



The State Bar of California

2023 LEGAL SPECIALIST EXAMINATION Preparation Packet

Examination Date: October 24, 2023

Legal Specialization Area:
ESTATE PLANNING, TRUST & PROBATE 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)

ESTATE PLANNING, TRUST & PROBATE LAW
Examination Specifications

Purpose of the Exam: The Estate Planning, Trust & Probate 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 estate planning, trust & probate 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</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 Fiduciary duties</p> <p>1.8 Conflicts of interest/ethics</p> <p>1.9 The client’s remedies against the attorney</p>	<p>Subject Area 2: Tax Planning Matters, Tax Procedures, and Tax Returns</p> <p>2.1 Tax opinions, memoranda, and advice letters</p> <p>2.2 Tax-sensitive wills, trusts, and powers of attorney</p> <p>2.3 Audits, appeals, and ruling requests</p> <p>2.4 Estate, gift, fiduciary, and personal income tax issues</p> <p>2.5 Property taxes</p> <p>2.6 Disclaimers, reformations, and constructions</p> <p>2.7 Powers of appointment</p> <p>2.8 Generation-skipping taxes</p> <p>2.9 Preparation and filing of returns</p> <p>2.10 Payment/deferral of taxes</p> <p>2.11 Modification/termination of irrevocable trusts for tax planning purposes</p>
<p>Subject Area 3: Estate and Incapacity Planning</p> <p>3.1 Wills (drafting, codicils, revocation)</p> <p>3.2 Trusts (creation, amendment, restatement, revocation, termination)</p> <p>3.3 Use of custodianships</p> <p>3.4 Documents of title</p> <p>3.5 Beneficiary clauses</p> <p>3.6 Property agreements</p> <p>3.7 Community property, separate property, and quasi-community property</p> <p>3.8 Powers of attorney</p>	<p>Subject Area 4: Administration Procedures</p> <p>4.1 Trusts (court or non-court)</p> <p>4.2 Powers of attorney</p> <p>4.3 Custodial accounts</p> <p>4.4 Conservatorships</p> <p>4.5 Guardianships</p> <p>4.6 Health care directives/issues</p> <p>4.7 Accountings</p> <p>4.8 Fiduciaries</p> <p>4.9 Modification/termination of irrevocable trusts for non-tax planning purposes</p>

<ul style="list-style-type: none"> 3.9 Health Care Directives 3.10 Gifts 3.11 Powers of appointment 3.12 Disclaimers 3.13 Public benefit planning 3.14 Issues of diminishing capacity 3.15 Elder law/Medi-Cal planning 3.16 Retirement benefit planning 3.17 Business succession planning 3.18 Charitable planning 3.19 Use of business entities 3.20 Nominations of conservator/guardian 3.21 Special needs trusts 3.22 Elder abuse 3.23 Spousal and Registered Domestic Partnership rights 	<ul style="list-style-type: none"> 4.10 Other procedures under the Probate Code
<p>Subject Area 5: Transfers by Administration or Otherwise</p> <ul style="list-style-type: none"> 5.1 Terminations of interests with right of survivorship 5.2 Spousal set asides 5.3 Summary probate procedures 5.4 Formal probate 5.5 Pay on death/transfer on death accounts 5.6 Retirement accounts 5.7 Family claims/protection procedures 5.8 Will/trust contests 5.9 Determination of heirship 5.10 Creditor's claims/rights 5.11 Constructive trusts 5.12 Contracts to convey at death/contracts regarding wills 5.13 Asset ownership disputes 	

ESTATE PLANNING, TRUST & PROBATE 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

Decedent's two children, Daughter and Son, consulted Attorney. They related the following facts.

Father left a valid Will that read as follows:

"I declare that I am a widower. I have had two children, namely, Daughter and Son.
I direct that all my just debts be paid from the residue of my estate.
I give my residence to Daughter.
I give all my stocks and corporate bonds in my trading account to Son.
I give the sum of \$10,000 to my late wife's brother, Brother-in-Law.
I give the sum of \$1,000 to my Church.
I give the residue of my estate to my surviving grandchildren, equally.
I appoint Daughter as executor or, in the alternative, Son."

After the execution of the Will, Father put an equity loan against his house to pay off some bills. He liquidated the portfolio in his trading account and invested the proceeds in a U.S. Treasury Bond mutual fund. Brother-in-Law died prior to Father. The creditors' claims filed and approved exceed the value of the residue.

- A. What are the legal issues bearing on the distribution of the estate? Please discuss any alternative arguments regarding the applicable rules of law.**
- B. Discuss the ethical issues:**
- 1. regarding either of the children serving as the executor; and**
 - 2. regarding the attorney representing either of them as the executor.**

END OF QUESTION

Sample Legal Specialist Examination Question #2

Father is a 100% owner of a manufacturing corporation named Tools, Inc. The entire business is worth \$2,000,000.

Father is a single parent with two adult daughters from a marriage which ended in divorce many years ago. One daughter, Daughter 1, is unmarried and works at Tools, Inc. as the head of the sales department. The other daughter, Daughter 2, is a housewife with two children and a very rocky marriage. Daughter 2 is a very poor money manager and is heavily in debt. Father does not want to undertake family entity planning nor incur the cost of such planning.

Father has a partner, Girlfriend, with whom he has lived for the last 10 years. They live in a condominium with title vested in the name of Father and Girlfriend, joint tenants. Father wants Girlfriend to inherit the condominium, debt and estate tax free, on his death.

Father owns the following assets with title vested in his name alone:

Corporate Stock in Tools Inc.	\$2,000,000
Personal property, furniture, furnishings located in the Condo	\$ 100,000
401k Plan with his ex-wife named as beneficiary	\$ 300,000
IRA with no named beneficiary	\$ 150,000
Checking account	\$ 10,000
Mutual funds	\$ 200,000

Father owns the following asset with title vested in joint tenancy with Girlfriend:

Condominium with a \$100,000 mortgage	\$ 400,000
Total Assets	\$3,160,000

Father consulted Attorney with a 10-year-old will prepared by the corporate attorney for Tools, Inc. The will stated that, on Father's death, everything goes to his spouse (from whom he has since divorced) and, if she pre-deceases him, in equal shares to his two daughters or the survivor between them. There is no estate tax payment clause in this Will.

Father wants Daughter 1 to inherit the business because she has worked there for a long time and "built it up" to where it is now. He does, however, wish to treat his daughters equally. Father is very concerned about Daughter 2's long-term financial stability.

Father has an advanced case of cancer and seeks Attorney's estate planning advice.

A. What estate planning documents should Attorney recommend for Father? Discuss.

- B. What estate tax provisions should Attorney include in these documents to accommodate these goals? Discuss.**
- C. If Daughter 1 inherits the corporate stock, how might Attorney equalize Daughter 2's inheritance? Discuss.**

END OF QUESTION

Sample Legal Specialist Examination Question #3

Settlor was a widower. His wife had died twenty years previously. Settlor had executed a handwritten will that left everything to her.

Later, Settlor decided to get himself a living trust. A non-attorney “advisor” handed Settlor a notebook with instructions on how to implement the trust. Instead of a detailed Exhibit “A” listing the individual assets, the notebook contained a form of general assignment of all Settlor’s assets to the trust, which was to be attached.

Later at home, Settlor signed the declaration of trust, general assignment, and the will above the respective signature lines. There was a notarial acknowledgment on the trust, but Settlor never got around to seeing a notary. None of the documents were witnessed. The trust left the remainder interest to Settlor’s Brother, and a neighbor, Girlfriend, whom Settlor was dating. The trust named Brother as the successor trustee.

Subsequently, Brother died. Settlor interlineated the declaration of trust by drawing a line through Brother’s name with a ballpoint pen.

Eventually, Settlor and Girlfriend had a falling out. He then interlineated the trust with a pencil by drawing a line through her name, wrote the name of his Church in the margin next to the cancellation, put his initials next to the name of the Church, but did not insert a date.

Sometime later, Settlor realized that he had not changed the successor trustee of the trust after Brother died. He took a blank piece of paper, wrote “Codicil” at the top, and then wrote that, instead of Brother as successor trustee, he wanted his Pastor to be successor trustee.

A few years later, Settlor died. He left assets valued at approximately \$300,000, of which \$210,000 were vested in his name as trustee of the trust and another \$90,000 still in his individual name. Due to a protracted terminal illness, he left unpaid debts of \$110,000.

Settlor had no children. He was survived by his late wife’s sister, Sister-in-Law, and a Nephew, through Brother.

- A. Who would be entitled to distribution of Settlor’s probate estate (ignore the impact of payment of the liabilities)? Discuss.**
- B. Who would be entitled to distribution of Settlor’s trust estate (ignore the impact of payment of the liabilities)? Discuss.**
- C. What are the legal issues bearing on the payment of Settlor’s debts? Discuss.**
- D. What are the alternative procedures for transferring title to the assets still in Settlor’s individual name to the trust? Discuss.**

END OF QUESTION

Sample Legal Specialist Examination Question #4

Settlor owned, as his separate property, two parcels (70 acres and 50 acres) of unimproved land on the California coast that have a value in excess of \$8,000,000. Settlor decided to (1) preserve all views to and from the entire 120 acres for posterity; (2) prevent the development of a hotel and golf course by his heirs; (3) obtain a discount on his federal estate taxes by creating an easement across the land; and (4) take a current income tax deduction by making a current gift of an easement to the Carmel Coastal Conservancy (“CCC”). Settlor and CCC entered into a valid easement agreement covering the entire 120 acres. The easement provided that 70 acres along the coast would be restricted from being developed and would be used solely for walking and wildlife habitat and environmental studies. The easement also provided that, on the remaining 50 acres, two houses could be built, one by each of his two children, on the North East corner of the parcel on lots of no more than five acres each.

Separate from the unimproved land, Settlor owned a residence and a vacation home. Settlor had a valuable collection of antique furniture and expensive art (\$200,000) in his vacation home. Settlor executed a valid revocable living trust. He named his Son as Trustee. The Trust left Settlor’s Second Wife “our residence.” The Trust left Settlor’s Daughter, “the vacation home and all of the antique furniture and art located therein.” The Trust left Second Wife, Settlor’s coin collection worth \$275,000. The Trust left the 120 acres, subject to the recorded easement, to Son and Daughter.

A week before Settlor died, he amended his Trust by deleting the bequest of the coin collection to Second Wife, and named Son as beneficiary of the coins.

Second Wife, shortly before Settlor died, removed all of the antique furniture and artwork from the vacation home and placed it in the residence.

When Settlor died, Second Wife told Son she thought Settlor was “losing it” when he made the Trust Amendment.

After Settlor’s death, Daughter and Son discover that the North East corner of the 50 acres covered by the easement cannot be developed at all because of a rising water table. The South West corner of the same 50 acres does not have the same problem. The CCC is willing to amend the easement.

- A. What are Son’s duties with respect to the antique furniture and art?**
- B. What are Son’s duties with respect to the coins?**
- C. How should Son negotiate the amendment of the easement?**
- D. What are the proper sources for payment of legal fees as to the: (a) antique furniture and art, (b) coins, and (c) easement? Discuss.**
- E. In which court or courts should each of the pleadings be filed? Discuss.**

END OF QUESTION