

# **EXAM SPECIFICATIONS FOR ESTATE PLANNING AND PROBATE LAW**

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

**DEFINITION.** Estate planning and probate law is the practice of law involving the Texas Probate Code, Texas Property Code the Internal Revenue Code and other federal, state and local statutes and interpretive material in connection with matters in which issues of estate planning and probate are significant factors. The practice of estate planning and probate law includes, but is not limited to, consulting with clients and giving advice regarding estate planning, probate and guardianship law; analyzing, planning and making recommendations for the conservation and disposition of clients' estates in accordance with the clients' expressed desires, including tax effects and consequences; drafting legal instruments to effectuate the clients' estate plans, (e.g., wills, trusts and other legal documents); representing clients before courts which hear and decide cases involving decedent's estates and guardianships; representing clients by litigating contested probate and guardianship issues in trial and appellate courts; representing clients in cases before the Internal Revenue Service and other taxing authorities and courts with respect to proposed, completed and ongoing transactions and other matters involving tax issues which are related to estate planning and probate law; and representing clients in the administrative appeal and litigation of tax issues involving transfers of assets during lifetime and at death.

**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.)**

- I. Estate Planning
  - A. Community and separate property principles
  - B. Formalities of wills
  - C. Elements of trusts, including requirements of the Texas Trust Code
  - D. Asset protection
  - E. Business agreements
  - F. Use of gifts, including Texas Uniform Transfers to Minors Act
  - G. Elder law issues, including government entitlements
  - H. Planning for disability (property management, medical care, Natural Death Act)
  - I. Non-probate assets (e.g., multiple party accounts, life insurance)
  - J. Impact of estate, gift and generation skipping transfer taxes, and Chapter 14
    - 1. The unified rate concepts
    - 2. The 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

II. Estate Administration

- A. Probate and administration of decedent's estate including dependent and independent administrations
- B. Administration of trusts, including the Uniform Prudent Investor Act and Uniform Principal and Income Act
- C. Muniments of title
- D. Guardianships
- E. Determinations of heirship and intestate successor
- F. Will and trust litigation

III. Taxation Related to Estates

- A. Income taxation of estates, trust, and beneficiaries
- B. Income taxation of employee benefits
- C. The income tax basis of property acquired by gift or from a decedent
- D. Texas inheritance tax
- E. Federal estate, gift, fiduciary income tax, and generation skipping transfer tax returns
- F. Representation before the Internal Revenue Service in connection with these returns or related controversies

IV. 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