



- Candidates are required to answer **ALL** the questions.
- Questions must be answered in **SEQUENCE**. Ensure that your answers are clearly **NUMBERED**.
- This is **OPEN BOOK** paper. Only documentation that is contained in the List of Study Material is permitted.
- Ensure that you answer **in your OWN words** when appropriate.
- Note that answers may be submitted to a PLAGIARISM detection service if deemed necessary.
- Total marks for paper one – **150 marks**
- Time allocation – **3 hours**
- Pass mark – **50%** in each of the two papers

**QUESTION 1**

25 marks

1.1	There are various requirements that must be met in order for a contract to give rise to a legal obligation. Name TWO (2) of these requirements and provide a practical example of how each of these may be implemented on a construction contract (4 marks each).	(8)
1.2	Breach of contract occurs when the binding agreement is not honoured by one or more of the parties to the contract. Name THREE (3) forms of breach of contract and provide a practical example of how each of these may apply to a construction contract (4 marks each).	(12)
1.3	Describe in your own words how the rights and obligations of the Principal Agent are contractually established on a construction project.	(5)

**QUESTION 2**

20 marks

You have been approached by a private developer to provide professional architectural services on a new mix-used development in the Eastern Cape to answer the growing need of a safe and convenient urban environment in the area. Your architectural services will be to fulfil the roles of architectural professional, principal consultant and principal agent, and therefore you will be tasked with advising the developer on the construction contracting and construction pricing strategies.		
As you were the first built environment professional with whom the project has been discussed, the developer has requested that you provide a proposal on how you and the other members of the professional team may be appointed on the project.		
2.1	Identify and describe in your own words TWO (2) methods that would be appropriate for the appointment of the professional team (4 marks each).	(8)
As the developer will act as both the contractor and your employer, the traditional design-bid-build construction project may not be appropriate for this project.		
2.2	Provide the name of the construction contracting strategy that you believe would be the most appropriate for this project.	(4)

2.3	Describe TWO (2) ways in which your choice of construction contracting strategy may impact on your ability as an architectural professional to provide objective and appropriate solutions to meet the needs of the future inhabitants of the development (4 marks each).	(8)
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### QUESTION 3

20 marks

<p>You have been appointed by the Body Corporate of a residential estate in Durban to provide the full scope of an architectural professional's service for the design and construction of a new guard house facility. The site for the new facility is located at the existing main entrance to the estate and vehicular access must be allowed to continue during construction.</p>		
3.1	<p>You have completed work stage 4.1 for the project, and have been informed by the local authority that a draft sectional plan must be prepared and submitted to the Surveyor General for approval.</p> <p>What is required in order for you as an architectural professional to complete and submit such documentation?</p>	(3)
<p>The submission of the sectional title plan and the building plans was successful and your client has received confirmation from the local authorities that that the project may proceed. The client submitted a loan application to their financial institution, and you subsequently received a letter from the client's bank requesting that you sign a "Duty of Care" letter for the project.</p>		
3.2	Identify the party to a construction contract to whom an architectural professional owes a "Duty of Care".	(3)
3.3	Describe the reason for "Duty of Care" in terms of a construction contract?	(4)
3.4	In your own words, describe TWO (2) reasons why you would not agree to the terms and conditions outlined in a "Duty of Care" letter from a third party such as the client's bank (5 marks each).	(10)

### QUESTION 4

30 marks

<p>Following up on the scenario in Question 3 above, the procurement process was carried out and your client (the employer) has elected to award the tender to the contractor <i>Effektivitet Construction (Pty) Ltd</i>, and the Joint Building Contracts Committee (JBCC) Principal Building Agreement (edition 6.2) was duly signed.</p> <p>An extraordinarily long construction period of 125 calendar days was allowed from the date of site handover to the date of practical completion in order to allow for vehicular access to the estate to continue during construction. The site was handed over in mid-February 2020 and during construction there have been issues regarding impeded site access. Added to this, construction was halted during the national lockdown period.</p> <p>As a result of delays experienced on the project, the contractor has submitted the two emails to you as the principal agent regarding revisions of the date for practical completion. Note that no additional communication or documentation was submitted with each email. An extract from each email is provided:</p>		
4.1	<p><u>02 March 2020:</u></p> <p><i>Despite numerous requests, we couldn't carry out our construction work as the residents to the estate would drive through the site area and hold up our work! This was usually on Mondays because they were frustrated by the time the project is taking, almost like a strike action! We claim these following 3 working days for the period from 17 to 20 February 2020.</i></p>	

	In your own words, compile a letter addressed to the contractor's <u>CLAIM</u> for a revision to the date of practical completion. Your letter should address the following: <ul style="list-style-type: none"> <li>– indicate whether you grant in full, reduce or reject the number of working days claimed</li> <li>– indicate the clauses within the agreement on which you rely</li> <li>– provide the reasons for your decision</li> </ul>	(12)
4.2	<u>04 November 2020:</u> <i>In a site meeting held last week, you enquired whether we can accelerate the work on the project following the national lockdown and the delays we experienced with resuming construction. Because of this, we now submit the attached revised construction program in order to complete the works by the end of November 2020. Please note that we CANNOT be held responsible for any new delays because of this new program! We intend to submit a claim for the revision of the date for practical completion in due course.</i>	
	In your own words, compile a letter addressed to the contractor in which you respond to the contractor's <u>NOTIFICATION</u> of intent to claim for a revision of the date of practical completion. Your letter should address the following: <ul style="list-style-type: none"> <li>– indicate whether the contractor's notification is acceptable in this instance</li> <li>– indicate the clauses within the agreement on which you have based your response</li> <li>– provide the reasons for your stance</li> </ul>	(12)
4.3	Provide TWO (2) frequently used reasons for the principal agent's to refuse a contractor's claim for the revision of the date for practical completion (3 marks each).	(6)

## QUESTION 5

20 marks

<p>You were appointed by your client to provide the standard (full) scope of an architectural professional's service on a project that entails an addition and alteration to an existing farm house near Kimberley. The project is currently in work stage 4.2, and you have approached three local contractors to submit tender offers for the project in terms of the JBCC Minor Works Agreement (edition 5.2).</p>		
<p><i>NOTE:</i> Questions 5.1 – 5.3 relate to three queries received from the owner of <i>Aptja Construction</i> (one of the tendering contractors) regarding the JBCC Minor Works Agreement and the project.</p>		
5.1	When compiling the Contract Data for the JBCC Minor Works Agreement, should the contract sum provided by the tendering contractor include the cost of equipment to complete the works?	(3)
5.2	Must each tendering contractor be registered with the National Home Builders Registration Council (NHBRC)? In your own words, describe why it is important for this contractor to be registered with the NHBRC for this project.	(4)
5.3	The contractor is not prepared to sign the JBCC " <i>Waiver of the Contractor's Lien</i> " agreement.	
	1. In your own words, provide an explanation of the concept of "lien".	(4)
	2. Under what conditions may a contractor "waive the lien" on a construction project?	(3)
<p>The three prospective contractors have submitted their tender offers for the project. You are now in the process of assessing each contractor in order to advise your client on the most suitable choice for the project.</p>		
5.4	Based on three queries submitted by <i>Aptja Construction</i> (5.1 – 5.3 above), do you believe that it would be appropriate to advise your client to appoint this contractor on the project? Provide a motivation for your answer.	(6)

**QUESTION 6**

25 marks

Your client appointed you to provide the services of principal agent for a lodge near Bela-Bela. The contractor was appointed under the JBCC Principal Building Agreement (edition 6.2) and you recently issued the certificate of practical completion for the project. In the last site meeting, the contractor was not satisfied with the amount that was certified in the latest interim payment certificate issued.		
Following this site meeting, the contractor submitted a letter to you and the client declaring a dispute on the project. The contractor stated that you did not carry out your obligations as principal agent to ensure that the amounts certified for interim payment are correct.		
6.1	Identify TWO (2) clauses in the agreement demonstrate that contractor was incorrect in declaring this dispute. In your own words, describe how these clauses will apply to this situation (5 marks each).	(10)
An urgent meeting is scheduled between you and the client to discuss the contractor's declaration of dispute and the dispute resolution clauses of the JBCC Principal Building Agreement. The client has identified specific items for of concern for this discussion.		
6.2	Which form of dispute resolution will apply to this dispute? Motivate for your answer in your own words.	(5)
6.3	As the dispute is regarding payment of amounts due to the contractor, would it be less expensive and time consuming to refer the matter to a legal professional and to resolve the dispute in court through litigation?	(5)
6.4	Is it possible for a ruling made in the dispute resolution process to be overturned when it is submitted to the Supreme Court of Appeal?	(5)

**QUESTION 7**

10 marks

7.1	An architectural professional should comply with certain ethics and rules of guiding behaviour in order to remain within the profession. Does SACAP stipulate such rules within an ethical code of conduct? (answer either "YES" or "NO")	(2)
7.2	In your own words, describe what is meant by the <u>LEGAL</u> and <u>ETHICAL</u> obligations of an architectural profession in the practice of architecture (4 marks for each description).	(8)

end of examination paper two