

**Specifications for the National Board of Trial Advocacy
Truck Accident Certification Examination (Approved April 21, 2018)**

Purpose of the Examination: The Truck Accident Examination is designed to verify the applicant's basic knowledge of the usual legal procedure, core substantive law 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 the issues, as well as understand and properly apply the unique legal, regulatory and industry standards to factual situations. 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. 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.

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.

NBTA POLICY DOCUMENT: Inspection of Examination/Retention
(Board Approved– November 4, 2014)

Within 60 days after the announcement of the results of an NBTA examination, an applicant who has failed to pass a specialization certification examination may inspect his or her examination in such manner and place as the NBTA designates.

PROCEDURE:

1. Failure of Examination:

- Following the failure by an applicant of the Spring or Fall examination he or she will be notified in writing of his or her failure and informed of the examination inspection policy.
- An applicant must timely notify NBTA in writing that he or she wishes to review that examination.

2. Inspection of Examination

- NBTA upon request by an applicant will set up an inspection site at the NBTA Office or at a location geographically located as close as possible to the requesting applicant.
- Upon completion of the proctored location arrangement, NBTA will send a filled in copy of the Multiple Choice Examination, a copy of the Essay portion of the Examination and a copy of the applicant's answers.
- Only the Applicant will be permitted to review his or her examination at a proctored site for an hour's time.
- The applicant is not permitted to copy or make notes of the examination in any way.
- At the end of the hour all examination materials must be returned to the proctor for transmission to the NBTA Offices.
- Upon the date marking the 60th day after the announcement for that examination, all an applicant's examination materials shall be destroyed.

3. Passage of Examination:

- Following the passage by an applicant of the Spring or Fall examination he or she shall be notified in writing of his or her passage.
- At the date of the announcement of his or her passage of the examination all his or her examination materials shall be destroyed.

4. Examination:

- NBTA shall retain a copy of each administered examination in a secure location and in a secure medium that is accessible only to authorized personnel. All confidential information as to each applicant's examination score will be deleted after 60 days and no information concerning the applicant's file will be provided to a third party.

NBTA POLICY DOCUMENT: Testing Accommodations
(Board Approved– February 16, 2013)

It is the Policy of the NBTA to administer a specialization certification examination in a manner that does not discriminate, on the basis of a disability, against a qualified applicant with a disability in accordance with the Americans with Disabilities Act, as amended (ADA). A qualified applicant with a disability who is otherwise eligible to take the specialization certification examination may file a request for special testing accommodation if by virtue of a disability the applicant cannot demonstrate, under standard testing conditions, that the applicant possesses the essential skills and aptitudes that the NBTA has determined to be the basis for issuance of certification as a legal specialist.

PROCEDURE:

1. Requests:

- **A request for an accommodation for the Spring or Fall examination shall be made in writing and must be received 21 days prior to the date of the general examination's administration.**
- **The Request shall include the following minimum information: Contact information of the requestor (name, address etc.), the date scheduled for the general administration of the examination, and a description of the applicant's disability and the special accommodation requested. The specific reason for the request with any additional documentation in support of the request must be submitted on a Form prescribed by NBTA.**

2. Decisions on the Requests:

- **NBTA shall take steps reasonable and necessary for it to reach a fair determination before the general examination.**
- **The Request shall be reviewed by the Staff in consultation with the Dean of Faculty.**
- **A decision on a request shall be completed within 14 days of the receipt of the request.**
- **A denial of a Request may be appealed to the full Examination Committee and shall be filed within 7 days of the applicant's receipt of the denial. The appeal shall be conducted on the basis of the record compiled and the applicant shall be limited to a written argument in support of the appeal.**

3. Availability of Request Forms

All forms necessary to complete a request shall be available at no charge from the NBTA Office.

NBTA POLICY DOCUMENT:

Alternate Examination Administration Day for Religious Reasons (Board Approved– February 16, 2013)

It is the Policy of the NBTA to permit an applicant to take a specialization certification examination on an alternate date if the applicant for religious reasons is unable to take the examination on the date selected for general administration. This alternate examination day administration must not compromise the validity and reliability of the specialization certification examination for which it is requested.

PROCEDURE:

1. Requests:

- A request for change of date of the Spring or Fall examination shall be made in writing and must be received 21 days prior to the date of the general examination's administration.
- The Request shall include the following minimum information: Contact information of the requestor (name, address etc.) the date scheduled for the general administration of the examination and the alternate administration date requested. The specific reason for the request with any additional documentation in support of the request (on a Form prescribed by NBTA).

2. Decisions on the Requests

- NBTA shall take steps reasonable and necessary for it to reach a fair determination before the examination.
- The Request shall be reviewed by the Assistant Director in consultation with the Dean of Faculty.
- A decision on a request shall be completed within 14 days of the receipt of the request.
- A denial of a Request may be appealed to the full Examination Committee and shall be filed within 7 days of the applicant's receipt of the denial. The appeal shall be conducted on the basis of the record compiled and the applicant shall be limited to a written argument in support of the appeal.

3. Availability of Request Forms

All forms necessary to complete a request shall be available at no charge from the NBTA Office.

**NBTA POLICY DOCUMENT: Completion of Examination
(Board Approved– February 16, 2013)**

It is the Policy of the NBTA to permit an applicant to sit for a specialization certification examination twice (contingent upon file eligibility). If an applicant fails the second administration of the examination (any part or the entire exam) an applicant's file will be procedurally denied. Thereafter, an applicant must wait a calendar year from the date of last unsuccessful examination before re-applying to sit for a specialization certification examination, so that an applicant can demonstrate that the applicant possesses the essential skills and aptitudes that the NBTA has determined to be the basis for issuance of certification as a legal specialist.

PROCEDURE:

1. Failure of Examination:

- Following first failure by an applicant of the Spring or Fall examination he or she shall be notified in writing of his or her failure and informed of the examination completion policy.**
- Following the second failure by an applicant of the Spring or Fall examination he or she shall be notified in writing that; he or she failed; and that his or her application has been procedurally denied; and the date of the next general examination's administration that he or she will be eligible to attend.**
- Procedural closure of an applicant's file for failing the exam twice is final and not appealable.**