



Mid Year 2005 Final Examination

University of South Australia

Student ID:		Student Name:	
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DIVISION OF
INFORMATION TECHNOLOGY, ENGINEERING & THE ENVIRONMENT

SCHOOL OF NATURAL & BUILT ENVIRONMENTS

Subject Area:	BUIL	Catalogue Number:	3010
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--CONTRACT ADMINISTRATION 2--

Examination Day: Monday	Examination Date: 20 June 2005
Examination Time: 9:00AM	Length of Exam: 3 Hours of Exam time preceded by 10 minutes of Reading time – a total of 3 hours 10 Minutes. For ENTEXT students there is 10 minutes of Reading time plus 3.5 Hours of Exam time – a total of 3 Hours 40 Minutes.

Examination Venue:	RAS/Ridley Centre
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Instructions to Candidates

- This exam is worth 45% of the **total** course marks
- Attempt all questions in Section A & B
- The value of each question is indicated adjacent to the question

NOTES FROM EXAMINER:

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



SECTION A

QUESTION 1 (40%)

a) Explain the reasons for using nominated subcontractors in building contracts, and the problems associated with their involvement in terms of their delay, design fault, liquidation and not being paid promptly by the head contractor. Briefly describe how these problems can be resolved.

b) Use diagrams to illustrate the contractual relationships of:

1. Construction Management; and
2. Design and Build by Novation.

Discuss the advantages and disadvantages of using these procurement methods.

c) The following information relates to a progress claim. Prepare an interim valuation of payment No. 5 for this contract. The contract sum is \$108 010.00.

Main Contractor

Work completed to date	\$47,525
Materials on site	\$5,700
Dayworks	\$600
Rise & Fall (escalation)	\$598
Agreed variations	omit \$865 and add \$1,250
Unresolved variations	approximately +\$500

Nominated Sub-contractors

1. Steel Frame Ltd	\$4,500
authorized additional work	\$375
escalation	\$28
Profit 2.5% and attendance 1.25%	
2. Mr. Hot & Cold Ltd	\$1,250
materials on site	\$300
Profit 2.5% and attendance 1.25%	

- Retention to be 10% with a maximum of 5% of the contract sum.
- Total amount of previous certificates (1-4) is \$28,345
- It is found out that 10% of materials on site (by Main Contractor) have been prematurely delivered to site.

d) Explain the following and give example(s) of their applications and implications in building contracts:

- 1) The differences between Adjudicators & Arbitrators in dispute resolution
- 2) Performance bond, its definition, types and how it works



QUESTION 2 (25%)

Woolcock Street Investment Pty Ltd v CDG Pty Ltd [2004] HCA 16

This is a High Court case where the court considers whether a construction consultant is liable to subsequent owners of a commercial property for the cost of rectifying defects:

Background

Woolcock sued a consulting engineering business and one of its employees for damages for loss associated with repairing the structural defects in a commercial building in Townsville bought by Woolcock.

The consulting engineers, CDG had designed the foundation for the original owner. The High Court considered whether, on the agreed facts, a relevant duty of care was owed by CDG to Woolcock.

Agreed Facts

In 1987, CDG designed and supervised the construction of the foundations of the building for the original owner, the trustee of a property trust. CDG obtained a quote for investigating the sub-soil conditions under the proposed building, but the trustee refused to pay for those investigations and the construction continued without them.

Woolcock bought the property in September 1992 from the successor to the trustee of the property trust. The sale contract did not include any relevant warranty that the building was free from defects. Before purchasing the property, Woolcock requested that Townsville City Council inspect the building. The council treated the request as being to matters arising under the Building Act 1975 (Qld) and did not identify any matters of structural concern.. Woolcock did not arrange for any other inspections of the building by experts and did not inquire of the tenants or their agents as to whether the premises had any structural defects.

Within two years of Woolcock's purchase, substantial structural distress caused by the settlement of the foundations of the building and/or the material below the foundations was apparent.

Woolcock commenced action in the Supreme Court of Queensland, but was unsuccessful. The Court of Appeal also concluded that the High Court's decision in *Bryan v Maloney* established that a builder of a dwelling may owe a duty of care to a subsequent owner. However, the court declined to extend the decision to cases involving commercial properties, and held that the pleading did not disclose a cause of action in negligence against CDG.

Answer the following questions:

1. In tortious context explain what is the meaning of 'duty of care'? Identify the 4 elements that a plaintiff must establish in an action in negligence. Use an example in building contract to illustrate how these 4 elements could be fulfilled for an action in negligence. (8%)
2. Describe the facts, decision and its implications of the Australian High Court case of *Bryan v Maloney [1995]*. (5%)
3. Based on the above case, explain if there was a duty of care owed by CDG to the original owner and to the subsequent owner (Woolcock). (8%)
4. Suggest various steps that a purchaser in Woolcock's position could take to protect its interests. (4%)



SECTION B Multiple Choice Questions (1.75% each, i.e. a total 30%)
(Please circle the correct answer below:-)

1. 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)

2. 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

3. Bid shopping is the term used to 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.

4. 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.

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

- (a) It consists of actual or threatened violence or imprisonment to a person that induces him to enter into a contract.
- (b) It consists of actual violence to a person's property in order to get him to enter 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.

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

- (a) There must be a threat of a 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 paid and received.
- (d) There must be restitution as a result of the event.

7. 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 hesitated when deciding whether to 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.



- 8. The leading case of latent conditions in Australia was *Morrison Knudsen v Commonwealth (1972)*, the contractor managed to have a claim in**
- (a) contract for misleading information by Client.
 - (b) contract for mistake by Client.
 - (c) tort for misleading information by Client.
 - (d) tort for misleading information by the geotechnical engineer.
- 9. The parties to an arbitration agreement are agreeing that when there is a dispute between them they will.....**
- a) refer their disputes to the adjudication of some selected person whose decision upon the matter they agree to accept as legally binding.
 - 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 legally binding.
- 10. Mechanisms for resolving disputes by the binding decision of a third party fall into three categories. They are:**
- a) litigation; expert determination; adjudication.
 - b) expert determination; arbitration; mediation.
 - c) expert determination, litigation; arbitration
 - d) litigation; expert witness; arbitration.
- 11. What was the rule in *Rylands v Fletcher (1968)*?**
- a) There is a 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.
- 12. In the case of *Burnie Port Authority v General Jones Pty Ltd (1994)*, if *Rylands v Fletcher* rule applies,**
- a) the Authority would still be liable in tort as he was the actual owner of the property.
 - b) the sub-contractor will be liable as he stored inflammable materials close to where the welding was being carried out.
 - c) there was delegable duty of care owed by the Authority to the sub-contractor.
 - d) General Jones can only claim back his damages through his house content insurance
- 13. Under AS4000, the Principal is not liable to pay for _____ unless they are listed in the Annexure:**
- (a) unfixed plant and materials
 - (b) liquidated damages
 - (c) work executed
 - (d) work done by sub-contractors



14. Under the NSW Limitation Act 1969, 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

15. 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 liquidated damages is to protect the client, but not the contractor
- (d) Liquidated damages is a genuine pre-estimate of the actual loss likely to be suffered as result of the breach

16. Which is incorrect based on AS 4000?

- (a) The Principal shall supply the contractor the documents and numbers 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.

17. 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.

18. Economic loss refers to.....

- (a) financial loss as a consequence of other party's negligent fault causing property damage.
- (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 damage.
- (d) financial loss as a consequence of other party's negligent fault without causing any physical damages.

19. Based on AS 4000, the Principal shall not be liable to pay unfixed plant materials unless:

- (a) insurance is specially taken out by the contractor
- (b) the contractor provides additional security in Item 13(e)
- (c) they are properly delivered to site
- (d) the superintendent is satisfied that they should be included for payment

20. Which two of the following are mentioned in AS 4000?

- (a) all insurance policies taken out by contract shall be in joint names with cross liabilities clause
- (b) the insurance of employees shall be maintained until practical completion of the contract
- (c) the insurance of employees shall be maintained until completion of all WUC
- (d) the effect of the latent conditions shall be a deemed direction

'End of Questions'