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## Institute Examinations in Law

American Institute of Accountants. Board of Examiners

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## Institute Examinations in Law

[The following statement of purposes and methods underlying commercial-law examinations of the American Institute of Accountants has been prepared by the Institute's Board of Examiners for the information of those interested in the subject.—EDITOR.]

In *The Accounting Review* for September, 1936, John C. Teevan, professor of business law in Northwestern University, has a most interesting article on "C. P. A. commercial-law examinations," in which he comments on the Institute's examinations and those of the American Society and of the New York State Board of C. P. A. Examiners. With the thought that this may be, indeed should be, of interest to certified public accountants, we urge that Professor Teevan's article be read and our comments on our own examinations made in this statement be carefully noted. Professor Teevan's temperate article was written, to use his own words, in a "friendly, coöperative, and constructive spirit." We welcome this opportunity to discuss it. We all are working for a common purpose and comments of the sort made by him are genuinely helpful.

Professor Teevan says, "Most of us are convinced that, apart from the irksomeness of it, the preparation of a law examination is no easy task." Agreed. As we analyze the problem, the difficulty is due to three factors: the nature of law as a subject, the ungraded character of the candidates and the limitations inherent in written examinations. Law is not an exact science. States, through their highest courts, vary; courts within a state vary; judges in the same court vary, and the lawyers who should be experts vary. The application of the more or less scientific principles of law to specific cases is an art and thus necessarily varies among the lawyers, judges, writers and teachers who make the application. Among those interested in examinations, agreement even as to the topics to be included can not be found. As to the candidates, they range from the man with no training at all to the college graduate who also is a graduate of, or has had resident work in, a school of law or business, or both, and has had practical experience in the practice of law or accounting, or both. On written examinations, a candidate can not be graded upon what he knows, but only upon what his answers indicate that he knows—a very different thing. The technique of answering examination

questions should be taught in every school in short courses explaining and exemplifying rules, among others those given by Professor Teevan in the introduction to his book *C. P. A. Law Questions and Answers*. An experienced, practising lawyer with no knowledge of the art of answering examination questions could easily fail on a C. P. A. law examination by giving abrupt answers not supported by reasons.

Despite these difficulties, the results as reported by Professor Teevan are not bad, although all serious students of the subject readily admit that great improvement can be made. He states that in the last six Illinois examinations, the percentage of successful candidates in all subjects is 7.8 per cent. (this being the average of *seven* percentages stated by him). Yet in those six examinations, the average percentage passing in law is 44 per cent. (this being the average of the six percentages which he gives) and the average percentage who passed the law examination in the last twenty examinations is stated to be 46 per cent. It is evident that the vast majority of failures was in theory of accounts, practical accounting and auditing, subjects with which candidates might reasonably be presumed to be more familiar than with law. He wonders what teachers of business law can do to reduce the number of failures by candidates who had been their students. He gives no statistics to indicate that anything need be done. It is reasonable to infer that the 46 per cent. who passed were chiefly trained men and that the 54 per cent. who failed were chiefly the untrained men. Two things, however, can be done by the teachers: teach the technique of answering examination questions, and spread the gospel of the need for systematic, organized, classroom training in law.

The first point of discussion raised by Professor Teevan is the proper scope of the examinations, the subjects to be covered. In the first place, no subject in law has definite boundaries and any question of the slightest complexity can usually be classified under more than one subject heading. We disagree, for instance, with his statement that we have asked questions on crimes, torts and constitutional law and we would not like anyone to infer that we thought those subjects should be included. None of the Institute's questions is listed under those subjects in the index of Professor Teevan's book, to which we have previously referred. In May, 1932, we asked whether a corporation could commit a crime or a tort, but both of these questions were regarded by us

as questions in corporation law and they were so indexed in Professor Teevan's book. In November, 1933, we asked whether the citizens of each state were entitled to the privileges and immunities of citizens in the several states. This is an extremely simple constitutional question and it led to the next subdivision (of the same question) which asked whether a corporation was a citizen to which the preceding answer applied. This was regarded by us and was indexed by him as a question in corporation law. We believe that any other similar question can be similarly explained.

The fundamental question of what subjects should be covered is one of difficulty. Professor Teevan does not specify the subjects he thinks should be included, but it may be fair to infer (from his reference to the *Accountant's Handbook*) that he approves of contracts, sales, bailments and carriers, negotiable instruments, agency, partnerships, corporations, and bankruptcy. This leaves for discussion the other subjects listed by him as having been included by us (excluding crimes, torts and constitutional law), as follows: conditional sales, equity, insolvency, insurance, mortgages, patents, trademarks and copyrights, personal property, real property, suretyship and guaranty, and trusts, wills and the administration of estates. Space permits only summary comments on this list. Conditional sales is regarded by us as a part of sales and is so indexed by Professor Teevan. Questions on equity seem justifiable to the limited extent that we have asked them. An accountant should be familiar with the fundamental distinction between law and equity, he should know some of the maxims of equity and he should be aware of the uses of injunctions, specific performance and the marshalling of assets. Insolvency as a subject is not included in our examinations. In May, 1930, we asked for the distinction between insolvency laws and bankruptcy laws, but we regarded this as a question on bankruptcy and it was so indexed in Professor Teevan's book. Insurance seems to us to be important. The subject of mortgages has become particularly important since 1929. Patents, trademarks and copyrights are so integral a part of most large businesses that we believe an accountant should be generally familiar with them. Personal property constitutes the wealth of the vast majority of persons and the few fundamental principles of law concerning it should be known to an accountant. Real-property law, as such, is not covered by our examinations. No accountant should be expected to know any of the intricacies of its law. He should, however, be

able to define real property and to know the simple law of fixtures. Suretyship and guaranty, in our opinion, is an important topic in commercial law. To quote from Professor Teevan's article itself, "The professional accountant knows, for example, that a knowledge of the law of trusts, wills and estates is of considerable help and value in the practice of accounting." In addition, we believe accountants should know something of the legal responsibilities of persons engaged in the public practice of accountancy. In May, 1934, we discontinued asking questions in the law examinations on income or other taxes, but such questions are continued in the examinations on the other subjects.

The next point discussed by Professor Teevan is the form or style of the questions. We agree with him that too many questions should not ask for definitions or summary statements of legal principles. Not only are such questions easy to answer by candidates who have crammed, but also they are unrelated to the experience of an accountant. All that an accountant can be expected to do is to uncover questions of law in situations as he finds them; in other words, to know the general principles of law sufficiently well to recognize their applicability to facts as he finds them. We believe that the only fair test of a candidate's ability to do this is to give him a statement of facts and to ask him his understanding of the law involved. The following headnote is printed at the top of each Institute examination in law:

*"Reasons must be stated for each answer. Whenever practicable give the answer first and then state reasons. Answers will be graded according to the applicant's evident knowledge of the legal principles involved in the question rather than on his conclusions."*

We realize, however, that many candidates will not read and some will not understand this headnote. Therefore we seek a fair balance between the two types of question.

Professor Teevan believes that a case question based on a reported decision is apt to be too long and confusing. Certainly no question should be deliberately confusing, but, on the other hand, care must be exercised not to state a case so simply that no skill would be required to uncover the question of law. He objects also to the use of a case in which the first appellate court reversed the lower court and was in turn reversed by a higher appellate court. "What chance does a candidate have with a question like that?" asks Professor Teevan. The answer is, every chance if he will state his reasons for his opinion. We do not

want an answer without reasons because that kind of answer may be merely a guess. We do not want the candidate's notion of what may be fair to all parties to the controversy because the examination is not one in ethics. We want to know what legal principles are involved and we want an intelligent application of them to the facts stated. Whether or not the candidate happens to agree with the majority of the judges in the highest court which has dealt with these facts is a matter of indifference to us.

Professor Teevan objects to our question on bankruptcy in November, 1931 (which he inadvertently places in May of that year) on the ground that it was too long in that it had five subdivisions. It is true that his book's answer to that question covers almost two printed pages, but it also is true that his answer restates the statute in a way neither expected nor desired from a candidate. One idea in using five subdivisions was to aid the candidate by a spread of related topics. If we had limited it to three subdivisions, a candidate who could answer only one could receive a grade of only 3. By adding two more subdivisions, we gave him a chance of receiving a grade of 6 by correctly answering the two others. The time limit was adequate for a candidate who knew the answers; none would be adequate for a candidate who did not know them.

The final point raised was that the examination papers should be prepared and graded by teachers, past or present, of business law. We cannot agree with this. We believe that familiarity with classroom reactions is helpful to some extent, but we make our main effort to relate our questions to conditions apt to be met in the practice of accountancy. We are deeply conscious of the fact that our efforts are not completely successful and we continually strive for improvement. We welcome the helpful and friendly comments made by Professor Teevan and we shall welcome similar help and guidance from other thoughtful commentators upon the difficult task with which we find ourselves charged.