

EXAM SPECIFICATIONS FOR CIVIL APPELLATE LAW

The purpose of the certification examination is to require applicant to demonstrate substantial knowledge of significant legal concepts and corresponding skills in civil appellate law.

DEFINITION. Civil appellate law is the practice of law involving proceedings brought before a civil appellate court either by appeal of a final judgment or appealable interlocutory order or by an original proceeding in the appellate court. The preparation and presentation of the court's charge and of post-trial and other dispositive motions at the trial court level shall also be considered the practice of civil appellate law. The practice of civil appellate law that qualifies for substantial involvement and special competence should generally cover multiple areas of procedure and substantive law and not be limited to any one, narrow area of law (unless substantial involvement and special competence can otherwise be shown). For these purposes "civil appellate courts" include the United States Supreme Court, the Federal Court of Appeals, the Texas Supreme Court, the Texas Courts of Appeals, and comparable courts of other jurisdictions.

KNOWLEDGE. Applicant must have knowledge of the following: **(Not all of the following exam topics will be covered on the exam. Applicant will be tested on all laws currently in effect at the time of the exam.)**

Part I, the Essay portion of the exam will test applicant's ability to handle hypothetical state court fact scenarios from pre-trial through appeal to the Texas Supreme Court. While applicant is not tested on substantive law, it will be the background against which applicant must demonstrate knowledge and understanding of trial and appellate procedure, and applicant's ability to apply the law to the facts. No credit will be given for mere recitations of general rules.

- I. Intentional Torts
- II. Negligence
- III. Breach of Contract
- IV. Texas Deceptive Trade Practices Act
- V. Pre-trial Procedures
 - A. Appellate remedy provisions of the venue statute (Chapter 15 of the Civil Practice and Remedies Code)
 - B. Interlocutory appeals
 - C. Preserving appellate complaints
 - D. Perfecting appeal

- E. Obtaining the record
 - F. Briefing in the Courts of Appeals
 - G. Briefing in the Texas Supreme Court
 - H. Re-hearings
 - I. Original proceedings in appellate court
- VI. Texas Civil Practice and Remedies Code provisions regarding malice and punitive damages
- VII. Texas Civil Practice and Remedies Code provisions relating to frivolous law suits
- VIII. Tex. R. Civ. P. 13
- IX. Appellate Procedure/Preserving Error for Appeal
- A. Trial Level Preservation of Error (State and Federal)
 - 1. Pretrial
 - 2. Voir Dire/Trial/Charge
 - 3. Post-Verdict
 - 4. Post-Judgment
 - 5. Offer of Proof/Formal Bill of Exception
 - B. Default Judgment/DWOPS/Sanctions/Rule 76a Sealing of Court Records
 - C. Summary Judgments (State and Federal)
 - D. Appealable Rulings (State and Federal)
 - 1. Interlocutory Rulings/Appeals
 - 2. Final Judgments
 - E. Standards of Appellate Review (State and Federal)
 - F. Jurisdiction
 - 1. Trial Court plenary power
 - 2. Texas Courts of Appeals, Original, Appellate, Plenary
 - 3. Texas Supreme Court, Original, Appellate, Certified Questions
 - 4. U. S. Courts of Appeals
 - 5. U. S. Supreme Court
 - G. Perfecting Appeal/Record on Appeal
 - 1. Perfecting (State and Federal), Notice of appeal, affidavit of Indigence, Docketing Statement
 - 2. Clerk's Record
 - 3. Reporter's Record, General/Necessity, Partial, Agreed, Unavailable, Exhibits
 - H. Appellate Timetables/Deadlines (State and Federal)
 - I. Appellate Court Disposition
 - 1. Motions (recusals, extensions, supersedeas, etc.)
 - 2. Opinions/Judgments/Mandates – Effect on subsequent proceedings
 - J. Motions for Rehearing
 - 1. General Rule
 - 2. Second Motion/En-Banc Motion
 - 3. Federal Cases
 - K. Petition for Review/Briefs/Motions for Rehearing/Other Texas Supreme Court Proceedings
 - L. Petition for Cert/Proceedings in U. S. Supreme Court

- M. Original Proceedings
 - 1. Mandamus
 - 2. Prohibition
 - 3. Habeas Corpus
 - 4. The Record in Original Proceedings
- N. Miscellaneous
 - 1. Effects of Bankruptcy
 - 2. Superseding Judgment/Abstracting/Execution/Enforcement of Judgment
 - 3. Severance
 - 4. Trial and Appellate Proceedings after Remand
 - 5. Remittitur
 - 6. Restricted Appeals/Bills of Review
 - 7. Multi-party and Cross Appeals
 - 8. Harmless vs. Reversible Error
 - 9. Attorney's Fees
 - 10. Retroactivity of Court Decisions
 - 11. Standing to Appeal
 - 12. Res Judicata/Law of the Case
 - 13. Standards for Appellate Conduct/Sanctions on Appeal
 - 14. Punitive Damages
 - 15. Jury Charge
 - 16. Judgment Interest (pre-, post-, calculating interest rates)
- X. Trial Procedure
 - A. Parties/Pleadings
 - B. Jurisdiction/Venue
 - C. Summary Judgments (State and Federal)
 - D. Jury/Non-Jury
 - 1. Voir Dire, Strikes
 - 2. Jury Misconduct
 - 3. Charge/Jury Findings/Jury Verdict
 - 4. Findings of Fact/Conclusions of Law
 - E. Federal Jurisdiction/Removal/Remand
 - F. Expert Challenges
 - G. Injunctive Relief
 - 1. TROs
 - 2. Temporary and Permanent Injunctions
- XI. 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. Applicant must demonstrate the:

1. Ability to communicate effectively to a variety of audiences (e.g., communications addressed to clients, counsel, courts, administrative agencies, etc.)
2. Ability to develop and evaluate strategies for solving a problem or accomplishing an objective
3. Ability to analyze and apply legal rules and principles
4. Ability to analyze, sort and use facts, and to plan and direct factual investigations
5. Ability to organize and manage a legal task efficiently within time constraints
6. Ability to represent a client consistent with applicable ethical standards
7. Ability to invoke and utilize the procedures normally required in the area of specialty including pleadings and filings