subrogation, and Indemnity**
- 9. Limitation of Actions**
- 10. Equitable Actions and Defenses**
- 11. Rules of Evidence (Texas and Federal)**

- 12. 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
- 13. 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
 - e. Real, demonstrative, and experimental evidence
- 14. 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
- 15. Writings, Recordings, and Photographs**
 - a. Requirement of original/best evidence
 - b. Summaries
 - c. Completeness rule
- 16. 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
- 17. Rules of Civil Procedure (Texas and Federal)**

18. 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

19. Law Applied by Federal Courts

- a. State law in federal court
- b. Federal common law

20. Injunctions and Provisional Remedies

21. Pre-Trial Procedures

- a. Pleading
- b. Motions to dismiss
- c. Abstention doctrines
- d. Joinder of parties and claims
- e. Discovery
- f. Adjudication without a trial, including summary judgments
- g. Pre-trial conference and order
- h. Class action/certification

22. Damage Model Construction and Analysis

23. The Trial Process

- a. Jury trials
- b. Non-jury trials
- c. Conduct of class action trials
- d. Jury instructions
- e. Motions
- f. Declaratory judgments
- g. Texas Civil Practice and Remedies Code

24. Verdicts and Judgments

- a. Jury verdicts
- b. Judicial findings and conclusions
- c. Directed verdicts and non-suits
- d. Post-trial motions
- e. Effect; claim and issue preclusion
- f. Appealability and review

25. 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:

- 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 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
- 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