



The State Bar of California

2023 LEGAL SPECIALIST EXAMINATION Preparation Packet

Examination Date: October 24, 2023

Legal Specialization Area:
APPELLATE LAW (CIVIL & CRIMINAL)

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)

APPELLATE LAW (CIVIL OR CRIMINAL)
Examination Specifications

Purpose of the Exam: The Appellate 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 appellate 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:

<p>Subject Area 1: Professional Responsibility</p> <p>1.1 Duties to clients, opposing counsel, and the Court</p> <p>1.2 Bases for attorney's fees/costs</p> <p>1.3 Bases for sanctions</p> <p>1.4 Fee agreements</p> <p>1.5 Arbitration/mediation and dual representation</p> <p>1.6 Conduct resulting in malpractice/discipline</p> <p>1.7 Conflicts of interest</p>	<p>Subject Area 2: Pre-Briefing</p> <p>2.1 Preserving issues in the trial court</p> <p>2.2 Appealability</p> <p>2.3 Standing</p> <p>2.4 Notice of appeal and cross appeals</p> <p>2.5 Timing of notice of appeal/cross appeal</p> <p>2.6 Designation and preparation of the record on appeal</p> <p>2.7 Perfecting record on appeal</p> <p>2.8 Stays, supersedeas, appeal bonds/bail</p>
<p>Subject Area 3: Motions</p> <p>3.1 Applications, motions, and requests</p> <p>3.2 Correction/augmentation of the record on appeal</p> <p>3.3 Judicial notice</p>	<p>Subject Area 4: Briefing</p> <p>4.1 Reviewing the record</p> <p>4.2 Spotting issues</p> <p>4.3 Legal research</p> <p>4.4 Issue selection, strategy, and waiver</p> <p>4.5 Overcoming procedural problems</p> <p>4.6 Drafting and reviewing the brief</p> <p>4.7 Filing and service requirements</p> <p>4.8 Standard of review</p> <p>4.9 Standard of prejudice</p>
<p>Subject Area 5: Post-Briefing</p> <p>5.1 Supplemental briefing</p> <p>5.2 Oral argument</p> <p>5.3 Petitions for rehearing</p> <p>5.4 Petitions for review</p> <p>5.5 Remittitur and post-remittitur issues</p> <p>5.6 Preservation of issues and timing for Petition for Writ of Certiorari</p>	<p>Subject Area 6: Writs</p> <p>6.1 Appropriate petitions for extraordinary writs</p> <p>6.2 Procedural requirements for extraordinary writs</p> <p>6.3 Review of writ orders</p>

APPELLATE LAW (CIVIL OR CRIMINAL)
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 (CIVIL)

As Plaintiff was walking down the street on the way to work, she accidentally bumped into Defendant. Enraged by this indiscretion, Defendant threw a cup of hot coffee onto Plaintiff, who staggered backward into the street where she was struck by a passing motorist, sustaining serious injuries. Plaintiff thereafter filed a civil suit for battery against Defendant.

Following the presentation of evidence, the jury was instructed. After two days of deliberations, the jury determined that it was split 8-4 in favor of Plaintiff. At this time, both Juror Number 1 and Juror Number 2 indicated that, based on their religious beliefs, they did not believe they can sit in judgment of another person. The judge then instructed all jurors that they were to base their decision on the evidence and the Court's instructions alone. Juror Number 1 agreed to do so; Juror Number 2, however, indicated that she still could not be a juror. Defense counsel moved for a mistrial, but the Court instead chose simply to replace Juror Number 2 with Alternate Number A. Shortly after replacing Juror Number 2, the jury returned a 9-3 verdict in favor of Plaintiff.

After the verdict but before the bifurcated trial on damages, the Jury Foreperson (Juror Number 4) informed the Court that, before the jury had deadlocked, Juror Number 3 visited the intersection where the battery allegedly occurred and told the rest of the jury panel that it was extremely unlikely that the incident could have happened as Plaintiff testified. This issue was raised properly in Defendant's motion for new trial, which was denied by the trial court.

At the conclusion of the case, Juror Number 4 telephoned defense counsel and indicated that, during deliberations, he had done some research on the internet and found a newspaper article that said Defendant had suffered a prior conviction for assault with a deadly weapon in a highly publicized case. Juror Number 4 stated that he did not share this information with the remaining jurors, but that he was not sure whether it affected his decision. Assume a timely notice of appeal has been filed.

As to Jurors Number 1 through 4:

- A. Identify each claim of error and discuss whether each may be considered on direct appeal.**
- B. Identify the appropriate standard of review. Discuss.**
- C. Briefly analyze whether each claim of error is likely to succeed. Discuss.**

END OF QUESTION

Sample Legal Specialist Examination Essay Question #2 (CIVIL)

A jury found that Defendant unlawfully sold quantine, a very dangerous chemical, to Plaintiff, who was severely injured when he failed to take the necessary precautions to handle the material safely. Defendant appealed from the judgment, contending that the trial court erred in precluding her from presenting a defense focusing on the fact that Plaintiff had passed the safety course necessary to become a licensed quantine hauler. When precluded from tendering the defense, Defendant's counsel became extremely irate and ranted that the statute contemplated exactly such a defense. Defense counsel was nearly sanctioned during the tirade on how the court's ruling was unfair, violated due process, and essentially ended the case for Defendant. Deterred by the threat of sanction, defense counsel did not renew the objection when the trial court failed to instruct on this defense. The respondent's brief argues that it is irrelevant whether the statute so provides because Defendant's evidence of the defense was too weak to persuade a rational jury.

Defendant also complained that the trial court erroneously barred the introduction of the quantine handling course work that Plaintiff successfully completed. The record showed that defense counsel made an offer of proof, but shed no light on Plaintiff's assertion that the trial court ruled on the basis of Evidence Code §352's provision that cumulative evidence may be excluded.

Defendant asserted that the basis for ruling was the trial court's failure to understand the business records exception to the hearsay rule. To bolster the argument, Defendant referred to a point later in the trial in which the trial court also barred a related piece of evidence by explaining the business records exception in a clearly erroneous manner. Though the record contained the mistaken explanation, it did not reveal an offer of proof for this evidence. Since the jury deliberated for nine days, both sides admitted that the case was close.

For the issues of (1) the failure to allow a defense and (2) the exclusion of Defendant's evidence, discuss:

- A. the scope of review;**
- B. the standard of review for whether the trial court erred;**
- C. how the court will view the evidence if it finds legal error**

END OF QUESTION

Sample Legal Specialist Examination Essay Question #3 (CIVIL)

In January 2002, Port, Inc., represented by Law Firm, sued Corporation for misappropriation of trade secrets. Boutique Firm is a 20-lawyer “boutique,” and is the best-known firm in the area for defense of trade secret cases. Corporation hired Boutique Firm to represent them.

The litigation was highly contentious from the very beginning. Discovery was extensive and involved “sensitive” disclosures by both sides, with many documents exchanged in discovery under strict confidentiality conditions. A five-week trial is scheduled for January 2004.

In March 2003, Boutique Firm learned that one of their former partners, a Certified Appellate Specialist who had left Boutique Firm in 2002 to open her own office, became “of counsel” to Law Firm to do their appeals. In April 2003, Boutique Firm filed a motion to disqualify Law Firm from representing Port, Inc., based on the fact that one of their former partners presently serves as an appellate lawyer for Law Firm. The superior court heard the motion in June 2003 and granted the motion.

- A. What, if any, are Port, Inc.’s remedies in connection with Law Firm’s disqualification in the Court of Appeal? Discuss.**

- B. What, if any, ethical issues are presented by the Certified Appellate Specialist’s association with Law Firm? Discuss.**

END OF QUESTION

Sample Legal Specialist Examination Essay Question #4 (CIVIL)

Defendant's husband died a year ago, leaving her with their family home worth \$1.5 million with no encumbrances. Defendant and her husband had three minor children living in the family home. Defendant has no other assets other than the family home; she works as a nurse earning \$85,000 per year. Defendant's mother and father are financially "well off" but have never had to financially help Defendant in her adult life. However, Defendant and her children have a very loving relationship with her parents. At the time of Defendant's husband's death, her husband was Chief Financial Officer for the XYZ Company.

Shortly after the death of her husband, Defendant was sued in superior court for the County of San Francisco by the XYZ Company for allegedly conspiring with her husband to embezzle \$1.5 million.

Ten days ago, a jury returned a verdict in favor of XYZ in the amount of \$1.5 million. Judgment was entered shortly after the verdict.

After the entry of judgment, XYZ immediately garnished Defendant's wages.

Defendant retained Attorney to determine if the judgment should be appealed, and to determine if anything can be done to stop execution on the judgment pending Attorney's opinion concerning appealable issues, and pending appeal if Attorney agrees to handle the appeal.

- A. What, if anything, can be done procedurally in the superior court or appellate court?**
- B. What arguments should be made by Attorney for Defendant to stop garnishment and possible execution against Defendant's home pending Attorney's opinion concerning appealability? (Assume that Defendant is not entitled to bankruptcy remedies.)**
- C. Describe in detail the procedural avenues available to Attorney in the superior court or appellate court to stay execution of the judgment.**
- D. Discuss how Defendant's financial condition and her parent's financial condition could affect these procedural avenues available to Attorney. (Again, assume that Defendant is not entitled to bankruptcy remedies.)**

END OF QUESTION

Sample Legal Specialist Examination Essay Question #1 (CRIMINAL)

Appellant went to a casino one evening where he met a woman who agreed to drive him home in her car. On the way home, he suggested they stop at a motel. When the woman said she didn't want to, Appellant grew terribly angry. He forced the woman to pull the car to the side of the road, where he beat her, threw her out of the car, and drove off with her purse containing \$5,000 in cash. Police stopped to aid the woman and found and arrested Appellant approximately one hour later, while he was still driving the car.

Appellant was charged with carjacking, robbery and assault by means of force likely to produce great bodily injury. At trial, the woman testified consistent with the foregoing facts. Appellant testified that the woman was a prostitute who had told him how much money she wanted, and the two had agreed to proceed to a motel. Shortly before they arrived at the motel, the woman doubled her fee. When Appellant told her he would not pay that much, she became irate and pulled a knife on him. According to Appellant, a struggle ensued, resulting in Appellant pushing her out of the car and driving away to escape her. Fearing potential prosecution for soliciting prostitution, Appellant was still driving around, contemplating what to do, when police arrested him.

The jury acquitted Appellant of carjacking, but convicted him of the lesser offense of violating Vehicle Code §10851 (unlawfully driving or taking a vehicle) and assault by means likely to produce great bodily injury.

Appellant had previously been convicted of grand theft auto in 1999. At sentencing, the trial court denied his motion to declare the instant vehicle-taking offense a misdemeanor and further denied his motion to strike his prior conviction. The court stated it did not believe this incident involved a "garden variety" vehicle taking, commenting that the offense involved great violence. The court further stated that Appellant left the victim particularly vulnerable, given that he drove away with her purse and left her with no means of communication or transportation. The trial court sentenced Appellant to the upper term of four years for the vehicle taking and imposed a consecutive three-year sentence for the assault. The court limited Appellant's pre-sentence custody credit for being convicted of a violent felony (defined as any felony in which the defendant inflicts great bodily injury on another person.)

Appellant filed a timely notice of appeal, and Attorney was appointed to represent him on appeal. Attorney filed an opening *Wende* brief on May 15, 2004.

In light of the June 24, 2004 United States Supreme Court decision in *Blakely v. Washington*, and in light of the California Supreme Court's recent treatment of that decision, what further actions, if any, should Attorney take as appellate attorney?

END OF QUESTION

Sample Legal Specialist Examination Essay Question #2 (CRIMINAL)

One night Defendant A and Defendant B went to a bar, had far too much to drink, and decided to challenge all other patrons in the bar to a fight. Not only did they lose, they were both arrested and charged with several felonies each. Defendant A's family was able to arrange bail for him and hired a private attorney to represent him. Defendant B was unable to make bail and the public defender was appointed to represent him. At trial, Defendant A testified that Defendant B alone had started the fight and claimed that he was only acting in self-defense once the fight started. Both men were convicted on all charges. Defendant A's lawyer was able to convince the judge to allow him to remain free on bail pending the appeal. Defendant B was transferred to state prison to begin serving his sentence.

Defendant A's attorney timely filed a notice of appeal on Defendant A's behalf. Defendant B told his public defender that he wanted to appeal, and his attorney explained to him what he had to do to file a notice of appeal and to have an attorney appointed to represent him on the appeal. She also told him the deadline for filing the notice of appeal.

Defendant B handwrote out a notice of appeal, and on the last day for filing the appeal, handed it to one of the guards at the prison, told him what it was, and asked him to have it filed. The guard took the notice and marked on the envelope the date and time he received it, but the notice of appeal was not received by the court clerk until several days after the final deadline for filing it.

After reviewing the record on appeal, Defendant A's attorney was unable to find any grounds for reversal. He drafted a *Wende* brief, asking the Court of Appeal to review the record itself to determine whether any grounds for reversal exist. Defendant B's appointed appellate attorney came to the same conclusion and also submitted a *Wende* brief, asking that the Court conduct the same review.

Defendant B, after receiving a copy of the *Wende* brief from his attorney, decided that he would be better off without a lawyer. He filed a motion with the Court of Appeal requesting permission to discharge his appointed counsel and to represent himself on the appeal, and to present his own case at oral argument. The appellate court denied Defendant B's motion. Instead, over Defendant B's objection, the Court of Appeal removed Defendant B's appointed counsel and in his place appointed Defendant A's appellate attorney to represent Defendant B for the remainder of his appeal.

- A. The Attorney General filed a motion to dismiss Defendant B's appeal on the ground that it was untimely filed. How should the Court rule on the motion, and why? Discuss.**
- B. How should the Court respond to each appellant's counsel's request that it conduct its own review of the record to determine if there are any appealable issues as to that appellant, and why? Discuss.**

- C. Did the Court make the correct ruling on Defendant B's request to represent himself on appeal and to present his own case at oral argument? Discuss.**
- D. Did the Court exceed its authority when it removed Defendant B's appointed counsel and appointed Defendant A's appellate attorney to represent Defendant B for the remainder of his appeal? Discuss.**

END OF QUESTION

Sample Legal Specialist Examination Essay Question #3 (CRIMINAL)

Assume the legislature passed a sentencing enhancement statute stating that proof of a blood alcohol (BA) content of .10 is sufficient to presume impaired driving, and that anyone found guilty of intentionally driving with a .10 or above BA content shall be sentenced to state prison for seven years in addition to the punishment prescribed for the underlying crime.

Defendant was charged with second degree murder and drunk driving. At trial, a criminalist testified that she tested Defendant's blood and determined that the BA content was .11. Consistent with the new statute, the jury was instructed that it could presume Defendant's driving was impaired because of the BA content. Defense attorney did not object to the instruction and stipulated that the wording of the instruction was correct.

Counsel did request that the jury be instructed on whether Defendant intentionally drove a vehicle with a BA content of .10 or above, but the court refused the instruction.

Defendant was convicted of second degree murder and drunk driving, and was sentenced to a term of 22 years to life. The drunk driving conviction was stayed pursuant to Penal Code §654.

- A. Is a challenge to the instruction preserved for appeal? Discuss.**
- B. Is the instruction a proper presumption instruction? Discuss.**
- C. Did the trial court err in denying the request to have the jury instructed on the enhancement? Discuss.**

END OF QUESTION

Sample Legal Specialist Examination Essay Question #4 (CRIMINAL)

On January 1, 2003, Defendant was committed to State Hospital for the statutory two-year period as a sexually violent predator. Prior to December 30, 2004, a civil petition was filed in superior court to extend the civil commitment period for an additional two years until December 31, 2006.

At the probable cause hearing, Defendant moved to dismiss the petition on the grounds that: (1) probable cause was lacking to support the commitment; and (2) one of his two prior convictions was not a qualifying prior conviction under the statute.

On January 31, the superior court issued its ruling, finding probable cause to hold Defendant for trial on the civil commitment petition. The court also denied the motion to dismiss after finding that the prior conviction challenged by Defendant met the requirements of the commitment statute.

After Defendant's motion to dismiss was denied on both grounds, Defendant decided that he did not want to appear for trial and executed a signed "Waiver of Appearance Declaration." In this declaration, Defendant declared that: (1) he was aware of his right to appear at all proceedings and was giving up this right; (2) he was aware of his right to a jury trial, and was giving up that right; (3) he had spoken with his attorney, and that he was requesting the waiver of his own free will; and (4) he wished to agree to a two-year extension without appearing in court.

This declaration was filed on February 15, 2005, and the court issued its order of commitment on the same day. Thereafter, on February 28, 2005, Defendant filed a notice of appeal from the denial of his motion to dismiss. Attorney was appointed to represent Defendant on appeal.

Has Defendant properly perfected his appeal and any procedural impediments that may exist in this appeal? Discuss.

END OF QUESTION