



The State Bar of California

2023 LEGAL SPECIALIST EXAMINATION Preparation Packet

Examination Date: October 24, 2023

Legal Specialization Area:
FRANCHISE & DISTRIBUTION LAW

This packet contains key information you will need to prepare for the 2023 Legal Specialist Examination:

- Examination Action Plan
- Exam specifications listing topics that may be tested
- Free sample essay questions (multiple-choice questions are not released)

For full details, please visit [Exam Information](#).

2023 LEGAL SPECIALIST EXAMINATION ACTION PLAN

A. Start Today:

1. **Register** for the Legal Specialist Examination today in the [Admissions Applicant Portal \(Applicant Portal\)](#). Registration closes on **September 15**.
2. **Review** this packet for an overview and visit [Becoming a Certified Specialist](#) for eligibility requirements, current exam information, and other important dates and deadlines.

B. Know the Exam:

1. **Format:** The Legal Specialist Examination is a single-day exam that consists of eight short essay questions and 75 multiple-choice questions and tests whether an attorney has a proficient understanding of the key laws, rules, and procedures applicable to that area of law.
2. **Exam topics:** See enclosed exam specifications.
3. **Exam practice:** See enclosed sample essay questions. No sample answers are available for the essay questions, and no multiple-choice questions are released for practice.
4. **Ensure that your laptop is ready before exam day:** Applicants should take the two mock exams on the laptop that they will use on exam day **prior** to exam day.
5. **Other certification requirements:** Review the other task, education, and experience requirements in the post-exam application for initial certification. You may have already met many of the requirements, or you can continue to meet them through January 31, 2027.

C. Prepare for Exam Day

1. **Applicants must login into the exam by the posted password release time of 8:00 a.m.** so that you have enough time to verify your identification and start your laptop.
2. **Items allowed in the exam room:**
Please review the [exam bulletin](#) for a list of items that are allowed in the exam room before the exam.

While most applicants will not be allowed to bring reference books into the exam room, those taking the exams in the following four specialty areas have the option to bring in one of the following code books if they wish to do so (annotated or unannotated version):

- **Bankruptcy Law:** Bankruptcy Code and Rules
- **Estate Planning, Trust & Probate Law:** California Probate Code

- **Immigration & Nationality Law:** Immigration & Nationality Act only (NOT regulations)
- **Taxation Law:** Internal Revenue Code only (NOT regulations)

FRANCHISE & DISTRIBUTION LAW

Examination Specifications

Purpose of the Exam: The Franchise & Distribution Law Legal Specialist Examination consists of a combination of essay and multiple-choice questions. It is designed to verify the applicant's knowledge of and proficiency in the usual legal procedures and substantive law that should be common to specialists in the field as represented by the skills listed below. We recognize that these skills are interrelated, which may require that you apply several skills in responding to a single exam question. Also, the order of the skills does not reflect their relative importance, nor does the skill sequence represent an implied order of their application in practice.

Your answers to the exam questions should reflect your ability to identify and resolve issues, apply franchise & distribution law to the facts given, and show knowledge and understanding of the pertinent principles and theories of law, their relationship to each other, and their qualifications and limitations. Of primary importance for the essay questions will be the quality of your analysis and explanation.

Knowledge of the following fundamental lawyering skills may be assessed:

Subject Area 1: Professional Responsibility 1.1. Litigation-related duties to clients, opposing counsel, and the Court 1.2. Transactional-related duties to clients, client's corporate managers and owners and other third parties 1.3. Bases for attorney's fees/costs in litigation matters 1.4. Fee agreements – fee or equity based 1.5. Arbitration/mediation and dual representation 1.6. Conduct resulting in malpractice/discipline 1.7. Conflicts of interest – multiple clients, franchisee associations, competitors	Subject Area 2: Distribution Methods and Regulations 2.1 Franchising a. Federal Trade Commission (FTC) Franchise Rule b. California Franchise Investment Law 2.2 Business Opportunities / Seller Assisted Marketing Plans a. FTC Business Opportunities rule b. Seller Assisted Marketing Plan (SAMP) Act 2.3 Industry Specific Regulation (Federal and California) 2.4 Dealerships, Licensing and Other Distribution Methods
Subject Area 3: New Franchise or Distribution Program 3.1 Defining scope of attorney's role 3.2 Planning legal compliance 3.3 Designing franchise or distribution structure 3.4 Securing trademark and other intellectual property rights 3.5 Drafting franchise agreements, distribution agreements and related agreement 3.6 Selecting legal entity	Subject Area 4: Filing and Maintaining Disclosure Documents 4.1 Drafting disclosure documents under Federal and State laws 4.2 Preparing registration applications and exemption notices 4.3 Preparing ongoing documentation, including renewals, amendments, negotiated changes and material modifications 4.4 Conducting due diligence 4.5 Obtaining approval of franchise advertising and promotion 4.6 Creating franchise law compliance plan

	4.7 Handling franchise brokers –agreements and disclosure issues
Subject Area 5: Counseling Regarding System Expansion 5.1 Multi-unit franchising and subfranchising 5.2 Mergers and acquisitions 5.3 Multi-state franchising 5.4 International franchising	Subject Area 6: Ongoing Franchise Relationship Issues 6.1 Structural changes to system 6.2 Franchisee associations 6.3 Transfer, renewal and termination of agreements 6.4 System maturity and saturation issues
Subject Area 7: Representing Franchisees 7.1 Defining scope of attorney’s role 7.2 Reviewing disclosure documents 7.3 Conducting due diligence 7.4 Negotiating terms of agreements 7.5 Assisting in sale or purchase of existing franchised or distribution businesses and succession planning transactions 7.6 Counseling regarding termination and exit strategies 7.7 Representing multiple franchisees and franchisee associations 7.8 Counseling regarding franchisor or franchisee business failures	Subject Area 8: Franchise Disputes and Litigation 8.1 Franchise terminations, non-renewals and transfer refusals 8.2 Enforcement of post-termination obligations 8.3 California Franchise Relations Act issues 8.4 Violations of Franchise Investment Law and related laws, including Federal Trade Commission regulations 8.5 Civil and criminal liability issues – corporate and personal 8.6 Vicarious liability issues 8.7 Administrative actions by the California Department of Business Oversight, Attorney General, Federal Trade Commission and other agencies 8.8 Bankruptcy of franchisor or franchisee 8.9 Intellectual property
Subject Area 9: Dispute Resolution 9.1 Choice of law 9.2 Choice of resolution method: mediation, arbitration and/or litigation 9.3 Forum selection 9.4 Enforceability of provision a. Implied covenants b. Unconscionability (substantive vs. procedural) c. Statutory limitations d. Other boilerplate provisions 9.5 Statute of limitations 9.6 Issues regarding multiple actions and class action issues	Subject Area 10: Counseling Regarding Competition Issues 10.1 Price fixing 10.2 Unfair practices 10.3 Tying/exclusive dealing 10.4 Noncompetition covenants 10.5 Other anti-trust and unfair practice laws 10.6 Advertising law issues
Subject Area 11: Counseling Regarding Fundamental Intellectual Property Issues 11.1 Trademarks 11.2 Copyrights 11.3 Patents 11.4 Trade secrets	

FRANCHISE & DISTRIBUTION LAW
Sample Essay Questions

Below are actual questions from past examinations. These questions were designed to be read and answered within 45 minutes, though current examination questions are designed to be read and answered in 30 minutes.

Sample Legal Specialist Examination Question #1

Franchisor's business, "LAWSOME! Cleaners," provides cleaning services to law firms and offers an ultra-high level of cleanliness to her demanding clients. Franchisor now has offices in three locations in California.

Franchisor wants to expand her business and is unsure how she should do so. She has several alternatives in mind, including licensing additional businesses throughout the country.

Alternatively, she may use the internet to offer a business start-up kit for \$5,000 and \$10,000, which would include the necessary tools to use in the business and a written manual on how to market the business to law firms, how to hire workers, and how to provide an ultra-high level of services.

Franchisor uses only SUPERVAC vacuum cleaners because of their high suction power. The owner of SUPERVAC has offered to pay her \$50 for each SUPERVAC vacuum cleaner and also \$1 for every SUPERVAC vacuum bag purchased by anyone in the LAWSOME! Cleaners system. She thinks she may be able to make more money on these payments than on royalties or selling a kit.

- A. What distribution alternatives are available to Franchisor for expanding her business? Discuss.**
- B. What are the legal advantages and disadvantages of each alternative? Discuss.**

END OF QUESTION

Sample Legal Specialist Examination Question #2

Distributor paid \$250,000 to purchase from Green Machine, Inc. ("Company"), the exclusive distributorship rights to market the "Green Machine" (a machine that purports to convert grass clippings into ethanol) to residential customers only in Santa Clara County. Company's salesman told Distributor that he could easily sell 20 units a month at a 50% profit margin. Company salesman said Distributor would be fully trained in a "sure-fire" marketing program.

Distributor had to (1) purchase 10 Green Machines at \$2,500 each and pay the Company \$5,000 for marketing materials and \$2,500 for training; (2) contribute to a co-op advertising fund on an ongoing basis; and (3) lease a retail store decorated with the Green Machine sign and motif.

The agreement stated that it was not a partnership, joint venture, franchise, business opportunity or security and that Distributor was to operate as an independent distributor. There is no record that Company ever registered with any agency in California.

When Distributor signed the agreement, he was given a brochure on the credentials of Company's management, the history of the products, and a sales chart showing the projected sales and profit results for selling 10, 20 and 50 units per month. The brochure contained a disclaimer stating: "These projections are for illustration only. Your results may vary. We make no guarantees or promises as to revenues or profits."

After his business was open for five months, Distributor became convinced he had been cheated. None of the units worked. He had lost his total investment of \$325,000. He was forced to buy back all of the units under threat of lawsuits from his customers. Company would not negotiate regarding any responsibility for Distributor's problems.

- A. What remedies does Distributor have under the FIL? Discuss.**
- B. What legal and practical strategies should Distributor pursue, considering the risks and/or complications? Discuss.**

END OF QUESTION

Sample Legal Specialist Examination Question #3

Attorney, who represents both franchisors and franchisees, is engaged by Client, a prospective franchisee of Franchise to review a UFOC and Franchise Agreement with respect to a possible purchase of a franchise.

Attorney (who has had no prior dealings with Franchise) reviewed the documents and found that the Franchise's UFOC is not in compliance with the California Franchise Investment Law; the Franchise Agreement omits a number of areas that would normally be covered by a well-drafted agreement (to the material disadvantage of both the Franchisor and a Franchisee); and that an illegal earnings claim has been made. Attorney sent a letter to Client to that effect. Client took the letter to Franchise, some (but not all) of the problems identified by Attorney were fixed and Client (ignoring Attorney's advice) purchased the franchise.

Client referred other prospective franchisees of the Franchise to Attorney and she performed similar services for three other prospective franchisees of Franchise, who also end up purchasing a franchise.

Attorney then had no further dealings with any of the prospective (now actual) franchisees for the next six months.

Franchise finally decided that they needed to (a) revise their franchise documents to become legally compliant, (b) educate their sales staff on how to not violate the law, and (c) retain an attorney who is experienced and knowledgeable in franchise law.

Since Attorney was clearly competent to perform all of these tasks and seemed like a rational person, the CEO of Franchise contacted her and suggested a retainer arrangement.

Under the current California Rules of Professional Conduct, can Attorney represent Franchise? If she may do so, how should Attorney proceed?

END OF QUESTION