**South African Council for the Architectural Profession**

**PROFESSIONAL PRACTICE EXAMINATION**

**26 SEPTEMBER 2019**

**PAPER 2 – MEMORANDUM**

* This is an open book paper. Only material listed in the suggested Reading Material circulated by SACAP for this examination will be allowed in the examination room.
* Candidates must answer all questions.
* Total marks for paper 2 – **150 marks**
* Time allowed for paper 12 – **3 hours**
* Pass mark – **55%** in either paper, and an average of **60%** for the two papers combined
* Please ensure that each exam book that you use displays your correct **EXAMINATION NUMBER** for identification purposes.
* No cell phones, programmable calculators, laptops and/or other electronic equipment will be permitted in the examination room.

**QUESTION 1** *30 marks*

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| 1.1 | Is it true that every agreement constitutes a contract? | (2) |
| No, not every agreement is a contract. |
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| 1.2 | When an offer is returned and the original terms have been materially altered, what does this constitute? | (3) |
| A counter offer. |
|  |
| 1.3 | Provide a definition of the term 'agency'. | (8) |
| The legal position (2) where one person (the agent) is authorised to act with authority on behalf of another (2) (the employer) to create legal relations (2) with a third party (the contractor) (2). |
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| 1.4 | What would a financial institution that has provided finance for a building project under a mortgage bond typically require from the contractor? | (3) |
| A waiver (1) of the contractor’s lien (2) |
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| 1.5 | What is the meant when referring to the 'delictual duty' owed by an architectural professional to the public at large? | (3) |
| A delictual duty is a legal obligation arising between people independent of any contractual or other legal relationship between them. |
|  |
| 1.6 | What are some of the conditions that must be met before an architectural professional can be held 'delictually' liable? | (5) |
| *Any of the following (1 marks each – total of 5 marks)** There must have been an act or conduct on the part of the wrongdoer.
* There must have been wrongfulness (i.e. the infringement of a subjective right of the person prejudiced).
* There must be fault on the part of the wrongdoer.
* There must be a causal connection between the conduct (by the wrongdoer) and the infringement of the right.
* There must actually have been damage or injury to the person who suffered the wrongdoing.
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| 1.7 | Provide a definition of the term 'repudiation'. What does this constitute? | (6) |
| One party to a contact’s refusal (2) or inability (2) to fulfil or discharge an agreement, obligation, or debt. This would constitute a breach (2) of contract. |

**QUESTION 2** *22 marks*

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| 2.1 | What is the purpose of arranging for construction work to be performed by a subcontractor, and who primarily benefits from such an arrangement? | (6) |
| To obtain an acceptable combination of work quality (2) and price (2). The employer enjoys the primary benefit (2). |
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| 2.2 | Which form of subcontract would be most suitable when time is of the essence in procuring tenders? | (3) |
| The nominated subcontract |
|  |
| 2.3 | What may be required from a subcontractor in order to protect the architectural professional? | (4) |
| An indemnity (2) concerning the design and choice of materials of the architectural professional (2). |
|  |
| 2.4 | Identify three examples of what would result if there was no building contract entered into for a project? | (9) |
| *Any of the following or in a similar vein (3 marks each – total of 6 marks)** There would be no principal agent, and the contract would be under the exclusive control of the employer.
* The works would need to be completed entirely before the contractor is entitled to receive payment.
* There would be no obligations to carry out variations to the works
* The latent defects liability would run indefinitely.
* The contractor would be liable for damages due to late completion (as opposed to penalties).
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**QUESTION 3** *15 marks*

* Select the correct answer from the list provided. There is only one correct answer to each question.
* Provide only the question number and the letter of the selected answer.
* The acronym 'JBCC-PBA' refers to the JBCC Principal Building Agreement.

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| 3.1 | The JBCC-PBA is reached by the process of offer and acceptance… | (3) |
| A. | between the tenders and the principal agent |
| B. | between the employer and the principal agent |
| C. | between the employer and the contractor |
| D. | between the nominated and selected subcontractors |
|  |
| 3.2 | The principal agent is appointed by the employer to \_\_\_\_\_\_\_\_ the JBCC-PBA. | (3) |
| A. | administer |
| B. | manage |
| C. | perform |
| D. | supervise |
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| 3.3 | The term 'practical completion' has an absolute legal definition. | (3) |
| A. | TRUE |
| B. | FALSE |
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| 3.4 | In the JBCC-PBA, if a dispute or a disagreement has been declared… | (3) |
| A. | the principal agent must cease issuing payment certificates |
| B. | the contractor must vacate the site |
| C. | both parties must continue to perform their obligations |
| D. | the employer takes possession of the site from the contractor |
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| 3.5 | In the JBCC-PBA, the latent defects liability period runs… | (3) |
| A. | from when the tender is awarded |
| B. | from when the site is handed over |
| C. | until practical completion |
| D. | until the final payment certificate is issued |
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**QUESTION 4** *18 marks*

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| 4.1 | Your client on a residential project has decided to make use of a contractor that was recommended by a family friend. The contractor prepared a bespoke contract for the project, and the client has asked you whether this would be a good idea. What would you advise and why? | (8) |
| Advise the client to enter into a *STANDARD FORM CONTRACT* such as a JBCC Principal Building or Minor Works agreement for the following reasons:* Standard form contracts are usually negotiated between different bodies that make up the industry in the interests of standardisation and good practice
* Standard form contracts ensure that the risks between the contracting parties are more balanced
* A standard form contract avoids the cost and time of individually negotiated contracts
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| 4.2 | A project on which you are the architectural professional was administered by a project manager, who did not follow up on the signing of the JBCC Principal Building Agreement. There is now a dispute, and the contractor alleges that the contract cannot be enforced as it was not signed. The client has made payment of the certified amount in two payment certificates and now askes your advice on how to proceed. What would you advise and why? | (5) |
| Advise the client that a written agreement is enforceable, despite the fact that it was unsigned due the oversight by the project manager. The rights and obligations of the parties remain in force. |
|  |
| 4.3 | You are the principal agent on for a new office development. A nominated subcontractor has been appointed for the elevator installation. The main contractor has submitted a claim for the revision of the date for practical completion, as the delivery of certain components required for the elevator have been delayed due to the closure of Hong Kong airport. What would be your assessment of the contractor’s claim and why? | (5) |
| The main contractor will be entitled to a revision of the date for practical completion *WITHOUT* and adjustment to the contract value. The cause of the delay was the inability to obtain materials and goods and was beyond the control of both the main contract and the subcontractor. |

**QUESTION 5** *30 marks*

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| You have been appointed as principal agent on an addition and alteration residential project. This entails the addition of two new bedrooms and one new bathroom to an existing residence. Furthermore, an existing bathroom is to be completely renovated following the completion of the new bathroom to allow the family to occupy the building during the execution of the works. The JBCC Principal Building Agreement has been used for the project. |
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| The building contract has not run smoothly, with the employer growing ever more impatient with the manner in which the contractor has carried out the works. The employer has elected to levy penalties and also insists on occupying the new portion of the house, despite the fact that the contractor has not reached practical completion on the agreed date. The contractor has threatened to terminate the contract should this occur, without completing the project. |
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| 5.1 | Under normal circumstances, what are five of the consequences of the achievement of practical completion? | (10) |
| *Any of the following or in a similar vein (2 marks each – total of 10 marks)** The employer takes possession of the building (and the contractor relinquishes possession/lien of the site to the employer)
* The contractor hands over all information for the preparation of project record ('as built') documentation as well as all applicable regulatory and statutory approval certificates.
* These documents are required in order that an occupation certificate be issued by the local authority (it is the employer’s responsibility to procure this – agents to assist)
* The contractor hands over all operating and instruction manuals, product guarantees, etc.
* No new contract instructions may be issued (except to rectify defects)
* The contractor can no longer be penalised for late completion
* The employer must arrange for insurance of the building
* Public liability insurance remains in effect until final completion
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| 5.2 | What would occur should the employer should occupy the building prior to practical completion? | (4) |
| If the employer takes possession of the works prior to practical completion, practical completion would be deemed to have occurred (2) and the contractor would not be required to remedy defects (2). |
|  |
| 5.3 | What is the reason for penalties due to late completion of the works? | (2) |
| The employer is unable to reap the benefits of occupation |
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| 5.4 | As principal agent, how would you determine the penalty amount? | (4) |
| Once practical completion has been certified, the calendar days between the contractual and actual dates of practical completion (2) is multiplied by the amount recorded in the JBCC Contract Data (2). |
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| 5.5 | Should the contractor elect to terminate the agreement, a document must be prepared to record complete and incomplete work. What is the name of this document, who must compile it, and why is this important? | (8) |
| The status report (2) must be compiled by the principal agent (2). This document is important as it will be relied upon to determine the value of the final account and may be relied on during the course of dispute resolution proceedings (4). |
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| 5.6 | Having learnt from the difficult situation above, what would you consider doing differently when preparing the contract documentation for a similar project in future? | (2) |
| One would consider specifying dates for sectional completion within the JBCC-PBA Contract Data. |

**QUESTION 6** *15 marks*

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| 6.1 | In terms of the JBCC Principal Building Agreement, what is the primary difference between the following causes of delay? |
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| 1. | Factors beyond the control of the employer or contractor. | (3) |
| Such delays will result in a revision of the date for practical completion *WITHOUT* an adjustment of the contract value. |
|  |
| 2. | Factors caused by the employer or the employer’s agents. | (3) |
| Such delays will result in a revision of the date for practical completion *WITH* an adjustment of the contract value. |
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| 6.2 | What are three guiding principles to consider when assessing a contractor’s claims for the revision of the date for practical completion as principal agent? | (9) |
| *Any of the following or in a similar vein (3 marks each – total of 9 marks)** The principal agent must act fairly between the parties and in accordance with the terms of the contract.
* Make sure that all the facts regarding the claim are established in order to ensure that the revised date for practical completion is accurately determined.
* Evaluate whether the contractor adhered to the contractual obligations regarding the notification and the claim.
* Not to consider the effect of each circumstance or claim separately and independently.
* Consider what the position would be if each circumstance or claim had not occurred.
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**QUESTION 7** *20 marks*

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| 7.1 | A client who has entered into a Professional Service Agreement with an architectural professional has declared a dispute and wishes to refer the matter to adjudication. Would this be the correct course of action and why? | (6) |
| This is an *INCORRECT* course of action (2), as Professional Service Agreements do not allow for adjudication as an alternative means of dispute resolution (4). |  |
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| 7.2 | Provide two examples of the lawful termination of a contract. | (5) |
| *Any of the following (2.5 marks each – total of 5 marks)** The performance of all contractual obligations.
* Mutual agreement to terminate if not all obligations are performed.
* The ceding of obligations of a party to another party under a new contract.
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| 7.3 | Provide three examples of what in your view would be regarded as unethical behaviour in the provision of services as an architectural professional? | (9) |
| *Not all possible answers are listed, and the marker will be required to assess the insight of the candidate in answering this question. (3 marks each – total of 9 marks)* |