

Memo: Truck Accident Law Examination Information

From: Elizabeth Collins, Director of Examinations and State Accreditations

OVERVIEW:

The Legal Specialization program was created to provide a method for attorneys to earn the designation of certified legal specialist in particular areas of law for the purposes of increasing public protection and encouraging attorney competence. As part of the certification process, an applicant must pass a written examination in the specialization area. Board Certification is the process that is designed to identify the highly qualified attorneys in the practice area.

FORMAT:

The examination consists of a combination of multiple choice and essay questions and is a total of 6 hours: A Morning Section (8:30 a.m. – 11:30 a.m.) with a one-hour break and an Afternoon Section (12:30 p.m. – 3:30 p.m.) given on a Saturday. The 3-hour morning section is entirely multiple choice and the 3-hour afternoon section is made up of essays that contain subparts of hypothetical cases and fact patterns which contain a series of questions that require knowledge of Evidence, Ethics and Truck Accident Law. The questions test knowledge of the current law and are geared to evaluate basic knowledge of the usual legal procedures, core substantive law and trial ability that is common to specialists in the area of truck accident law.

NBTA's examination is nationally administered. Questions are to be answered by applying the permitted reference materials below:

- **Federal Rules of Evidence**
- **ABA Model Rules of Professional Conduct - FOR MULTIPLE CHOICE & ESSAYS OR**
- **ONLY FOR THE ESSAY SECTION OF THE EXAMINATION - If an applicant's state laws differ from Federal Law, an applicant may indicate the state and the applicable state law but is to respond using Federal Law as it applies to a given set of facts in the outcome of the issues presented**
- **Federal Motor Carrier Safety Regulations**

It is not designed to be a bar or law school type of examination.

- **Multiple Choice Questions**
The Multiple-Choice questions test an applicant's knowledge of federal law. Individual state law is not tested on the Multiple-Choice section of the examination.
- **Essay Questions**
The examination's essay questions are also designed to be answered under federal law. However, if an applicant's state laws differ from federal law an applicant may indicate the state and the applicable state law but is to respond

using federal law as it applies to a given set of facts in the outcome of the issues presented.

- **A passing score is 75%.**

Multiple Choice questions are 40% of the score and Essays are 60%. A combined score of 75% must be achieved in order to pass the examination. There are 75 multiple choice questions. A failing score in the Multiple-Choice ETHICS portion of the examination results in a failure of the entire examination. However, only the ETHICS portion of the examination must be retaken and passed.

TIMING:

The examination is given twice a year. Registration material for an examination is sent two months prior to the examination date. You will automatically receive registration material before every examination until you have actually taken and passed one (contingent upon file eligibility). There is no need to contact our office if you cannot take a particular examination.

LOCATION:

The NBTA Board Certification Examination in all areas of law will be offered only as an online examination that can be taken from your home or office using software from Examsoft called Examplify. You must sign up at least 30 days prior to the date of the administration of the examination and NO EXCEPTIONS can be made.

COST:

The application fee is \$400. The Examination fee is \$400. Please click [here](#) for the entire NBTA Fee Schedule.

CONTACT:

If you have any additional questions, please call me at 386.986.7590 or email me at ecollins@nbtalawyers.org. I look forward to helping you complete our examination requirement.

Specifications for the National Board of Trial Advocacy Truck Accident Certification Examination

Purpose of the Examination: The Truck Accident Examination consists of a combination of multiple choice and essay questions. It is designed to verify the applicant's basic knowledge of the usual legal procedure, core substantive law (*including recent changes in law and regulations*) and litigation skills necessary to specialists in the area of Truck Accident Law. Truck Accident Law deals with the procedural, substantive and practical issues unique to collision cases involving commercial tractor trailers, buses and other commercial motor vehicles and all of the people and entities in the transportation cycle.

An applicant is expected to demonstrate the ability to identify and resolve the issues, state and apply the applicable law, analyze and apply law to the facts given, show knowledge and understanding of the pertinent principles and theories of law, their relationship to each other and their qualifications and limits as well as understand and properly apply the unique legal, regulatory and industry standards to factual situations. Of primary importance in the essay questions will be the quality of analysis and explanation. It is recognized that the subject areas below may overlap, which may require incorporation of more than one substantive or procedural area in Truck Accident Law which may apply to several skills in responding to a single question.

The order of the subject areas does not reflect their relative importance, nor does the sequence represent an implied order of their application in practice. Knowledge of the following fundamental lawyering skills may be assessed.

Subject Area 1: Professional Responsibility

- 1.1 Ethical duties to client, opposing counsel, third parties, and the court/attorney as witness
- 1.2 Basis of sanctions
- 1.3 Fee agreements/bases for fees/declining terminating representation
- 1.4 Prohibited referrals and inducements/contact with prospective clients
- 1.5 Dual representation/conflicts of interest/independent professional judgment
- 1.6 Unauthorized practice of law
- 1.7 Trial publicity/client property
- 1.8 Dealing with an unrepresented person
- 1.9 Dealing with paralegals and other non-attorney staff
- 1.10 Restrictions on right to practice law

Subject Area 2: Federal Motor Carrier Safety Regulations (Subchapter B, Chapter III, Subtitle B of the *Code of Federal Regulations* TITLE 49-Transportation), CDL Manual, Training Manuals and Related Cases

- 2.1 Lease and independent contractors
- 2.2 Hours of service and logbooks (49 C.F.R. Part 395)
- 2.3 Drug and alcohol use and testing (49 C.F.R. Part 382)
- 2.4 Preservation of records (49 C.F.R. Part 379) and record-keeping requirements

- 2.5 CDL standards and qualifications (49 C.F.R. Part 383)
- 2.6 Service of process
- 2.7 What is a CMV and determining when FMCSRs Apply?
- 2.8 Driver's certification (49 C.F.R. Part 391) and qualification file
- 2.9 CDL Manual, including turning left, turning right, following distance, air brakes, inclement weather, hazard perception and space management
- 2.10 Medical qualification
- 2.11 Financial responsibility requirements, including federal and state law analogues (part 387, MCS 90, Form K)
- 2.12 Registration requirements (unified, MCS 150, OP-1)
- 2.13 Brokers (49 C.F.R. Part 371)
- 2.14 Bills of lading (49 C.F.R. Part 373)
- 2.15 Cargo securement
- 2.16 Recognizing HAZMAT issues
- 2.17 Safety fitness procedures (49 C.F.R. Part 385)
- 2.18 Other key regulations located in 49 C.F.R. Parts 390, 391, 392, 393, 396 and 397
- 2.19 Industry training manuals
- 2.20 Preventability manuals and determinations

Subject Area 3: Jurisdiction and Venue

- 3.1 Subject matter jurisdiction
- 3.2 Jurisdiction over parties
- 3.3 Jurisdiction over property
- 3.4 Service of process and notice
- 3.5 Venue, forum non-conveniens, and transfer
- 3.6 Joinder of parties and claims
- 3.7 Adjudication without trial, summary judgments, etc.

Subject Area 4: Theories of Liability

- 4.1 Distracted driving and fatigue management
- 4.2 Direct negligence and vicarious fault admission
- 4.3 Lease and independent contract issues; Graves amendment
- 4.4 Statutory liability
- 4.5 Broker and shipper liability: direct negligence and agency
- 4.6 Recognizing product liability issues
- 4.7 Recognizing construction zone claims and the MUTCD
- 4.8 Intermodal carrier liability
- 4.9 Loading and unloading negligence
- 4.10 Visibility and conspicuity
- 4.11 Negligent maintenance
- 4.12 Negligent hiring, supervision, retention and training
- 4.13 Sudden emergency
- 4.14 Other driver negligence issues including adverse weather conditions, transporting hazardous cargo, bad brakes

Subject Area 5: Present and Object to Evidence

- 5.1 Introduction of evidence/mode and order/probative value
- 5.2 Proper use of demonstrative and other trial exhibits/writings, recordings, photographs, experimental evidence and the completeness rule
- 5.3 Remedial measures/compromise, payment of expenses and plea negotiations
- 5.4 Character evidence and related concepts
- 5.5 Qualification of expert and lay witnesses and scientific evidence
- 5.6 Judicial notice
- 5.7 Privileges and other exclusionary policies, spousal immunity and marital communications, attorney-client, work product, etc.
- 5.8 Relevancy and reasons for excluding relevant evidence
- 5.9 Refreshing recollection
- 5.10 Preventability determinations and self-critical analysis

Subject Area 6: Hearsay / Non-Hearsay

- 6.1 Definition
- 6.2 Present sense impressions and excited utterances
- 6.3 Statements of mental, emotional, or physical condition
- 6.4 Statements for purposes of medical diagnosis and treatment
- 6.5 Past recollection recorded
- 6.6 Business records
- 6.7 Public records and reports
- 6.8 Learned treatises
- 6.9 Former testimony, depositions
- 6.10 Other exceptions to the hearsay rule
- 6.11 Prior statements by witnesses
- 6.12 Party Admissions

Subject Area 7: Other Practice Issues

- 7.1 On board technology, ECM's and collision avoidance systems
- 7.2 Rear and side underride
- 7.3 Interstate vs. intrastate
- 7.4 Crash reports and investigation
- 7.5 FOIA requests
- 7.6 Use of liability experts
- 7.7 Safety ratings and determinations; FMCSR websites
- 7.8 CVSA (out of service standards)
- 7.9 Bills of lading (49 USC 80101)
- 7.10 Carmack amendment (49 USC 14706)
- 7.11 Defensive driving programs

TRUCK ACCIDENT LAW EXAMINATION MANUAL (Revised 8/2018)

Please note: your demonstration of knowledge of EVIDENCE and ETHICS are important.

Failure of the ETHICS portion will result in failure of the examination.

The following are samples of the multiple choice portion of the examination:

EVIDENCE

1. During a break in settlement negotiations in a negligence case, the plaintiff and the truck driver defendant, not in the presence of their attorneys, are having a cordial conversation. The truck driver defendant says to the plaintiff, "I'm sorry about the accident. I should have been more careful." Settlement negotiations are not successful and the case is on trial. During the plaintiff's direct testimony, his attorney asks him about the conversation he had with the truck driver defendant while the parties were engaged in settlement negotiations. Truck driver defendant's counsel objects.

**Which of the following best reflects the proper ruling on the objection?
Objection-**

- A. **sustained because statements made during settlement negotiations are not admissible.**
- B. **sustained because the statements made by plaintiff are irrelevant to the case.**
- C. **overruled because truck driver defendant's statement was an admission against interest.**
- D. **overruled because neither party's attorney was present during the conversation.**

ANSWER: A

2. This is a product liability case on trial in federal district court. Plaintiff is suing for property damage and economic loss because of the malfunction of in-cab truck fleet cameras sold to it by defendant. Defendant claims that plaintiff expressly assumed the risk. During its case-in-chief defendant offers into evidence a shipping invoice, signed by plaintiff's receiving agent, which contains the following language:

"BUYER agrees to buy said goods with the full understanding that it will be solely responsible for any losses or consequential damages caused by said goods.

BUYER ACKNOWLEDGES THAT IT HAS FULLY EXAMINED THE GOODS AND IS FULLY AWARE OF ANY DEFECTS IN WORKMANSHIP."

Is the exhibit admissible?

- A. No, because the invoice is hearsay.**
- B. Yes, because the invoice has independent legal significance.**
- C. No, because the invoice is not a business record.**
- D. Yes, because the invoice is a business record.**

ANSWER: B

ETHICS

1. Attorney Jones represents Jack in a case about a truck accident collision between Jack and Albert. After a pre-trial hearing, Attorney Jones talked to a local news reporter and stated, "We feel good about our chances. My client was hit by Albert, who was drunk. Albert failed his breathalyzer test. Go look it up. It's all in the police report. This isn't the first time Albert has done stuff like this. It's time for people in this community to hold him accountable." **Can Attorney Jones make these statements in his media interview?**
 - A. Yes. All statements of Attorney Jones quote or make reference to a public record, or are Jones's personal opinions about Jack and Albert.**
 - B. Yes. Breathalyzer results are inadmissible and will not be considered by the jury.**
 - C. No. An attorney cannot make general, public comments on the character, credibility or criminal record of a party or witness.**
 - D. No. Ethical rules presume that comments from an attorney within 30 days of trial are prejudicial and improper.**

ANSWER C

2. You have been informed by a large national insurance company that they would like to retain your services to represent their insured in relation to a truck wreck in which their insured was involved and in which a lawsuit has been filed against their insured. The insurance company has informed you that they will pay your attorney's fees and all costs associated with defending this lawsuit and otherwise representing their insured.

QUESTION: Under what circumstances, if any, can you represent the insured?

- A. There are no restrictions on an attorney's ability to be able to represent the insured/client under these circumstances.**
- B. Provided that you obtain the insured/client's informed consent, you are ethically permitted to represent the insured/client.**
- C. You can only represent the insured/client under these circumstances if you obtain his informed consent, it does not interfere with your independent professional judgment, and communications with the insured/client are protected as privileged.**
- D. You can only represent the insured/client under these circumstances if you obtain, in writing, his consent.**

ANSWER: C

The following is a sample of the essay portion of the examination:

SAMPLE 1:

Joe Smith's Trucking was in the business of transporting oranges from Central California to various sites in Canada. In 2006 Joe purchased a used 1999 Kenworth tractor-trailer to use in his business. About a year later Joe was on his way to Vancouver when the left rear axle assembly separated from the tractor and the wheels and tires came off, bouncing along the highway and striking an oncoming car killing its driver. A lawsuit on behalf of the deceased driver was filed against Joe and a prior owner of the 1999 Kenworth. The allegations were that both defendants had negligently maintained the axles on the tractor. Specifically, it was alleged that the prior owner had driven the tractor for 500,000 miles and during that time had only performed one act of maintenance on the rear axle shaft and drive axle. Further it had failed to follow the manufacturer's recommended service on the axles which required specific types of maintenance at specific times during the life of the truck. Had the maintenance been performed, it was alleged, the wheels and tires would never have come off the truck. In that condition the truck was not safe to operate.

- A. The prior owner's response was as follows:**
 - 1. Its loss of ownership and control of the tractor during the one-year period that Joe was using the truck absolved it of liability.**
 - 2. 49 CFR 396.3(a)1 which states in relevant part that "every motor carrier ... must systematically inspect, repair, and maintain, or cause to be**

systematically inspected, repaired and maintained “all motor vehicles . . . subject to its control” did not apply to prior owners.

B. Joe responded as follows:

1. He was an unregulated carrier since he hauled exempt commodities and therefore was not subject to the Federal Motor Carrier Safety Regulations.
2. When the plaintiff argued the applicability of Restatement of Torts (2d) Sec. 428 which provides:

“An individual or a corporation carrying on an activity which can be lawfully carried on only under a franchise created by public authority and which involves an unreasonable risk of harm to others, is subject to liability for physical harm caused to such others by the negligence of the contractor employed to do work in carrying on the activity.”

Joe responded it did not apply to him since:

- a. he was not operating under a public franchise
- b. driving a truck does not involve an unreasonable risk of harm

C. Joe’s insurer denied coverage since:

1. It took the position that the MCS-90 which is part of Joe’s policy did not cover exempt carriers.

Discuss fully the arguments on both sides.