

**UNIVERSITY OF SOUTH AUSTRALIA  
SCHOOL OF GEOINFORMATICS, PLANNING & BUILDING**

PROGRAM: **Bachelor of Construction Management & Economics**

COURSE: **CONTRACT ADMINISTRATION 2 (BUIL 3010)**

EXAMINATION: **Internal Exam, Semester 1, 2003**

DURATION: **3 Hours of Exam time preceded by 10 minutes of Reading time,  
a total of 3 Hrs 10 Mins.**

**For ENTEXT students 10 minutes of Reading time plus 3.5  
Hours of Exam time, a total of 3 Hrs 40 Mins.**

EXAMINER: **Tony Ma** **ext. 22238**

INSTRUCTIONS TO CANDIDATES:

- This exam is worth **50%** of the total course marks
- Attempt all questions
- The value of each question is noted adjacent to the question
- State any assumptions made

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NOTES FROM EXAMINER:

A clean copy of AS4000 – 1997 General Conditions of Contract, Australian Standard is allowed for reference during examination. Calculator is allowed.

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**SECTION A**

**Question 1**

**(10 marks)**

Explain the following terms and give example(s) of their applications in building contracts.

- a) Certificate of Practical Completion, its issue & effects
- b) Economic Duress and its possibility in building contracts
- c) Delay on the part of nominated sub-contractors
- d) Difference between Experts & Arbitrators in disputes resolution
- e) Performance bond, its definition, types and how it works

**Question 2****(10 marks)**

- a) Define economic loss in tort. Describe the facts, the outcome and the implications of the High Court Case, *Bryan v Maloney* [1995] in Australia.
- b) Define liquidated and ascertained damages in building contracts. Describe the problems, the outcome and the implications of the court case *Dunlop Pneumatic Tyre Co Ltd v New Garage and Motor Co Ltd* [1915] in regard to whether a sum stipulated is a penalty or not.

**Question 3****(10 marks)**

The Contractor, during the course of the contract, submits a Progress Claim for \$852, 580.00 on 29 July detailed as follows:

a) Value of Work done for period 29/6 to week ending 26/7	725,000.00
b) Claim for error in setting out the Works (details supplied)	6,000.00
c) Discrepancy in Bills of Quantities	25,000.00
d) Discrepancy in Bills of Quantities	380.00
e) Value of imported items held in Store	75,000.00
f) Variations Order 7-9	14,400.00
g) Daywork (details supplied)	<u>6,800.00</u>

**852,580.00**

The Principal informed the Superintendent that because the Contractor had failed to renew its Public Liability Insurance Policy, the Principal had paid the premium of \$11,732.00. The superintendent has also arranged for another Contractor to clean up part of the site at a cost of \$2,100.00 because the Contractor had not done so, despite the fact that Kylie when visiting the site one day had told him to do so. You, as the Superintendent, instruct Kylie to prepare a payment certificate. **What items should be included in the Payment Certificate Kylie is to issue. Set out clearly the items and the total.**

The Certificate is issued on 15 August and the Principal makes payment on 3 September but in doing so decides to deduct monies owing by the Contractor to the Principal, firstly the sum of \$16,400.00 which the Principal says is outstanding as a contra for work taken out of the Contract but which the Superintendent overlooked in issuing his Certificate and secondly, the sum of \$18,000.00 being outstanding in liquidated damages imposed on the Contractor on another project in which the Contractor is the Builder and the Principal is the same as this project.

Is the payment certificates issued within time frame within contract provisions? What sum is the Principal liable to pay the Contractor and has he paid within time? Any consequences will follow as a result of the abovementioned deductions?

**SECTION B Multiple Choice Questions (1% each and a total 20%)**

(circle the correct answer below:-)

**1. The remedies for breach of contract include the following ways:-**

- (a) agreement; lapse of time; specific performance; lapse of time; merger
- (b) specific performance; injunction; quantum meruit; damages; repudiation.
- (c) repudiation; damages; latent condition; damages; specific performance.
- (d) rescission; damages; specific performance; injunction; quantum meruit.
- (e) specific performance; injunction; quantum meruit; rescission; forgiveness.

**2. Time is said to be "at large" when.....**

- (a) contractor cannot complete the work in time beyond his control;
- (b) there is no extension of time being granted;
- (c) there is no longer an agreed date for completion;
- (d) (a), (b) & (c)
- (e) (a) & (c)

**3. Which one of the following statements best applies to a collateral contract?**

- (a) The consideration for a collateral promise is entry into a main contract.
- (b) The consideration for a collateral promise, which is a non-essential term of a main contract, is the entry into the main contract.
- (c) A collateral promise is a non-essential term of a main contract
- (d) An additional promise, which can at times contradict the main contract

**4. Bid shopping is the term used denote .....**

- (a) practices employed by Builders in their attempts to reduce subcontractors' bids during tendering.
- (b) practices employed by subcontractors to compete among themselves so as to win the tender.
- (c) practices employed by Clients in their attempts to reduce subcontractor' bids during tendering.
- (d) illegal practices by Builders to obtain lowest tender by negotiations.

**5. If a first demand bond is called, but the contractor does not agree that he is in default, .....**

- (a) the dispute will remain unresolved and the surety is not entitled to pay to the Proprietor.
- (b) the dispute will remain unresolved but the surety still has to pay the Proprietor the bond amount.
- (c) the dispute can be resolved up until the arbitration award is given.
- (d) the surety will step in to solve if the contractor is in default before payment is made to Proprietor.

**6. Which one best describes the definition of "Duress" in a contract?**

- (a) It consists of an actual or threatened violence or imprisonment to a person that induce him to enter into a contract.
- (b) It consists of an actual violence to a person's property in order to get him entering into a contract.
- (c) It consists of actual violence against a person's will to enter into a contract.
- (d) It is a civil wrong to induce a person to enter into contract by threatened violence.

**7. Which one of following is not related to economic duress?**

- (a) There must be a threat in commercial or financial nature of a contract.
- (b) There must be overwhelming pressure and no other choice is left open.
- (c) There must be money had been paid and received.
- (d) There must be restitution as a result of the event.

**8. A building contract obtained under undue influence is.....**

- (a) void at the option of either party
- (b) voidable at the option of either party
- (c) voidable at the option of the injured party but the normal limits on the right to rescission apply.
- (d) unenforceable in law due to against the genuine consent of the injured party.

**9. In the case of North Ocean Shipping Co Ltd v Hyundai Construction Co [1979], the owner lost the case for economic duress because.....**

- (a) the owner had not paid the money to the threatening party.
- (b) the owner still hesitated if he should pay the money to the threatening party.
- (c) the owner had impliedly affirmed the variation by paying the increased amount.
- (d) the owner had taken no steps to have the variation set aside for some nine months after completion.

**10. The tort of negligence is complete when three conditions are satisfied:-**

- 1) the defendant owes a duty of care to the plaintiff
- 2) the defendant has acted in such a way as to break that duty of care
- 3) the plaintiff has suffered damages as a consequence of the breach
- 4) the plaintiff suffered and including remote damage because of failure to take care.

- (a) 1, 2, 3 are correct
- (b) 1, 3,4 are correct
- (c) 1, 4, 2 are correct
- (d) 2, 3, 4 are correct

**11. An arbitration is that there is a dispute between parties or persons who agree that they will.....**

- a) refer their disputes to the adjudication of some selected person whose decision upon the matter they agree to accept.
- b) refer their disputes to the adjudication of a third party who can advise their legal rights.
- c) refer their disputes to the adjudication of a third party in a friendly way so that a compromise can be reached.
- d) refer their disputes to the adjudication of a third party whose decision may be final.

**12. Mechanisms for resolving disputes by a binding decision of a third party fall into three categories:-**

- a) they are : litigation; expert determination; adjudication.
- b) they are : expert determination; arbitration; mediation.
- c) they are : expert determination, litigation; arbitration
- d) they are : litigation; expert witness; arbitration.

**13. What is the rule in *Rylands v Fletcher (1968)*?**

- a) There is close relationship between the occupier and his/her neighbour.
- b) There is a duty of care by the occupier owed to his/her neighbour irrespective of any activity.
- c) A person who brings dangerous materials or activities onto land is strictly liable for any damage caused by the escape.
- d) A person who brings dangerous materials or activities onto land may be liable in tort only upon special relationships between the parties.

**14. Under AS 4000, the Principal is not liable to pay for \_\_\_\_\_ unless they are listed in the Annexure:-**

- (a) unfixated plant and materials
- (b) liquidated damages
- (c) work executed
- (d) work done by sub-contractors

**15. Under the NSW Limitation Act, an action for breach of a contract must be commenced:**

- (a) within 6 years after the breach occurs
- (b) within 6 years after the commencement of the project
- (c) within 6 years after the practical completion
- (d) within 6 years after the final account

**16. Which two are not correct statements?**

- (a) failure of the contractor to complete on time will give the principal the entitlement of extra payment.
- (b) failure of the contractor to complete on time will give the principal the entitlement of deducting liquidated damages.
- (c) The purpose of the LAD is to protect the client, but not the contractor
- (d) LAD is a genuine pre-estimate of the actual loss likely to be suffered as result of the breach

**17. Which is incorrect based on AS 4000?**

- (a) the principal shall supply the contractor the documents and number of copies as stated in Item 16 of Annexure
- (b) the contractor is to indemnify the principal against loss or damage in respects of personal injury
- (c) the contractor shall not vary WUC except as instructed
- (d) the contractor shall set out the works according to WUC

**18. Which two are correct based on AS 4000?**

- (a) at any time before the expiry of the last defects liability period, the superintendent may direct that any WUC be tested.
- (b) Notwithstanding that the Contractor is not entitled to or has not claimed as EOT, the superintendent may at any time and from time to time before issuing the final certificate direct an EOT.
- (c) The Principal shall not vary WUC except as directed in writing.
- (d) The defects period stated in Item 26 shall commence on the date of practical completion at 5pm.

**19. In contract if one party is in default the innocent party may treat the action of the other party as \_\_\_\_\_ of contract.**

- (a) rescission
- (b) repudiation
- (c) revocation
- (d) reinstatement

**20. Economics loss means.....**

- (a) financial loss as a consequence of other party's negligent fault causing property damages.
- (b) consequential loss as a result of other party's negligent fault causing major physical damages.
- (c) financial loss as a consequence of other party's negligent fault causing both personal injury & property damages.
- (d) financial loss as a consequence of other party's negligent fault without causing any physical damages.

**'End of Questions'**