

EXAM SPECIFICATIONS FOR CIVIL TRIAL LAW

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

DEFINITION. Civil trial law is the practice of law dealing with litigation of civil controversies in all areas of substantive law before state courts, federal courts, administrative agencies and arbitrators. In addition to the actual pre-trial and trial process, "civil trial" includes evaluating, handling, and resolving civil controversies prior to the initiation of suit as well as the full course of appellate processes.

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.)**

All of the following topics include federal as well as Texas rules, procedures, etc.

- I. Litigation Between Businesses
 - A. Contract disputes
 - B. Business torts, including negligence
- II. 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
- III. Creditor's and Debtor's Litigation, including Fair Debt Collection
- IV. Litigation Between a Business and Its Employees
 - A. Discrimination
 - B. Employment contracts
 - C. Wrongful termination
- V. 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
- VI. Litigation between individuals
 - A. Contract disputes
 - B. Non personal injury torts

- VII. ADR, Settlement, Contribution, Subrogation, and Indemnity
- VIII. Rules of Evidence
 - A. Texas
 - B. Federal
- IX. Presentation of Evidence
 - A. Introduction of evidence
 - B. Presumptions
 - C. Mode and order
 - D. Impeachment, contradiction, and rehabilitation
- X. 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
- XI. 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
- XII. Writings, Recordings, and Photographs
 - A. Requirement of original/best evidence
 - B. Summaries
 - C. Completeness rule
- XIII. 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

- XIV. Rules of Civil Procedure
 - A. Texas
 - B. Federal
- XV. Jurisdiction and Venue
 - A. Subject matter jurisdiction
 - B. Jurisdiction over parties
 - C. Jurisdiction over property
 - D. Service of process and notice
 - E. Venue, form non-conveniens, and transfer
- XVI. Law Applied by Federal Courts
 - A. State law in federal court
 - B. Federal common law
- XVII. Injunctions and Provisional Remedies
- XVIII. Pre-Trial Procedures
 - A. Pleading
 - B. Abstention doctrines
 - C. Joinder of parties and claims
 - D. Discovery
 - E. Adjudication without a trial, including summary judgments
 - F. Pre-trial conference and order
 - G. Class action/certification
- XIX. The Trial Process
 - A. Jury trials
 - B. Non-jury trials
 - C. Conduct of class action trials
 - D. Jury instructions
 - E. Motions
 - F. Declaratory judgments
- XX. 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
- XXI. 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

Specifically, applicant must be able to:

8. Evaluate a case; including available remedies and elements of damages, develop pre-trial strategy and proposals for settlement
9. Draft pleadings; identify appropriate parties; identify causes of action and affirmative defenses
10. Conduct discovery
11. Draft pre-trial motions
12. Conduct voir dire
13. Examine and cross-examine lay and expert witnesses
14. Present, and object to, evidence
15. Use documentary evidence
16. Compose arguments
17. Preserve error
18. Draft trial motions and briefs
19. Draft jury instructions
20. Draft post-trial motions