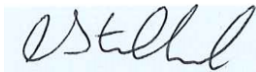


CPCCBC4003A SELECT AND PREPARE A CONSTRUCTION CONTRACT, CPCCBC4016A ADMINISTER A CONSTRUCTION CONTRACT & CPCCBC4032A APPLY CONTRACT LAW TO SALES PROCESSES

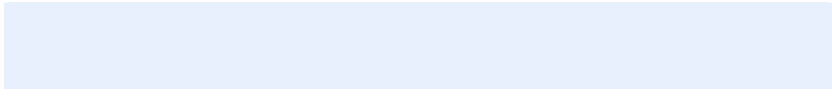
THEORY EXAM INSTRUCTIONS

- 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 Courtney Stallard

Participant signature 

Assessor name _____

Assessor signature 

Date 4/07/2019

Number of questions	Number of questions answered correctly	Satisfactory?	
		Yes	No
51		☐	☐

ASSESSOR COMMENTS

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

☐

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

Answer

- When the time for acceptance expires;
- If the offer is withdrawn before it is accepted; or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 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

☐

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 as the agreed price for the other's promises
- Usually the consideration is the payment of money

☐

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

Answer Persons suffering from a mental disability, intoxicated individuals, senile persons.

☐

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

Answer

- Consent is an act of reason and deliberation.
- A person who possesses and exercises sufficient mental capacity to make an intelligent decision demonstrates consent by performing an act recommended by another.
- Consent is implied in every agreement.
- Apparent consent may be negated because of mistake, fraud, innocent misrepresentation, duress or undue influence, all of which are defences to the enforcement of the contract.

☐

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

Answer Queensland Building and Construction Commission Act (QBCC)]

- Licensing contractors
- Educating contractors about their legal rights and responsibilities
- Educating consumers about their rights and obligations
- Handling disputes fairly and equitably
- Protecting homeowners against loss through the Queensland Home Warranty Scheme
- Implementing and enforcing legislative reforms and, where necessary, prosecuting people not complying with the law

☐

Q8. Under what laws are domestic building contracts regulated?

Answer

- [Queensland Building and Construction Commission Act 1991](#)
- [Building Act 1975](#)
- [Building Industry Fairness \(Security of Payment\) Act 2017](#)

☐

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

Answer If the cost of domestic building work exceeds \$3,300 it must be covered by a written contract.

☐

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 Commercial Building Contracts for building work over \$10,000 must be in writing before work starts.

☐

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 Under The QBCC Act (Schedule 1B, Section 15), contractors must give the Owner a signed copy of the entire contract (including any plans and specifications) within 5 business days after entering the contract

☐

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

Answer The building contract outlines the general rights and responsibilities of the builder and the homeowner and details the full scope of work under the contract.

☐

It is the single greatest protection to ensure that:

- Home owners receive the finished product they envisioned
- 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
New Homes Construction Contract	This plain language contract for new homes has been tailored to conform with state legislation and has a fair and balanced risk allocation. It includes both the general conditions and relevant schedules.
Level 2 – Renovation, Extension and Repair contracts	For renovations, extensions and routine repairs on existing homes for contracts \$20,000 and over
Commercial building contracts	A lump sum contract to be used for the construction only of commercial building work with or without a Principal's agent.
Commercial Cost Plus contract	A cost plus contract for use on commercial building projects, where a lump sum price cannot be established, however a fair and reasonable estimate is given.



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

Answer

Commercial Minor Works Contract - A lump sum contract for minor commercial work up to the value of \$100,000



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

Answer

Basic Works Contract - This contract can be used as either a Level 1 or 2 contract. This contract is a lump sum contract to be used for work performed on a detached dwelling, including a single duplex, or the renovation, alteration, extension or repair of a home, or removal or re-siting work for detached dwelling where the contract price is up to \$80,000 (GST inclusive)



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	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	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 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	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. Check your contract to see if it imposes any extra requirements on the contractor for practical completion.



Implied warranties	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.
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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

☐

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 PC item is:

- An amount of money included in a contract sum to purchase a specified item such as tiles, taps, doors or bathroom fittings
- An agreed estimated amount is included at contract signing but the specific products are not selected until a later stage
- A builder must estimate the cost of such items at or above the lowest amount these items could reasonably cost

A provisional sum is:

- An amount of money included in contract sum to cover work and/or materials, not detailed when entering the contract
- Typically builders will include a PS for site work costs
- The builder is legally required to take reasonable steps to ensure an accurate site works cost estimate but unforeseen events mean that the provisional sum is exceeded which is added to the contract sum

☐

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

There is a risk that, during the course of a commercial contract, the costs of performing that contract will rise or fall from the costs initially estimated. Cost adjustment provisions address this risk by providing mechanisms for adjusting contract payment to reflect changes in costs, but they only apply to long-term costs and some specific costs (e.g. labour and materials, currency exchange rates for overseas-purchased goods, duties, taxes, shipping).

☐

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

Answer

☒	True
☐	False

☐

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 When a customer asks for a ***time extension*** or 'variation' to the contract it requires:



- A variation in writing
- You to issue an 'extension of time' form – essentially asking the client to grant you an extension of the contract period to allow for delays caused by the variations
- The specific reasons for an extension of time are set out in the general conditions of the building contract and include reasons such as: inclement weather and delays caused by the owner, such as changes in the scope of works
- You should be familiar with the General contract conditions to you know what time extensions you are entitled to over the contract period

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

Answer [Fair Trading Act 1989 \(Qld\)](#)

These Acts prohibit:

- Misleading or deceptive conduct
- Unconscionable conduct (i.e. particularly harsh or oppressive conduct)
- Unfair contract terms (i.e. making a significant imbalance in the parties' rights and obligations arising under the contract)

☐

Q26. Under the National Consumer Credit Code, before entering into a credit contract, what must the credit provider do?

Answer Before entering into a credit contract, the credit provider must:

- 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**
- Consumers have certain "cooling off" rights, which may enable them to cancel the contract if they are not satisfied with it
 - Schedule 1B of the QBCC Act provides for a cooling off period, giving the consumer the option to withdraw from the contract within five days of receipt of the signed contract

☐

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

Answer ☐ The QBCC Act sets out maximum deposit percentages that must not be exceeded. If the contract for domestic building work is priced at \$20,000 or more, the maximum deposit is 5%. If the contract price is more than \$3,300 and less than \$20,000, the deposit must not exceed 10%.

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 ☐

Deposit	5%
Base stage	15%
Frame stage	20%
Enclosed stage	25%
Fixing stage	20%
Practical completion	15%

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 ☐ No. The maximum deposit of 5% should be \$27,500.00. This amount is set and enforced by the QBCC and the Builder could risk fines or losing their Builder's License for accepting payment for works not yet complete.

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	Conditions: These are essential terms. If a condition is not fulfilled, the nature of the contract is drastically changed. If a condition is breached, the aggrieved party can elect to discharge the contract and sue for damages
Breach of warranty under contract	Warranties (NB. This is not the same as a 'guarantee'): If a warranty is not fulfilled, the nature of the contract is not drastically changed. If a warranty is breached, the aggrieved party cannot elect to terminate or discharge the contract – they may only seek damages.

Q32. What does repudiation of a contract mean?

Answer	Repudiation is a term used to describe the <i>rejection of a proposal or idea</i>. When a party to a contract is unwilling, or exhibits behaviour which suggests that they are unwilling to perform their contractual obligations, the innocent party has the right to terminate the contract due to repudiation.	☐
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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 Whether repudiation has occurred is determined objectively. The test is **whether the party's conduct would convey to a reasonable person, in the position of the other contracting party, renunciation of the contract as a whole** (i.e. an unwillingness or inability to perform all of that party's obligations) **or of a fundamental obligation under it**. A sufficiently serious failure to perform obligations that are not fundamental may also show an unwillingness or an inability to substantially perform the contract according to its requirements



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. Abandonment of a construction project without legal excuse is a cause for disciplinary action.



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

Answer 1. 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 own poor performance, the law typically provides the terminated party with little recourse in the event of a termination for cause.

2. A *termination for convenience*, occurs when the owner stops work for reasons other than a deficiency in performance by the contractor. Because a termination for convenience is not the result of poor performance, the law may provide the aggrieved contractor with significant rights against the breaching owner.



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

☐

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

If timeframes are not specified in the contract and one party fails to perform within a reasonable timeframe, the 'injured' party may terminate only after serving the defaulting party with notice which must specify:

- 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

☐

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

☐

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

Answer At the point of practical completion, payment of the final progress claim becomes due.



A building contract usually defines practical completion as **when all works are completed except for any defects or omissions** which do not prevent the home from being used for its intended purpose, that is: if the unfinished items prevent the home from being “lived in” then practical completion could be deemed not to have occurred.

Usually there will be a practical completion inspection and the building supervisor and client will agree on a list of items to be attended to.

Final payment can not be withheld as it is a contract breach. The builder has a contractual obligation to repair these minor defects, but this may not necessarily happen before handover although most builders would attempt to do so.

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

Answer Defects after completion
The Contractor must make good defects or omissions in the **work under this 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.

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 during usual 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 (d) a warranty against defects must prominently state the following information about the person who gives the warranty;

- (i) the person’s name;
- (ii) the person’s business address;
- (iii) the person’s telephone number;
- (iv) the person’s email address (if any);



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

Answer To learn more about ousting a contractor from a building site you must consult your contract or lawyer to understand your rights and obligations. ☐

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

Answer Considering the far-reaching legal and economic consequences of ejecting you as the principal contractor or a sub-contractor, both owner and builder must be meticulous in applying the dismissal procedure delineated in the contract. ☐

Q45. How should you handle a customer complaint?

Answer

- 1. Deal with the complaint immediately**
- 2. Stay calm**
- 3. Identify the problem**
- 4. Decide what can be done**
- 5. Arrange a second opinion to confirm your view**
- 6. Keep records**
- 7. Fix the problem**

☐

Q46. How do you reduce the risk of dispute?

Answer

1. Record all complaints
2. Act promptly
3. Do what you say you're going to do
4. Do not make unrealistic promises

☐

Q47. What is the process for dispute resolution?

Answer

1. QBCC or other Building Associations can assist you in reaching an amicable solution with your building contract break down
2. The Queensland Civil and Administrative Tribunal provides cost-effective dispute resolution, particularly for domestic building disputes of a contractual nature. The Tribunal will hear any disagreement between yourself and your licensed contractor and may require the QBCC to provide a technical report www.qcat.qld.gov.au
3. *You should seek legal advice to investigate your options before taking any of these steps. This is particularly important if you intend to terminate the contract.*

☐

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

Good Afternoon Client,

Thankyou for your email regarding the bath installed at your property.

There are many products that make up a new home and I understand there may be some concern and confusion as all the parts start to come together.

I have gone over your Signed Colour Consultation as attached and ascertained that the bath selected was to be a Posh Solus MkII 1520x750mm White Acrylic Inset Bath.

Based on our Purchase Order & Invoice from Reece, the correct bath has been supplied. I have also double checked your progress photos from our Site Supervisor, and can visually confirm that the correct bath has been installed.

There are often a lot of options discussed at the Colour Consultation such as a Freestanding Bath option. Could this have been something that you initially wanted, but decided against due to the additional cost?

Our Site Supervisor Scott would be more than happy to offer a guided walk-through to cross-reference your Signed Colour Consultation, once all the plumbing fixtures have been installed. Please let me know if I can assist in setting up this appointment for you.

Kind Regards,
Courtney



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

Answer Penalties would be stated in the Contract under “liquidated damages” or “late completion damages”.
Client’s charging “liquidated damages” under a contract means there is a fixed sum of money which the builder agrees to pay the client, often in relation to late completion of the project.



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

Answer The **final certificate** is **certification** by the contract administrator that a construction contract has been fully completed.
It is issued at the end of the defects liability period and has the effect of releasing all remaining money due to the contractor, including any remaining retention.



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

