

# EXAM SPECIFICATIONS FOR PERSONAL INJURY TRIAL LAW

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

**DEFINITION.** Personal injury trial law is the practice of law dealing with litigation of claims involving trauma or disability, physical or mental, to a person. It includes, by way of definition, and not limitation, litigation involving personal injury aspects of, automobile and other vehicular accident reparations; governmental claims; professional malpractice claims; products liability claims; statutory claims; insurance contract claims; or any negligent or intentional tort claims.

**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. Intentional Torts
  - A. Harms to the person
  - B. Harms to property interests
- II. Negligence
  - A. Duty
  - B. Standards of care
  - C. Problems relating to proof
  - D. Problems relating to causation
  - E. Limitations on liability
  - F. Liability for acts of others
- III. Products Liability
- IV. Other Torts
  - A. Nuisance
  - B. Defamation and invasion of privacy
  - C. Misrepresentation
  - D. Intentional interference with business relations
- V. Wrongful Death and Survivors Actions
- VI. Medical Malpractice
- VII. Insurance Contract Claims including Uninsured Motorists
- VIII. Insurance Coverage Issues
- IX. Texas Tort Claim Act
- X. ADR and Settlement

- XI. Contribution, Subrogation, and Indemnity
- XII. Presentation of Evidence
  - A. Introduction of evidence
  - B. Presumptions
  - C. Mode and order
  - D. Impeachment, contradiction, and rehabilitation
- XIII. 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
- XIV. 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
- XV. Writings, Recordings, and Photographs
  - A. Requirement of original/best evidence
  - B. Summaries
  - C. Completeness rule
- XVI. 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
- XVII. 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

XVIII. Law Applied by Federal Courts

- A. State law in federal court
- B. Federal common law

XIX. Injunctions and Provisional Remedies

XX. 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

XXI. The Trial Process

- A. Jury trials
- B. Non-jury trials
- C. Conduct of class action trials
- D. Jury instructions
- E. Motions
- F. Declaratory judgments

XXII. 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

XXIII. 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