CPCCBC4032A
APPLY CONTRACT LAW TO SALES PROCESSES

THEORY EXAM INSTRUCTIONS

1. This exam will occur under standard assessment conditions.
    1. An oral examination may be allowed under certain circumstances. Answers will be documented and FT003 (Oral examination declaration form) must be completed.
2. Participants must provide enough detail in their responses to demonstrate their knowledge and skills.
3. Please fill in the details below, providing your name, signature and date of assessment.
    1. Your signature acknowledges that this is your own work.
4. If a participant initially answers a question incorrectly but modifies their response, they must follow the instructions below:
    1. If a participant changes their response in writing, they must put their initials next to the written change.
    2. If a participant changes their response verbally, this must be noted on the exam paper by the assessor.

Participant name: Erica Taylor

Participant signature:

Assessor name:

Assessor signature:

Date: 21/05/2018

<table>
<tr><th rowspan="2">Number of questions</th><th rowspan="2">Number of questions answered correctly</th><th colspan="2">Satisfactory?</th></tr>
<tr><td>Yes</td><td>No</td></tr>
<tr><td>25</td><td></td><td>☐</td><td>☐</td></tr>
</table>

ASSESSOR COMMENTS

Q1. **What are the four (4) essential elements of an agreement for it to be regarded as a contract?**

What is the consequence if any essential element is missing?

Answer

For an agreement to be regarded as a contract, it must contain these four essential elements:

1. Offer
2. Acceptance
3. Intention of Legal Consequences
4. Consideration

All 4 must be included to make the agreement legally binding.

☐

Q2. **When would an offer be considered to have lapsed?**

Answer

An offer is deemed to have lapsed when the time for acceptance has expired, the offer is withdrawn before acceptance or after a reasonable time in the circumstances. As a general rule, the greater the contract value, the longer the life of the offer.

☐

Q3. **What is able to be 'accepted'? What happens to the offer if new terms are suggested?**

Answer

The OFFER able to be accepted. The offer becomes a counter offer if new terms are suggested then negotiated until the final offer is accepted

☐

Q4. **What does it mean when a contract is supported by valuable consideration?**

Answer

A contract must be supported by valuable consideration in order for it to be binding. This means that one party promises to do something in return for another party ie the builder promises the owner, they will build their house. Consideration is essentially the reason for entering into a contract - One consideration is exchanged for another consideration. For example, the builder is exchanging materials and labour for a monetary sum from the owner. This exchange ensures both parties are obligated in the agreement, otherwise it becomes one sided and can be classified as a gift. Consideration is the payment of money.

☐

Q5. **Section 67AZN of the *Queensland Building and Construction Commission Act 1991* specifies that domestic building contracts are regulated under which Schedule?**

Answer

Domestic Building Contracts are regulated under Schedule 1B

☐

Q6. **Domestic building contracts must be put in writing once the work exceeds what value?**

Answer

$3,300.00

☐

Q7. **Section 67G of the *Queensland Building and Construction Commission Act 1991* specifies that it is an offence for a commercial building contract not to be put in writing before the building work is started if the reasonable cost of the work is more than what amount?**

Answer

$10,000.00

☐

Q8. **Under Queensland law, contractors must give the owner a signed copy of the entire contract (including any plans and specifications) within how many days after entering the contract?**

Answer

Within 5 days

☐

Q9. **What are the benefits of having a written contract in place between parties?**

Answer ☐

A written contract ensures that the home owner receives the finished product they have envisioned and the builders received payments and by the due date.

Q10. **Match the clauses and definitions by writing the appropriate letter next to each number in the centre column.**

Answer ☐

Clauses		Answers	Definition	
1	Acceptances	1 - F	A	Provide specific reasons that allow the contract period to be adjusted
2	Cost adjustments	2 - E	B	A provision for which remedies can be sough if breached
3	Extensions of time	3 - A	C	Specifically outlines the tasks to be completed as part of the construction work
4	Payments	4 - D	D	Outlines the requirements for deposits
5	Scope of work	5 - C	E	Address the risk of rise/fall of expenses
6	Term	6 - B	F	Require that the contract be accepted or rejected by a certain date, otherwise the contract will not be binding

Q11. **What are some of the preliminary contracts that a builder could ask a client to sign prior to signing the main contract?**

Answer ☐

Pre-Construction contracts, Prepartory Work Agreements, Quotes, Orders and Estimates can be used as pre-contract agreements and are legally binding providing there is an offer, acceptance, intention and consideration.

Q12. **True or False (Tick your response): Clauses within pre-contract agreements may carry over into the contract, so it is important to discuss these with the client and come to an agreement.**

Answer

☒	True
☐	False

☐

Q13. **Identify the various types of building and construction contracts and explain when it is appropriate to apply each type of contract.**

Answer

Australian Standard Contracts – for use on major building and engineering projects. A superintendent is usually engaged on behalf of the principal contractor to administer these types.

Construction Industry Contract This type of contract is designed for use where the architect is acting as the superintendent for the principal contractor

Contracts supplied or required by Regulatory authorities and Individual Organisations ie Head contract for Commercial Construction Contracts

MBA and HIA contracts including QBCC – used for domestic building works over $20k

Joint Contracts Committee Suite

Simple Building Works Contract for works that are not complex.

☐

Answer

Q14. **Which of the following QBCC contracts would be most appropriate for a house renovation exceeding $20,000? Tick your response.**

Answer ☐

Choice	Possible Answers
☐	New home construction
☐	Level 1
☒	Level 2
☐	Small building projects
☐	Natural disasters repairs
☐	Demolition of residential premises

Q15. **The *Master Builders Queensland Commercial Minor Works Contract* can be used for work up to which value?**

Answer ☐

This contract can be used for work up to the value of $100,000

Q16. **True or False (Tick your response): Variations can be requested by both the client and the builder.**

Answer ☐

☒	True
☐	False

Q17. **Describe the process for seeking a variation to a contract.**

Answer ☐

A variation must be detailed in writing and agreed upon by all parties within 5 business days of an agreement being reached and before the variation work can commence. There are circumstances where it will not be practical to do so such as unexpected work which is urgently required.

Q18. **What is the difference between the Prime Cost Item Schedule and the Provisional Sum Schedule in a contract? Give one example to help explain your answer.**

Answer

The Provisional Sum Schedule lists any work which can only be estimated at the time the contract is written. An example of this is the Contractor allows an extra amount for excavation in case any rock is encountered once the works begin.

The Prime Cost Schedule shows an allowance for items which have either not yet been chosen by the owner, for example tapware, tiles, carpet etc or the contractor is unable to give a fixed price

☐

Q19. **Under Section 4A of the *Fair Trading Act 1989* (Qld), to which persons/bodies does this Act apply? Tick all that apply.**

Answer

Choice	Possible Answers
☒	Bodies corporate incorporated or registered under the law of Queensland
☒	Persons carrying on business within Queensland
☒	Persons ordinarily resident in Queensland
☒	Persons otherwise connected with Queensland

☐

Q20. **True or False (Tick your response): Referring to Section 25 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth), would a contract be unfair if it contains a term that permits the builder, but not the client, to terminate the contract?**

Answer

☒	Yes
☐	No

☐

Q21. **Describe what must be stated in a warranty against defects about the person who gives the warranty [as per Section 90 of the *Competition and Consumer Regulations 2010* (Cth)].**

Answer

A warranty against defects must clearly state that the person giving it, must do so that the warranty may be honoured and how the and what the consumer is required to do, to make a warranty claim. It must also stage the person giving the warranty's name, business address, a contact phone number and an email address.

☐

Q22. **Under the National Consumer Credit Code, before entering into a credit contract, what must the credit provider do?**

Answer

Prior to entering into a credit contract, the credit provider must ensure these 5 processes have been undertaken:

1. Make reasonable enquiries as to why the applicant wants to borrow the money
2. Make reasonable enquiries as to the current state of the applicants finances
3. Take reasonable steps to verify state of finances
4. Assess whether the applicant can meet the financial obligations of the credit contract
5. Determine that the credit contract is 'not unsuitable' for the applicant

☐

Q23. **Describe the topics outlined in the QBCC Consumer Building Guide (listed below), which the consumer must sign before work is undertaken for contracts priced $20,000 or more.**

Answer ☐

Topics	Definition
QBCC Licence	A QBCC Licence is given to contractor who has the necessary experience or skills to undertake the works. This license covers the contractor under the Qld Home Warranty Scheme. Licence holders can be searched on the QBCC website
Contract price	The contract price must be stated on the first page of the contract schedule. Any contracts $20k + must also contain a warning about any provisions that may cause the contract price to change and if allowances have been included (items or services without fixed pricing as time of signing)
Building approvals and inspections	Building approvals and inspections are the responsibility of and must be carried out by a Building Certifier. It is the responsibility of the home owner to arrange these inspections. There are mandatory inspections which must be carried out during certain stages of construction.
Practical completion and handover	This states the home owner is not required to pay the final contract payment until all of the contracted work has been completed in accordance with the contract , all legal requirements and either without any defects or omissions or with only minor defects or omissions.
Implied warranties	All construction is covered under the Act by a range of warranties which cover the homeowner against structural defects (category 1) for a period of 6 years and all others (category 2) for a period of 12 months.

Q24. **What does the 'cooling off' period refer to when undertaking domestic building work with a total contract price of $20,000 or more?**

Answer

The Cooling Off period allows either party to cancel the contract providing it is within 5 business days after the signed contract has been received by the purchaser and in writing. It may also be cancelled if relevant provisions of the Act have not been met.

☐

Q25. **What are the maximum deposits recommended and how should progress payments be scheduled?**

Answer

For building works valued at $20,000 or more, the maximum deposit allowable is 5% of the total cost of the build. For building works valued above $3,300 but less than $20,000, the deposit must not exceed 10%.

Progress payments are broken down into percentages as follows:

Deposit	5%
Base stage	10%
Frame stage	15%
Enclosed stage	35%
Fixing stage	20%
Practical completion	15%

☐