**South African Council for the Architectural Profession**

**PROFESSIONAL PRACTICE EXAMINATION**

**26 SEPTEMBER 2019**

**PAPER 2**

* 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) |
|  |
| 1.2 | When an offer is returned and the original terms have been materially altered, what does this constitute? | (3) |
|  |
| 1.3 | Provide a definition of the term 'agency'. | (8) |
|  |  |  |
| 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) |
|  |
| 1.5 | What is the meant when referring to the 'delictual duty' owed by an architectural professional to the public at large? | (3) |
|  |
| 1.6 | What are some of the conditions that must be met before an architectural professional can be held 'delictually' liable? | (5) |
|  |
| 1.7 | Provide a definition of the term 'repudiation'. What does this constitute? | (6) |

**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) |
|  |
| 2.2 | Which form of subcontract would be most suitable when time is of the essence in procuring tenders? | (3) |
|  |
| 2.3 | What may be required from a subcontractor in order to protect the architectural professional? | (4) |
|  |
| 2.4 | Identify three examples of what would result if there was no building contract entered into for a project? | (9) |

**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.

|  |  |  |
| --- | --- | --- |
| 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 |
|  |
| 3.3 | The term 'practical completion' has an absolute legal definition. | (3) |
| A. | TRUE |
| B. | FALSE |
|  |
| 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 |
|  |
| 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 |

**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) |
|  |
| 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) |
|  |
| 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) |

**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. |
|  |
| 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. |
|  |
| 5.1 | Under normal circumstances, what are five of the consequences of the achievement of practical completion? | (10) |
|  |
| 5.2 | What would occur should the employer should occupy the building prior to practical completion? | (4) |
|  |
| 5.3 | What is the reason for penalties due to late completion of the works? | (2) |
|  |
| 5.4 | As principal agent, how would you determine the penalty amount? | (4) |
|  |
| 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) |
|  |
| 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) |

**QUESTION 6** *15 marks*

|  |  |
| --- | --- |
| 6.1 | In terms of the JBCC Principal Building Agreement, what is the primary difference between the following causes of delay? |
|  |
| 1. | Factors beyond the control of the employer or contractor. | (3) |
|  |
| 2. | Factors caused by the employer or the employer’s agents. | (3) |
|  |
| 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) |

**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) |
|  |  |  |
| 7.2 | Provide two examples of the lawful termination of a contract. | (5) |
|  |
| 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) |