



# The State Bar of California

## **2023 LEGAL SPECIALIST EXAMINATION Preparation Packet**

**Examination Date: October 24, 2023**

Legal Specialization Area:  
**LEGAL MALPRACTICE 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)

## LEGAL MALPRACTICE LAW

### Examination Specifications

**Purpose of the Exam:** The Legal Malpractice 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 legal malpractice 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:

<b>Subject Area 1: Professional Responsibility</b> 1.1 Duties to clients, opposing counsel, and the Court 1.2 Bases for attorney's fees/costs in litigation matters 1.3 Bases for enforcement of ethics/standards 1.4 Conflicts of interest 1.5 Process for recognizing and resolving ethical dilemmas 1.6 Rules of Professional Conduct/B&P Code sections dealing with Attorneys 1.7 Ethical issues involving fee claims 1.8 Fee agreements	<b>Subject Area 2: Legal Analysis and Reasoning</b> 2.1 Wrongful Acts 2.2 Omissions 2.3 Statute of Limitations 2.4 Breach of attorney-client privilege 2.5 Abandonment of a client's matter 2.6 Lack of due diligence 2.7 Exerting undue influence adverse to the client's interest 2.8 Improper legal advice 2.9 Malicious or frivolous litigation 2.10 Obstruction of justice 2.11 Gathering information relevant to the decision to be made 2.12 Malfeasance or dishonesty 2.13 Breach of Fiduciary Duty 2.14 Analyzing the decision to be made 2.15 Predecessor counsel conduct 2.16 Successor counsel conduct
<b>Skill 3: Damages</b> 3.1 Billing fraud 3.2 Excessive litigation at the client's expense 3.3 Collectability 3.4 Recoverable damages 3.5 Causation 3.6 Disgorgement of fees 3.7 Cross-complaints for fees	<b>Skill 4: Motions</b> 4.1 Dispositive 4.2 Summary judgment 4.3 Anti-SLAPP 4.4 Pre-trial/trial motions 4.5 Disqualification motions 4.6 Discovery motions regarding punitive damages
<b>Skill 5: Litigation and Alternative Dispute Resolution Proceedings</b> 5.1 Tactics/strategies/advocacy/parties	<b>Skill 6: Insurance</b> 6.1 Errors and omissions 6.2 Coverage policy limits

5.2	Trial court practice and procedures	6.3	Reservations of rights
5.3	Preliminary hearings	6.4	Coverage exclusions
5.4	Jury selection/instruction	6.5	Ethical issues regarding insurance policies
5.5	Gathering information relevant to the decision to be made		
5.6	Counseling client about the decision to be made		
5.7	Ethics in mediation		
5.8	Civil procedure		
5.9	Arbitration with clients		

## **LEGAL MALPRACTICE 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**

Company employed a large sales force. Company retained Attorney to draft a form employment contract for use in the hire of new salespersons, whose duties rendered them exempt from overtime compensation. The retainer agreement between Attorney and Company stated: "Attorney will provide Company with legal services and advice pertaining to an employment matter."

Attorney transmitted to Company without any comment the form employment contract it requested. Despite the fact that an important issue in the employment of salespersons is their status as exempt or non-exempt from overtime compensation, the contract did not contain a provision addressing whether the salespersons under contract are exempt or non-exempt for overtime compensation. At no time did Attorney talk with Company about salesperson classification or entitlement to overtime compensation.

Company hired Salesperson and entered into the form employment contract that Attorney had drafted. During the 28 months that Salesperson worked for Company, she never submitted a request for overtime compensation. After Salesperson was fired for poor performance, however, she sued Company, alleging that she was a non-exempt employee entitled to overtime compensation in the amount of \$125,000. Rather than engage in protracted litigation, Company paid Salesperson \$60,000 to settle her claims and dismiss her lawsuit, and paid a Law Firm fees and costs in the amount of \$50,000 to defend Company against Salesperson's lawsuit.

Company then sued Attorney for legal malpractice, alleging that Attorney should have both advised Company about the issue of exempt/non-exempt employment status and entitlement to overtime compensation for its salespeople and included a provision in the form employment contract that would have protected Company from claims such as Salesperson's. Company asserted that if Attorney had not committed legal malpractice, it would not have been sued by Salesperson and would not have had to pay her \$60,000 to settle her claims and Law Firm \$50,000 in defense costs. Company seeks \$110,000 in damages from Attorney.

**A. Did Attorney have a duty to:**

- 1. Advise Company about the issue concerning the classification of its salespersons as exempt or non-exempt in the context of eligibility for overtime compensation? Discuss.**
- 2. Include in the form employment contract a provision addressing salesperson's status as exempt from overtime compensation? Discuss.**

**B. Can Company establish a claim for legal malpractice against Attorney?**

1. If so, may Company recover in damages from Attorney the amount of settlement with Salesperson (\$60,000) and the amount it incurred in the defense of Salesperson's claim? Discuss.

**END OF QUESTION**

## **Sample Legal Specialist Examination Essay Question #2**

Attorney is a business and probate attorney who was hired to probate the estate of Testator for statutory fees. Testator's Son is the executor.

During the pendency of the probate proceeding, Son apprised Attorney about a business opportunity to develop a golf course on land that Son owned. Attorney agreed to participate in a business transaction whereby Attorney and two of his other clients would invest in the development of, and acquire ownership interests in, the golf course. In full consideration for his ownership interest in the new golf course, Attorney agreed to prepare the legal documents necessary to get the planning and procedures approved, and also to draft an appropriate agreement. A partnership agreement drafted by Attorney was executed by all the parties to the golf course transaction.

Attorney's investment consisted solely of the contribution of his legal services. To make sure those services appeared equal in value to the ownership interest he was to acquire, Attorney increased his hourly rate for business-related legal services from \$400 to \$900, without advising any of the other parties. Attorney then sent bills out reflecting his services to the transaction at the higher rate. Son contributed the land and the other partners each contributed \$100,000 to the development partnership. Environmental snags caused delays, the project was not completed, and the partnership lost the land in foreclosure because it could not repay the loan.

- A. What duties of disclosure did Attorney owe to Son and the other clients/investors before the parties entered into the transactions? Discuss.**
- B. What issues were raised with respect to Son and Attorney's other clients as parties to the transaction for development of the new golf course when Attorney raised his fees from \$400 to \$900 for services related to the transaction and formation of the partnership? Discuss.**

**END OF QUESTION**



### **Sample Legal Specialist Examination Essay Question #3**

Attorney represented Plaintiff in a personal injury action. For reasons unknown to Attorney, Plaintiff failed to attend his noticed deposition. Defense Attorney moved to compel Plaintiff's appearance, and sought sanctions against him, but not against Attorney. Attorney appeared at the hearing, and told the court she had not been able to speak to her client for some time. The court granted the motion and ordered Plaintiff to appear. Defendant immediately re-noticed the deposition.

Two weeks before the new deposition date, Attorney served a motion to be relieved as counsel citing, among other reasons, her inability to locate Plaintiff. Attorney, not having been able to contact Plaintiff, although still his attorney of record, told Defense Attorney she still could not reach her client and did not attend the deposition. When Plaintiff yet again failed to appear at the deposition, Defendant moved for terminating and sought monetary sanctions against Plaintiff, citing his numerous failures to appear and to respond to discovery, and moved for monetary sanctions against Attorney, without citing any conduct by Attorney, as opposed to Plaintiff, to support sanctions.

Before opposition to Defendant's motion was due, the court granted Attorney's motion to be relieved. Two weeks later, the court granted sanctions against both Plaintiff and Attorney, based on Plaintiff's violation of the court's order to appear at deposition. Attorney did not appear at the hearing on Defendant's motion, never received formal notice of the court's ruling and never knew about the sanctions awarded against her until Defendant demanded payment three months later. Upon learning of the sanctions, Attorney requested that the court vacate the order awarding sanctions against her and sought a rehearing on Defendant's motion for sanctions against Attorney.

**What arguments, if any, can Attorney reasonably make in seeking to vacate the order of sanctions? Discuss.**

**END OF QUESTION**

### **Sample Legal Specialist Examination Essay Question #4**

Attorney represented Client in Client's wrongful termination lawsuit against Employer. Attorney agreed to advance costs and represent Client "on contingency" but there was no written fee agreement.

After nearly two years of litigation, the parties attended mediation before Retired Judge. During the mediation, Attorney told Client for the first time that there was a pending summary judgment/adjudication motion which was likely to end Client's case because there was no evidence of wrongful termination.

Employer, through Retired Judge, offered \$75,000 to settle the case, claiming it was their "best and final offer." Attorney told Client the offer was reasonable and should be accepted. Client agreed and entered into a written settlement agreement with Employer at mediation.

After the mediation, Employer sent the settlement check to Attorney. Attorney deposited the entire settlement check into Attorney's personal account as payment for fees and costs for the numerous depositions that had been taken.

Believing there was evidence of wrongful termination that, if known, would have increased the settlement value of Client's claim, Client sued Attorney for legal malpractice and breach of fiduciary duty.

- A. What breaches of fiduciary duty will be raised by Client against Attorney?**
- B. What defenses will Attorney raise in response to Client's claim that the advice to accept the \$75,000 settlement offer was negligent?**

**END OF QUESTION**