

CPCBC4003A SELECT AND PREPARE A CONSTRUCTION CONTRACT, CPCBC4016A ADMINISTER A CONSTRUCTION CONTRACT & CPCBC4032A 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 whereby the Participant's answers will be documented by a party other than the Participant. This must be acknowledged in writing (e.g. FROB and Assessor Comments)
- 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.
- Assessors are to complete marking in pen of a different colour to the Participant.
- 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

Date

Assessor name

Assessor signature

Date

Number of questions	Number of questions answered correctly	Task outcome (Tick)	
		Satisfactory	Not Yet Satisfactory
51		☐	☐

Q1. Order the following elements of an agreement from 1 to 4.

Answer

Element Number	Element
2	Acceptance
4	Consideration
3	Intention of legal consequences
1	Offer

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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When the time for acceptance expires or if the offer is withdrawn before it is accepted; or after a reasonable time in the circumstances (when considering what is 'reasonable', generally the greater the value of the contract, the longer the life of the offer).

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Q3. What happens to the offer if new terms are suggested?

Answer

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.

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

Answer

One party promises to do something in return for a promise from another party - consideration is what each party gives to the other. Usually the consideration is the payment of money in return for a product/services.

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Q5. Identify two (2) parties who may be deemed to not have the capacity to enter into a contract.

Answer May include: Persons who suffer from a mental disability, intoxicated or senile or under the age of 18 years (but there are some exceptions). ☐

Q6. Outline your understanding of 'consent' as it applies to contractual agreements. Identify when 'apparent consent' might not actually exist.

Answer Parties must possess and exercise sufficient mental capacity to agree to the proposed objectives and terms of a contract in order for it to be enforceable. There will be no binding contract without the real consent of the parties. Apparent consent may be negated because of mistake, fraud, innocent misrepresentation, duress or undue influence, all of which are defences to the enforcement of a contract. ☐

Q7. Identify the building industry regulator in your state and describe its role, particularly with regards to providing advice about contracts.

Answer Assessor's discretion. In Queensland, the Queensland Building and Construction Commission (QBCC) works to: ☐

- Educate contractors and consumers about rights and responsibilities;
- Handle disputes fairly and equitably;
- Protect homeowners against loss through Home Warranty Scheme;
- Implement and enforcing legislative reforms and, where necessary, prosecuting people not complying with the law.

Q8. Under what laws are domestic building contracts regulated?

Answer Assessor's discretion. In Queensland, Section 67AZN of the Queensland Building and Construction Commission Act 1991 specifies that domestic building contracts are regulated under Schedule 1B ☐

Q9. Domestic building contracts must be put in writing once the work exceeds what value?

Answer Assessor's discretion. In Queensland, domestic building work contracts ☐

over \$3,300 must be in writing.

Q10. A commercial building contract must be put in writing before the building work is started if the reasonable cost of the work is more than what amount? Identify the relevant law that imposes this requirement.

Answer Assessor's discretion. In Queensland, section 67G of the *Queensland* ☐

Building and Construction Commission Act 1991 states this applies for
commercial contracts over \$10,000

Q11. 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 Assessor's discretion. In Queensland, this must occur within five (5) days. ☐

Q12. What are the benefits of having a written contract in place between parties?

Answer Having the agreement fully documented provides protection to all parties. ☐

Ensuring that owners receive the finished product they envisioned and
builders get paid and paid on time.

Q13. Match the common building contract clauses and definitions below 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 sought 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	

Q14. Which of the following are preliminary contracts that a builder could ask a client to sign prior to signing the main contract? Tick all that apply.

Answer	Choice	Possible Answers	
	✓	Contract estimate	
	✓	Contract request	
	✓	Preliminary agreement	

Q15. 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	

Q16. Identify and explain the purpose of four (4) standardised building construction contracts – two (2) residential and two (2) commercial.

Answer

Contract name	Description
	Assessor's discretion For example, Queensland residential contracts include: - New home construction contract - Renovation, extension and repair contract for contracts \$3301 to \$19,999 (Level 1) or \$20,000 and over (Level 2)
	Assessor's discretion For example, Queensland commercial contracts include: - Major works subcontracts - Minor works subcontract - Period minor works subcontract
	Assessor's discretion
	Assessor's discretion



Q17. Identify an appropriate standardised contract that would be suitable for a commercial works job up to \$100,000.

Answer

Assessor's discretion. For example in Queensland, Master Builders Queensland Commercial Minor Works Contract may be used for work up to \$100,000



Q18. Identify one (1) standardised residential building contract and explain the maximum value of the work it may be used for.

Answer

Assessor's discretion. For example in Queensland, renovations, extensions and routine repairs on existing homes may be under Level 1 (\$3,301 to \$19,999) or Level 2 (\$20,000 and over) contracts.



Q19. Describe the requirements for each of the topics listed below, with regards to residential contracts priced at \$20,000.

In Queensland, these are outlined in the QBCC Consumer Building Guide, which the consumer must sign before work is undertaken.

Answer

Topics	Definition
Builder's Licence	Assessor's discretion. In Queensland, 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	Assessor's discretion. In Queensland, 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	Assessor's discretion. In Queensland, 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	Assessor's discretion. In Queensland, you are not required to pay the final contract payment until all the contracted work is completed in accordance with the contract, all legal requirements, and either without any defects or omissions, or with only minor defects that will not unreasonably affect occupation. If you believe there are any minor defects, the contractor must give you a 'defects document' (listing agreed and non-agreed matters), compiled by you and the contractor during a handover inspection.
Implied warranties	Assessor's discretion. In Queensland, 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.



Q20. Which of the following documents can be referred to as collectively making up a contract? Tick all that apply.

Answer

Choice	Possible Answers
✓	Engineer specifications
✓	Plans, drawings and specifications
✓	Prime Cost Items Schedule
✓	Processes for applying for extensions of time
	Product catalogues
✓	Project timelines and schedules
✓	Provisional Sums Schedule
✓	Rise and fall calculations
✓	Site conditions report
✓	Soil and sedimentation report

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Q21. What is the difference between the Prime Cost Item Schedule and the Provisional Sum Schedule in a contract? Provide an example of each type to help explain your response.

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 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. Once the actual excavation is completed, then the real cost is known.

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Q22. Cost adjustment provisions under a contract address risk by providing mechanisms for adjusting contract payment to reflect changes in costs. What can cost adjustment apply to?

Answer

Labour and materials

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Currency exchange rates for goods purchased in foreign currency

Other costs, including duties and taxes, or shipping and transport.

Q23. True or False (Tick your response): Variations can be requested by both the client and the builder.

Answer

✓	True
	False

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Q24. How should you deal with a client variation request that consequently requires a time extension? How are time extensions addressed within the contract?

Answer

Variations should be in writing and signed off by both parties. The Contractor should issue an 'extension of time' form – asking the client to grant them an extension of the contract period to allow for delays caused by any variations.

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The builder should refer to the 'General Conditions' of the contract and know what time extensions he or she are entitled to over the contract period (e.g. inclement weather and delays caused by the owner, such as changes to the scope of works).

Q25. Name the Fair Trade legislation that applies in your state and identify which persons/bodies it applies to.

Answer

Assessor's discretion. In Queensland, it is the *Fair Trading Act 1989 (Qld)*, ☐

which applies to the following (as per Section 4A):

- Bodies corporate incorporated/registered under Queensland law
- Persons carrying on business within Queensland
- Persons ordinarily resident in Queensland
- Persons otherwise connected with Queensland

Q26. 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

Q27. What does the 'cooling off' period refer to when undertaking domestic building work with a total contract price of \$20,000 or more?

Answer

Assessor's discretion. In Queensland, a client may withdraw from the contract within five business days of receiving copies of the signed contract 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). The client must also advise the contractor in writing. ☐

Q28. What are the maximum deposits recommended for a residential building project?

Answer

Assessor's discretion. In Queensland, the maximum deposit allowed is:

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- 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.

Q29. Throughout the building schedule, progress payments are made when each new stage is ready to commence.

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

Answer

Assessor's discretion. The following apply in Queensland.

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1. Deposit: 5% (Contract Sum)
2. Base stage: 15%
3. Frame stage: 20%
4. Enclosed stage: 25%
5. Fixing stage: 20%
6. Practical completion: Balance

Q30. You have been engaged by a client to construct their residential dwelling for \$550,000. Your client is pressuring you to accept a \$70,000 deposit to get priority on their construction. Should you accept the deposit? Explain your response.

Answer

In Queensland, the deposit cannot be accepted because the Queensland Building and Construction Commission Act 1991 sets out maximum deposit percentages which must not be exceeded and in this case a maximum deposit is 5% of the contract price of \$550,000 amounting to a deposit of \$27,500.

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Q31. Explain the following types of contractual breach and identify the consequences for the contractual arrangement due to each type of breach.

Answer	Breach	Explanation	☐
	Breach of condition under contract	Breach of an essential part of the contract, which makes performance of the rest of the contract totally different from what was agreed. Consequence: Can elect to discharge the contract and sue for damages	
	Breach of warranty under contract	Breach of a term of the contract which, if not carried out, the basic nature of the contract is not changed. Consequence: Cannot elect to discharge the contract. Damages are the only remedy.	

Q32. What does repudiation of a contract mean?

Answer Repudiation occurs when a party to a contract is unwilling to perform their contractual obligations – this may be through acknowledgment or their actions are totally inconsistent with their obligations under the contract. ☐

Q33. True or False (Tick your response): In the event of repudiation, the injured party has two options:

- Continue with the contract
- Accept the repudiation and move to terminate the contract

Answer

☒	True	☐
☐	False	

Q34. Why should you exercise caution, even if you are sure that the other party has repudiated the contract?

Answer A party could move to terminate a contract based on their own belief that the other party has repudiated the contract. However, if they have no legal right to terminate the contract, they may themselves have repudiated the contract and could be liable to pay damages. ☐

Q35. What does 'abandonment of contract' mean?

Answer

Abandonment can have different meanings. One type of abandonment is contract abandonment, where the parties both have conducted themselves in such a way that the original contract is no longer valid. Both parties may mutually agree to do this, or it can become part of a claim. Another type of abandonment is where a contractor fails to perform the work on a project by either not starting the project in a reasonable amount of time, or not completing the work, or failing to resume work in a reasonable amount of time.

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Q36. A contract can be terminated for 'cause' or for 'convenience'. Explain these two terms.

Answer

A termination for cause occurs when one party stops work because of a deficiency in performance by the other party. Because the contract is terminated as a result of a party's poor performance, the law typically provides the terminating party with little recourse in the event of a termination for cause.

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A termination for convenience occurs when the one party stops work for reasons other than a deficiency in performance. Because a termination for convenience is not the result of poor performance, the law may provide the aggrieved party with significant rights against the terminating party.

Q37. Yes or No (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

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Q38. If time is not of the essence for contract completion and one party fails to perform on time, the other party may terminate the contract after serving notice – specifying a time for performance on the first party. What are the requirements of a valid notice to complete?

Answer

The notice is not required to be in any particular form, but should contain the following details:

- What must occur to perform the contract
- A reasonable time in which the contract must be completed
- A statement of the consequences of not performing in accordance with the notice

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Q39. True or False (Tick your response): Where the notice given (as per Q38.) is deemed invalid, the innocent party must either serve another notice or prove repudiation by the defaulting party, in order to terminate the contract.

Answer

✓	True
	False

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Q40. When is the client owner required to pay the final contract payment? How might this be affected by defects and omissions?

Answer

The client 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 minor omissions that will not unreasonably affect occupation. If the client believes there are any minor defects or minor omissions, the contractor must give them a 'defects document' (listing agreed and non-agreed matters). This document should be compiled by the client and the contractor during a handover inspection. The client should also check their contract to see if it imposes any extra requirements on the contractor for practical completion.

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

Answer

Defects after completion means the Contractor must make good defects or omissions in the work under the Contract which become apparent within 6 months of the Date of Practical Completion. If there are any such defects or omissions, the Owner must give the Contractor written notice to make good such defects or omissions within the 6 month period and must give the Contractor reasonable access to the Site for that purpose.

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Subject to reasonable access being provided, the Contractor must within 28 calendar days of the notice being given rectify any defects notified to the Contractor under the relevant condition during normal business hours.

Q42. 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 and contact details (i.e. business address, telephone number, email address, if any)

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Q43. Name one (1) person you should consult if you are considering ousting a contractor from a building site.

Answer

A legal advisor

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Q44. What document should you refer to if you are considering ousting a contractor from a building site?

Answer

You should apply the dismissal procedure outlined in the contract.

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Q45. How should you handle a customer complaint?

Answer

Dealing with a complaint is never easy, but if viewed positively, it can be seen as a way to avoid a repeat of the problem. The goal should be to quickly reach a resolution by trying to understand the customer's point of view. Don't be afraid of complaints. For each customer whose complaint is handled well, most will remain loyal and recommend to others.

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Tips to avoid complaints

- Identify the problem and record complaints – even if verbal;
- Act promptly and stay calm;
- Decide what can be done and do what you say you're going to do;
- Do not make unrealistic promises.
- Arrange a second opinion to confirm your view.

Q46. How do you reduce the risk of dispute?

Answer

To reduce the risk of a dispute, both the contractor and owner should:

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- Carefully read and understand the contract.
- Check any associated plans and specifications before signing.
- Discuss questions with contractor and seek legal advice if needed.

Q47. What is the process for dispute resolution?

Answer

If a dispute with the contractor occurs, firstly the client should advise their contractor in writing giving them a reasonable time to respond. If this doesn't resolve the problem, the home owner can contact the regulator (e.g. QBCC) to explore their legal options. It's critical that the home owner engages a practising solicitor before terminating the contract. Incorrect termination may have serious legal and financial consequences and reduce the Home Owner's Home Warranty protection.

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Q48. During your build the client has emailed you at 7:00pm to say they have been to the premises and noticed the installed bath in the bathroom is the wrong style.

You check the contract and the white goods and chattels list selected by the client. You cross check this with the specifications and your materials order and the receivable order sheets. You establish that the bath, as per these details, is correct and there has been no mistake on your part.

Draft a detailed response email to your client alerting them to the pertinent parts of the contract and specification, cross-referencing the details in regard to this item and its installation.

Answer

Assessor discretion.

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Q49. Where would you find any possible penalties associated with a build?

Answer

In the specification and the contract under liquidated damage clauses.



**Q50. Explain the process for obtaining the final inspection certificate.
Explain how such documentation is to be stored/lodged.**

Answer

Assessor's discretion. In Queensland (specifically Brisbane), building work is assessable through private building certification under the Planning Act 2016, as well as under specific building regulations.



Brisbane City Council must hold records of building approvals and certification information. The legislation also requires that an accredited building certifier must lodge the following documents with Council:

- Engagement notice and application details
- Decision notice, approved building plans and any other documentation that contributed to the plan approval
- Completion details such as certificates (including certificate of classification and inspection certificates) and any other documents relating to the certification and acceptance of the completed building work

The Planning Act 2016 and the Building Act 1975 require a private certifier to lodge building work documentation with Council.

Q51. Select and prepare an appropriate standardised contract for the client in the scenario below.

Mr. and Mrs. Cousins intend to engage your company Resilient Homes Pty Ltd (License 141526) in order to build a new low-rise residential dwelling as their future retirement property. Mid-term of this build the clients intend putting their current home on the real estate market for sale.

Additional details:

- The land has been secured and paid for by the Clients.
- Proposed contract amount is \$580,000.00 plus \$85,000 for a kidney shaped 9m x 6m in-ground swimming pool, landscaping, gardens and lawns.
- Mr. and Mrs. Cousins have finance approval from the Commonwealth Bank for \$390,000.00 and the balance in cash. You have received written assurance from the Clients finance company and bank that their finances for the build are fully secured.
- Mr. and Mrs. Cousins want to pay you \$75,000.00 upon signing of the contract to get their build at the top of your priority list.
- The residential dwelling will be a low set single skin masonry structure with hip and valley roof using glazed clay tiles, contrast metal fascia and gutters and colour/rendered finish on a 1000m² level block upon which there are three large standing hardwood trees which will need to be fully removed.
- The Clients want the largest tree wood chipped and the chipped bark retained on site for the future gardens and landscaping.
- Mr. and Mrs. Cousins operate an aluminium window supply company and have advised they will supply all the windows and shower glass for the build.
- The dwelling has four bedrooms with built-ins. The master bedroom has ensuite with toilet, spa bath and double shower and walk-in robe and dressing area. There is an office, gourmet kitchen with stone bench tops and butler's pantry, media room, separate open plan dining adjacent to the kitchen plus slate tiled outdoor entertaining area adjacent to the pool, two living areas (formal and informal), two bedrooms share a bathroom with bath, shower, double vanity and toilet and the guest bedroom is ensuited with shower only, toilet and single vanity, there is a powder room (toilet and vanity only), three car garage (one double and one single) and a store/workshop room at the rear of the double bay garage. A slab is to be put down in the back corner of the allotment for a 5m x 3m garden shed.
- The council approved building plans have been provided by Mr. and Mrs. Cousins these do not include the garden shed slab.
- The construction period excluding inclement weather and possible delays is 23 weeks
- Provisional sums are required for the wet areas, alfresco area and living area tiling. (Only the bedrooms are carpeted).
- Prime costs are required for the solar hot water system and ducted air conditioning
- Provide fictitious details for all other sections of the contract.
- 18 solar panels are to be installed on the roof

Answer

Assessor discretion. Standardised contract should be submitted.

