



CPCCBC4016A

ADMINISTER A CONSTRUCTION CONTRACT

THEORY EXAM INSTRUCTIONS

- This exam will occur under standard assessment conditions.
 - An oral examination may be allowed under certain circumstances. Answers will be documented and FT003 (Oral examination declaration form) must be completed.
- Participants must provide enough detail in their responses to demonstrate their knowledge and skills.
- Please fill in the details below, providing your name, signature and date of assessment.
 - Your signature acknowledges that this is your own work.
- If a participant initially answers a question incorrectly but modifies their response, they must follow the instructions below:
 - If a participant changes their response in writing, they must put their initials next to the written change.
 - 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 16/05/2018

Number of questions	Number of questions answered correctly	Satisfactory?	
		Yes	No
49		☐	☐



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Q1. Identify the various types of building and construction contracts and explain when is it 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



- [illegible]

- a) Analyse the various types of building and construction contracts you will need and then apply the appropriate application of each type of contract;
- b) Identify and apply legislative requirements relating to building and construction contracts.
- c) Identify and apply essential terms and elements of a valid contract;
- d) Analyse the importance of identifying an intention to create legal relations;
- e) Identify and analyse rights and liabilities of parties under a contract;
- f) Identify and apply common building contract terms and procedures;
- g) Identify and analyse circumstances that bring about a breach of contract;
- h) Accurately select the contract, appropriate for the type of construction;
- i) Accurately identify and prepare the range of documents collectively make up a contract;
- j) Accurately identify and apply requirements associated with an offer and acceptance of a contract;
- k) Confirm the capacity of the parties to form a binding agreement in the form of a contract; and
- l) Identify and apply factors associated with the parties' consenting to a contract.

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Q3. How should you handle any customer complaint?

Answer All complaints should be dealt with immediately in a calm manner. Once the problem has been identified and confirmed, decide the best way to either solve the problem or negotiate with the customer to reach a mutually satisfactory agreement. A third party can be brought in to confirm the contractors position however it's vital to keep records of everything. Fix the issue in a timely manner so as not to delay construction or payment.

**Q4. 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.



Q5. What are the consequences for a client not using a QBCC licensed contractor?

Answer An unlicensed contractor may not have the required insurances to protect the homeowner in the event of non-completion, defective work and subsidence. QBCC licensed contractors are covered as part of a Statutory Insurance Scheme. By not having a QBCC license there is no way of ascertaining whether that contractor has the necessary experience or skills to carry out the work.



Q6. What is the Queensland Home Warranty Scheme?

Answer As mentioned in the previous question, QBCC licensed contractors are covered by a Statutory Insurance Scheme which is called the Queensland Home Warranty Scheme. This ensures that all building works over the value of \$3,300 for labour and materials, is protected in the event that the works isn't completed and the contract is terminated, the contractor does not rectify any defects and if the building suffers from subsidence or settlement.



Q7. What are the consequences of Cost Plus and Construction Management contracts on Home Warranty Insurance protection?

Answer These types of contracts can lead to the works extending well over the original amount if not managed properly and leaves the home owner unable to make a claim if the works are not completed.



Q8. At the commencement of a contract valued over \$20,000, what must the contractor give to the owner? What timeframes apply?

Answer The Contractor is required to supply the purchaser with a copy of the Consumer Building Guide BEFORE the contract is signed. This guide is to assist homeowners in avoiding disputes and common issues which can arise.



Q9. Where must the total contract price be stated?

Answer The total contract price is found in Item 8, Condition 16 of the QBCC New Home Construction Contract



Q10. 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%

Q11. Who has responsibility of building inspections and approvals?

Answer The homeowner however the builder has an obligation to notify the certifier when required ie during certain stages of construction such as to visually inspect a firewall prior to it being sheeted

☐**Q12. Identify and describe the term used to describe circumstances such as:**

- **Where there has been a change to the materials used or**
- **A change to the scope of the work to be performed under the contract?**

Answer This is called a Variation – these must be detailed in writing to the owner within 5 business days of an agreement being reached and before the variation work can commence

☐**Q13. How do you reduce the risk of dispute?**

Answer By reading and understanding the contract, drawings and specifications in full prior to signing the contract. If there is any part of the documents which you don't understand or have questions, it's best to clarify with your contractor or seek legal advice if you still don't fully understand the terms.

☐**Q14. What is the process for dispute resolution?**

Answer At the first instance, advise the contractor in writing as to what the issue is and give a reasonable time frame in which they can respond. If this doesn't resolve the issue, the QBCC has a service called the Early Dispute Resolution service which you can access and also explore any legal options you may have. Contracts cannot be terminated without seeking a registered solicitor as it may have serious legal and financial consequences and reduce the Home Warranty Protection you may be entitled to.

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Q15. When might an extension of time (EOT) apply? How is it approved?

Answer

Extension of Time applies when circumstances out of the control of the contractor arise such as inclement weather or variations submitted by the owner once construction has commenced. Once approved, the amount of time is then added to the Date for Practical Completion. All EOT's must be submitted in writing and either approved or disputed in writing.



Q16. When is the client/home owner required to pay the final contract payment?

Answer

The final contract payment is made once PC (practical completion) has been achieved. This means all the contracted work has been completed as per the contract, without any or with minor only defects or omissions not affecting habitability and all legal requirements have been met.



Q17. What are implied warranties?

Answer 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 12 months.

**Q18. Explain the responsibilities of an Owner Builder.**

Answer An owner builder is classed as someone who is carrying out domestic works on their own land who does not carry a license or is in the business of building. Before undertaking any works, the owner builder must first complete an owner builder course (there are exemptions for anyone holding a QBCC license, have qualifications which meet technical level to obtain a QBCC license, licensed interstate tradies, along with architects, engineers, surveyors, electricians) This course must be completed before applying for an Owner Builder Permit. Eligibility is determined by being a nominated person on a land title. The permit application requires supporting documentation such as Original or certified title search or registration confirmation statement under 30 days old, proof of identity along with the confirmation the application has completed the owner builder course.





Answer



Q19. What is 'notifiable work', who is responsible and to whom does it apply?

Answer

Notifiable work is work carried out by plumbers. It becomes notifiable when the work involves replacing damaged pipework, the removal, relocation and replacement of any sanitary drainage. Work which involves repairs to broken or damaged components is classed as Minor. Notifiable work must be lodged with QBCC by submitting a Form 4. A registered plumber/drainer is responsible for carrying out the notifiable work.





Answer





Answer



Q20. 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



Q21. What does Section 19 of the *Domestic Building Contracts Act 1995* provide to the consumer/client?

Answer



Q22. What are some of the preliminary contracts that a builder could ask a client to sign prior to signing the main contract?

Answer

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Q23. What are liquidated damages in terms of a signed building contract?

Answer

Liquidated damages is a fixed sum calculated by either a percentage or an amount per day that both parties agree on as part of the contract. These come into effect if the contractor fails to complete the works by the date set out by the contract. The owner then has the right to deduct either the daily amount or the percentage of the contract, for each day over the completion date until the works are completed.

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Q24. What contract documentation would you review to identify any unusual aspects related to materials and installations for a low rise construction project?

Answer

The Drawings and specifications. These will show what materials are specified to be used and the builder can check lead times on anything out of the ordinary.

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Q25. Where would you find any possible penalties associated with a build?

Answer

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Q26. What is the Australian Standard Contracts - AS2124 and AS4000 series?

Answer

These contracts are designed for use on major building and engineering projects where an independent professional known as a superintendent is engaged by the principal to administer the contract.

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Q27. How does the Queensland Building and Construction Commission (QBCC) regulate the Queensland building industry?

Answer

The Queensland Building and Construction Commission regulates the QLD building industry by implementing and enforcing legislative reforms and where necessary, prosecuting people not complying with the law as well as handling disputes fairly and equitably. The QBCC also functions to educate consumers about their rights and obligations as well as educating contractors about their legal rights and responsibilities. The QBCC is also responsible for licensing contractors to ensure they have the correct qualifications (or skills recognised where no formal training has been undertaken) experience and are able to run a business

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Q28. What industry legislation should builders and trade contractors have a good understanding of?

Answer The Queensland Building and Construction Commission ACT 1991
Domestic Building Contracts Act 2000 (DBCA)
Queensland Civil Administrative Tribunal Act (QCAT) – previously the CCT
Building Act 1975 & Regulations
Building and Construction Industry Payments Act 2004 (BCIPA)
Workplace Health & Safety Act 2011(WHS Act)



Q29. What supporting documents should you be aware of and include in your contracts with the consumer?

Answer Termite Management Documentation
Engineering Specification Confirmation
Foundation Maintenance Declarations
Cooling off period



Q30. 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

The exclusion of any one of these elements renders the contract not legally binding. All 4 MUST be included.



Q31. 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.



Q32. 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



Q33. 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.



Q34. Identify the term for each of the definitions listed in the table below.

Answer

Term	Definition
Addition	Any construction or change to a building or facility that increases its external dimensions and cubic contents.
Abitration	A procedure for resolving disputes that involves less formality than a court hearing. An arbitrator's decision is final and cannot be appealed.
Building Act 1993	A legal enactment by a parliament that specifies the procedures to be used in the building control process, outlines the functions and composition of the controlling body or bodies, and grants power to create subordinate regulations, ordinances or by-law.
	Assists builders, contractors and owners by ensuring that construction projects meet building regulations and codes of practice. Inspections assess design documentation and make on-site inspections during building work.
	Demonstrates that a building, other than a dwelling has been inspected and passed according to the <i>Building Regulations 2006</i> . It is obtained once the final inspection has been inspected and passed.
	The achievement of performance criteria described in a regulation or other statutory requirement. This is usually demonstrated by a compliance or approval certificate.
	An agreement entered into between two or more parties that involves an exchange or specified goods and/or services for specified financial reimbursement or other considerations.
	One or more buildings which in association constitute a single dwelling being a detached house or one or more attached dwellings.
	Required if you engage a building practitioner or tradesperson to carry out building work valued at over, \$5,000.
	A person who carries out domestic building work on his her own land, who is not in the business of building.



	Independent professionals with the same power to issue building permits and occupancy permits as municipal building surveyors.
	A person accepted by the appropriate authority as qualified to design, construct (or install) or supervise the erection of, buildings or services; usually recognised by a certificate of registration.
	That part of an allotment which is covered by buildings, expressed as a percentage of the area of the allotment.
	A minor clause in a contract the remedy for breach of which is damages for any loss. Also, a promise to repair or replace defective goods.

Q35. Explain the terms listed in the table below.

Answer

Term	Definition
Minor breach	
Material breach	
Fundamental breach	



Q36. Who are the parties that need to be consulted with for binding agreements to be confirmed?

Answer

1. Buyer's advocates: A licensed estate agent who acts for a buyer instead of a seller
2. Legal practitioners: they hold a current practising certificate and have professional indemnity insurance and can:
 - Advise on terms and conditions that need to be included in a contract
 - Perform legal work and provide legal advice to their client
3. Conveyancers: are persons other than legal practitioners who can:
 - Undertake property conveying work
 - Legal work or give legal advice



Q37. What is consent?

Answer Consent is demonstrated when a person is able to make an intelligent, informed decision to reach an agreement with another party.

**Q38. When might 'apparent consent' be negated?**

Answer

**Q39. A construction contract can be terminated for 'cause' or for 'convenience'. Explain these two terms.**

Answer Terminating a contract 'for cause' occurs when one of the parties cannot completely fulfill their contractual duties. This can be instigated by either the builder, for example if the owner did not make payment by the due date or by the owner if the builder fails to complete the works within the agreed timeframe.

Termination for Convenience is when there is no contract breach by either party but the owner stops the work for reasons other than lack of performance. In this case, the builder can still claim payment for works completed up to the termination of the contract.





Q40. What does repudiation mean?

Answer Repudiation is the rejection of a proposal or an idea



Q41. Explain the concept 'conditions for completion at the cost of the contractor'.

Answer This concept means that the builder is responsible for all defects or omissions under the contract which become apparent for a set period after the PC date.



Q42. What does 'abandonment of contract mean?

Answer Contract Abandonment is where the parties have both conducted themselves in a way which renders the original contract invalid. For this to occur, both parties must agree to do it. The other type of abandonment occurs when a contractor fails to begin the works, not complete the works or fail to resume the work, all within reasonable time frames.

**Q43. Throughout the building schedule, progress payments are made when each new stage is ready to commence.**

Nominate the recommended stages and percentages for these progress payments on a typical new residential housing building project.

Answer

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



Q44. Which section of the *Subcontractors' Charges Act 1974 (Qld)* address vexatious notices of claim?

Answer Section 22 Vexatious Notices of Claim

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Q45. Describe the circumstances in which a person is deemed to give notice of a claim of charge without unreasonable grounds.

Answer if the person knows or should reasonably know that the amount of the claim unreasonably exceeds the actual amount payable to the person. For example, a concreter claiming for labour to lay concrete to a section on the drawing which is clearly shown as a bitumen council road leading into the site.

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Q46. Who should you consult if you are considering ousting a contractor from a building site?

Answer Always check the terms of the contract then consult a legal professional in the field.

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Q47. What document should you refer to if you are considering ousting a contractor from a building site?

Answer The contract

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Q48. Contract Cost Adjustment Provisions address risk by providing mechanisms for adjusting contract payment to reflect changes in costs.

What can cost adjustment apply to?

Answer Labour and materials
Currency exchange rates for goods purchased in foreign currency
Other costs, including duties and taxes on shipping and transport
Providing the contract period is for 52 weeks plus.

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Q49. What document will outline the time extensions you are entitled to over the contract period?

Answer The General Conditions of the Contract

