CPCCBC4032A
APPLY CONTRACT LAW TO SALES PROCESSES

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 ______________________________

Participant signature ______________________________

ANSWERS

Assessor name ______________________________

Assessor signature ______________________________

Date ______________________________

Number of questions	Number of questions answered correctly	Satisfactory?	
		Yes	No
25			

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

a) Offer

b) Acceptance

c) Intention of legal consequences

d) Consideration

If any one of them is missing, the agreement is not considered to be legally binding.

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

Answer

When the time for acceptance expires or if the offer is withdrawn before it is accepted; or after a reasonable time in the circumstances; generally the greater the value of the contract, the longer the life of the offer.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 is accepted exactly as offered (without conditions).

New terms suggested are regarded as a counter offer which can be accepted or rejected; once a final offer is accepted the negotiation ends and therefore establishes the terms and conditions of the contract; and acceptance of the contract must conform with the method prescribed by the ‘Offeror’ for it to be effective.

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

Answer

It means that one party promises to do something in return for a promise from another party and consideration is what each party gives to the other as the agreed price for the other's promises and usually the 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

Schedule 1B

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

Answer

$3,300

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

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

Five (5) days

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

Answer

The contract must be fully documented and complete as it is the single greatest protection to ensure that: a) home owners receive the finished product they envisioned and b) builders get paid and paid on time.

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

- A preliminary agreement;
- A quote;
- An order;
- A preliminary contract estimate;
- A provisional quote to build on their land;
- An authorized tender acceptance;
- A contract request; or
- An authority to proceed.

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 ❑

Whether building a house for a homeowner, or working in the commercial sector on high rises, you need a contract between yourself and your client or subcontractor. This includes head contracts, subcontracts and sub-subcontracts (i.e. contracts between subcontractors). If any of your jobs involve domestic building work priced at over $3,300, you need to use a written contract. If the work is over $20,000, you must also ensure your client is given a signed copy of a QBCC-approved Consumer Building Guide. The types of contracts include:

- building a new detached (house) dwelling (including a duplex);
- building a structure associated with a home such as a shed, garage, carport, retaining structure, driveway, fence, workshop, swimming pool or spa;
- removing or re-siting a dwelling intended to be used as a residence;
- renovating, extending, altering, improving (including painting and installing services) or repairing a home, duplex or unit;
- refitting a kitchen or bathroom; and
- landscaping, paving, site work, etc.

You can order contract documents from the QBCC at the following address; https://www.qbcc.qld.gov.au/sites/default/files/Contract%20Order%20Form.pdf

Answer ❑

Typical Contract Documentation includes:

- New Home Construction Contract for the construction of an entire home
- Level 1 - Renovation, Extension and Repair Contract (PDF) for renovations, extensions and routine repairs on existing homes for contracts $3,301 to $19,999
- Level 2 - Renovation, Extension and Repair Contract (PDF) for renovations, extensions and routine repairs on existing homes for contracts $20,000 and over
- Contract for Demolition of Residential Premises (PDF) for demolishing homes severely damaged by natural disaster
- Consumer Building Guide (PDF)

Subcontracts include:

- Major Subcontract
- Minor Subcontract
- Period Minor Works Subcontract.

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 $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 ❑

Variations should be agreed to by both the client and the builder before the work commences (unless impractical). The changes should be fully and accurately documented (including extra costs).

The contractor should submit an extension of time and payment in accordance with the time stated in the variation document.

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

A Prime Cost Items Schedule sets out items which the Owner has not finally selected, or for which the contractor is not reasonably able to determine the cost at the date of signing the contract and which the Contractor cannot therefore price accurately as at that date. An example/s might be kitchen cabinets design, finish and bench tops not determined by the client.

Provisional Sum Schedule is one that sets out items of work under a contract, the extent of which is not fully known at the date of the contract and which the contractor despite making all reasonable enquiries can't price accurately as at that date. An example might be excavating for the foundations which may not be possible based on uncertainties of what may be found in the ground (very large boulders) and other unknown underground installations and therefore is listed in the Provisional Sum Schedule based on these unknowns despite other relevant information available like contour survey, soil testing and other engineering and geotechnical information until the actual excavation occurs and is completed and then the real cost is known.

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

The person's name

The person's business address

The person's telephone number

The person's email address (if any)

❑

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

Answer

Make reasonable inquiries about why you want to borrow the money

Make reasonable inquiries about your financial situation

Take reasonable steps to verify your financial situation

Assess whether you can meet the financial obligations of the credit contract (and whether it will meet your needs)

Determine that the credit contract is 'not unsuitable' for you

❑

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	You should only deal with a QBCC-licensed contractor. If you engage an unlicensed contractor, your building work may not be covered under the Queensland Home Warranty Scheme. Always check the contractor's licence and licence history via QBCC's Online Licence Search.
Contract price	The total contract price must be stated on the first page of the contract schedule, along with a warning about any provisions that may cause the price to change. If the total contract price includes any allowances (items or services for which the price is not fixed at the time the contract is signed), these allowances must be stated in the contract schedule.
Building approvals and inspections	Building inspections and approvals are the responsibility of a building certifier. Mandatory building inspections may be required at certain stages of construction. You can check the certifier's licence via QBCC's Online Licence Search.
Practical completion and handover	You are 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 minor omissions that will not unreasonably affect occupation. If you believe there are any minor defects or minor omissions, the contractor must give you a 'defects document' (listing agreed and non-agreed matters). This document should be compiled by you and the contractor during a handover inspection.
Implied warranties	Under the Act, a range of warranties are deemed to be part of all regulated domestic building contracts. The warranty period is six years for structural defects and one year for all other defects.

❑

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

A client may withdraw from the contract within five business days of receiving copies of the signed contract (including any plans and specifications) and the QBCC Consumer Building Guide which must be provided by the building contractor before the client/s you sign the contract. However, there are costs for home owners in withdrawing (generally $100 plus any out-of-pocket expenses reasonably incurred by the contractor up to the time of withdrawal). The client must also advise the contractor in writing.

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

Answer

The maximum deposit allowed is:

- 10% where the total contract price is under $20,000 or
- 5% where the price is $20,000 or more.
- 20% for a contract of any price where the value of the work to be performed off-site is more than 50% of the total contract price.

Owners and contractors are free to determine the number and timing of progress payments (if any) for their particular project, provided these payments are proportionate to the value of work performed on site (e.g. no home owner should pay more than 50% before half of the work has been completed).