

# **EXAM SPECIFICATIONS FOR ESTATE PLANNING AND PROBATE 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 estate planning and probate 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 questions involve situations you would likely encounter in your practice. Essays typically involve estate and trust planning issues, probate and administration of a decedent's estate and/or trusts, the application of estate, gift and/or generation skipping transfer taxes rules and preparation and filing of related federal tax returns. 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 estate planning and probate law is expected to have a high level of technical knowledge of relevant state and federal law in order to evaluate a client's goals and desires, advise on steps to limit or avoid applicable taxes, administration processes, prepare and/or review any appropriate documents or related tax returns or initiate or represent the client in any court actions to accomplish the planning goals,

A more detailed list of required 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. Estate and Trust Planning**

- a. Community and separate property principles (including marital property agreements)
- b. Formalities of wills
- c. Elements of trusts, including provisions of the Texas Trust Code
- d. Asset protection
- e. Choice of Entity
- f. Use of gifts, including Texas Uniform Transfers to Minors Act
- g. Governmental benefits (e.g., Special Needs Trusts, Medicaid/SSI qualification, etc.)
- h. Planning for disability (powers of attorney, property management, medical care, Natural Death Act)
- i. Non-probate assets (e.g., multiple party accounts, life insurance, transfer on death deeds, life estates, etc.)
- j. IRAs and other retirement accounts (including rules for designated beneficiaries, RMDs, rollovers, stretch and holding in trust)
- k. Closely-held businesses (S corporations, limited partnerships and limited liability companies)
- l. Charitable planning (trusts, foundations, donor advised funds, etc.)
- m. Estate, Gift and Generation Skipping Transfer Taxes, including Chapter 14
  - (1) Applicable exemption amounts
  - (2) Marital deduction
  - (3) Transfers during life
  - (4) Powers of appointment
  - (5) Life insurance
  - (6) Annuities
  - (7) Jointly owned property
  - (8) Charitable deduction
  - (9) Special use valuation
  - (10) Elections (State Law and Tax Elections)
  - (11) Extended payments
  - (12) Disclaimers
  - (13) Portability/DSUE
  - (14) Federal estate, gift, fiduciary income tax, and generation-skipping transfer tax returns, including, but not limited to, representation before the Internal Revenue Service in connection with such returns or related controversies, requirements and timing for returns, adequate disclosure and relevant statutes of limitation

**2. Estate and Trust Administration**

- a. Probate and administration of decedent's estate including dependent and independent administrations, muniments of title, foreign wills and disclaimers
- b. Determinations of heirship and intestate succession
- c. Guardianship creation and administration

- d. Guardianship alternatives
- e. Administration of trusts, including Decanting and Directed Trusts
- f. Contested proceedings involving wills, trusts and guardianship (including standing, statutes of limitation, remedies, etc.)

**3. Income Taxation Related to Estates and Trusts**

- a. Income taxation of estates, trusts, and beneficiaries
- b. Income taxation of employee benefits and other retirement accounts
- c. The income tax basis of property acquired by gift or from a decedent, including basis reporting rules

**4. 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 AND ABILITIES.**

An applicant must have the requisite skills and 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 area of specialty including pleadings and filings