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Chapter 2 Regulation of the Professions

TRUE FALSE

4. To be eligible for registration as a professional engineer in Canada, applicants must first sit an exam to evaluate their technical ability.

Answer: False Page: 11 Difficulty: Moderate Skill: Recall

Comment: Only applicants who are graduates of non-accredited universities need sit technical exams.

SHORT ANSWER

5. Explain what is meant by self-regulation.

Answer: Self-regulation is when a profession is given statutory authority to govern itself.

Page: 8 Difficulty: Easy Skill: Recall

MULTIPLE CHOICE

6. Engineers Canada has professional-level reciprocity agreements with all of the following jurisdictions except?

a. Mexico
b. United Kingdom
c. France
d. Texas

Answer: b

Comment: Engineers Canada has only an educational-level reciprocity agreement with the United Kingdom.

Page: 11 Difficulty: Difficult Skill: Recall

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Chapter 3 Ethical Considerations

TRUE FALSE

7. Codes of ethics have detailed lists of what professionals are prohibited from doing.

Answer: False Page: 15 Difficulty: Difficult Skill: Applied

Comment: Usually codes of ethics are written in general terms defining a vague threshold of acceptable behaviour. This is evident from the excerpts on page 15.

SHORT ANSWER

8. Name the four persons (or groups) professionals owe ethical duties to.

Answer: The public, client, employer, and profession.

Page: 16 Difficulty: Difficult Skill: Recall

MULTIPLE CHOICE

9. What is the definition of a "facilitation payment" under the *Corruption of Foreign Public Officials Act* in Canada?

a. payments made to secure contracts
b. payment for the acquisition of land rights
c. small payments made to expedite processing of routine approvals
d. vacation pay

Answer: c

Comment: Facilitation payments are an exception to the rule against bribery of foreign public officials under the *CFPOA*.

Page: 21 Difficulty: Medium Skill: Recall

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Chapter 4 Property Law

TRUE FALSE

10. You have the legal right to prevent your neighbour from building a tall house that obstructs your view of the ocean.

Answer: False Page: 27 Difficulty: Moderate Skill: Applied

Comment: Property ownership does not include the right to a view over neighbouring land.

SHORT ANSWER

11. A mobile amusement ride is bolted to the ground so that it is stable during operation. Is the ride real property or personal property?

Answer: Personal property. If the purpose of the fixing is to better enjoy the item fixed, the act of fixing does not make the item real property.

Page: 24 Difficulty: Moderate Skill: Applied

MULTIPLE CHOICE

12. Your neighbour intends to dig a basement close to your property boundary. The neighbour wants to ensure lateral support to your land, and so installs ground anchors that extend under your land. Has the neighbour done anything wrong?

a. no, the neighbour is complying with his duty to provide lateral support
b. no, the neighbour is entitled to take reasonable steps to facilitate construction on his land
c. yes, the neighbour's anchors are trespassing onto your land because you did not agree to them being installed
d. yes, ground anchors stretch as they take load, and so your land will settle as this occurs; the neighbour has compromised lateral support to your land

Answer: c

Comment: The right to place items on or under another person's land must be established by contract.

Page: 26 Difficulty: Moderate Skill: Applied

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13. Which of the following is not true about easements?

a. an easement permits the holder to harvest trees from the land
b. easements can be created through historical use
c. easements give others the right to use your property
d. easements can be registered against title in the land title office

Answer: a

Comment: Harvesting trees is done through a *profit à prendre*.

Page: 28 Difficulty: Moderate Skill: Recall

14. Ideas can be protected using:

a. copyright law
b. trademark law
c. trade secrets
d. industrial designs

Answer: c

Comment: Trade secrets and other ideas can be preserved by well-drafted contracts.

Page: 29 Difficulty: Moderate Skill: Applied

15. The term of patent protection in Canada is:

a. 50 years from the date the application is filed
b. 20 years from the date the patent is granted
c. 20 years from the date the first invention is disclosed to the public
d. 20 years from the date the application is filed

Answer: d

Page: 31 Difficulty: Easy Skill: Recall

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ESSAY

16. Discuss the importance of registration of patents, copyright, trademarks, and industrial designs respectively.

Answer: Registration is most important for patents and industrial designs. Without registration, there is no protection at all for patents or industrial designs. Patents must be registered in each jurisdiction where the inventor wants protection, and there are time limits by which this registration must be completed. For copyrights, registration is not required. However, registration is useful for copyright because it proves who the owner of the copyright is. Registration is also required to take advantage of copyright treaties. Trademarks need not be registered, but if they are not, the trademark will only apply in the area the trademark is actually used. Registering a trademark gives the owner the exclusive right to use the trademark throughout Canada.

Pages: 29-32 Difficulty: Moderate Skill: Applied

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TRUE FALSE

17. Filing requirements for partnerships are generally less onerous than for corporations.

Answer: True Page: 36 Difficulty: Moderate Skill: Recall

SHORT ANSWER

18. If you are setting up a business and are not concerned about liability, but expect to be very successful, what disadvantage is there to operating as a sole proprietor?

Answer: Sole proprietors pay tax on the profits of the business as personal income. For large incomes, the personal tax rate may be higher than the corporate tax rates, and so a sole proprietorship would not be efficient from a tax perspective.

Page: 36 Difficulty: Moderate Skill: Applied

MULTIPLE CHOICE

19. Which is the odd one out?

a. articles of incorporation
b. memoranda of association
c. letters patent
d. partnership agreement

Answer: d

Comment: The other documents are used to incorporate a company.

Page: 39 Difficulty: Moderate Skill: Applied

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20. A director is considering buying a car for the corporation from a car dealership that is owned by his brother. To be absolutely safe, what should the director do before making the purchase?

a. nothing, the corporation will be paying full price for the car, and the brother is not making any concession for the director
b. disclose the director's relationship with the seller, and have the purchase approved by the shareholders
c. disclose the director's relationship with the seller, and have the purchase approved by the independent directors on the board
d. have his brother make a statutory declaration that the car was sold at fair market value

Answer: b

Comment: Approval by the board of directors may be sufficient, but approval by an appropriate majority of shareholders is unassailable.

Page: 40 Difficulty: Difficult Skill: Applied

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Chapter 6 Contracts

TRUE FALSE

21. When a contract is voidable, the non-breaching party has the option to continue with the contract.

Answer: True Page: 46 Difficulty: Moderate Skill: Applied

Comment: However, when a contract is void, there is no option to continue.

SHORT ANSWER

22. Why is it advisable to record contracts in writing?

Answer: A record in writing makes it easier to prove what was agreed to.

Page: 45 Difficulty: Easy Skill: Recall

MULTIPLE CHOICE

23. When can a party revoke an offer?

a. only after a counter-offer is made
b. only when a new offer is made as a substitution
c. after it has been accepted
d. any time before it is accepted

Answer: d

Comment: Although, to be effective, the revocation must be communicated to the party the offer was made to.

Page: 46 Difficulty: Moderate Skill: Applied

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24. Which of the following would be acceptable consideration in exchange for a contractor building a house?

a. $1
b. $60,000
c. the free market value of the house
d. all of the above

Answer: d

Comment: Generally, the law does not inquire into the adequacy of consideration.

Page: 48 Difficulty: Moderate Skill: Applied

ESSAY

25. Explain why, in construction contracts, it is important for owners to ensure that the formalities specified for approving extras to the contract are complied with.

Answer: If a contract specifies a procedure for approving amendments or extras to the contract, but those procedures are not followed, then the court may rule that both parties adopted a relaxed approach to the contract and now neither party can require compliance with the procedures set out. Then, if the contractor performs extra work and claims that she was instructed to perform it, the court may award payment for such extra work even though no formal instruction was given. When a job is going well and relationships on site seem strong, strict compliance with paperwork requirements may seem unnecessary. However, projects go awry and memories fade. Best practice is to comply with the approval process from the outset so the rights of all parties are clear.

Page: 55 Difficulty: Easy Skill: Applied

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Chapter 7 Breach of Contract

TRUE FALSE

26. Because of the doctrine of remoteness, damages will only be awarded for breach of contract if the loss was caused by the breach.

Answer: False Page: 61 Difficulty: Difficult Skill: Applied

Comment: Remoteness requires that the damages be foreseeable. The doctrine of causation is the one that requires the loss be caused by the breach.

SHORT ANSWER

27. How relevant is inability to perform when considering whether a contract was breached?

Answer: Inability to perform is irrelevant to whether the contract was breached. Breach is determined by simply considering whether the work was done in accordance with the contract. Inability is merely the reason for the breach.

Page: 60 Difficulty: Moderate Skill: Applied

MULTIPLE CHOICE

28. The owner insists that the contractor perform certain work that the contractor claims is not part of the contract. Which of the following is an appropriate course of action for the contractor?

a. perform the disputed work hoping the owner will later agree to pay
b. stop work on the entire project unless the owner agrees to pay for the disputed work
c. perform all contractual obligations apart from the disputed work
d. none of the above

Answer: d

Comment: A notice of protest must be filed immediately, so A is inappropriate. B is inappropriate because, regardless of the disputed work, the contractor must complete the work that is clearly within the contract. C is inappropriate because if the contractor was

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mistaken and the disputed work was actually part of the contract, the contractor will be liable for breach of contract. The contractor should complete all work, including the disputed work, but file a notice of protest immediately.

Page: 60 Difficulty: Difficult Skill: Applied

29. Which is the most common remedy for breach of construction contracts?

a. specific performance
b. damages
c. declaratory order
d. injunction

Answer: b

Comment: Using the damages awarded, the innocent party can pay a replacement contractor to finish the project.

Page: 61 Difficulty: Difficult Skill: Applied

ESSAY

30. A swimming pool contractor builds a pool with a deep end 11 ft deep, instead of the 12 ft specified in the contract. Would specific performance be ordered? If not, how would damages be calculated?

Answer: When ordering specific performance, the court orders the breaching party to comply with the terms of the contract. In this case, specific performance would require the contractor to rebuild the entire pool. The court would be reluctant to do this because of the large cost compared to the small benefit to be gained by rebuilding the entire pool. However, if the owner demonstrated a special need for the extra foot of depth (such as a high-precision diving board), specific performance may be ordered, especially if the owner made this special need known to the contractor at the outset. Otherwise, the court would likely award damages to account for loss of enjoyment and diminution in value because of the shallower depth.

Pages: 61-63 Difficulty: Moderate Skill: Applied

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Chapter 8 Interpreting and Drafting Contracts

TRUE FALSE

31. Where the intentions of the parties are clear from the written contract, a court will not consider additional evidence on the parties' intentions.

Answer: True Page: 69 Difficulty: Easy Skill: Applied

SHORT ANSWER

32. When will courts prefer the customary or special meaning of a word over its ordinary meaning?

Answer: The customary or special meaning will be used when the context of the word in the document implies that the special meaning of the word was intended.

Page: 68 Difficulty: Moderate Skill: Applied

MULTIPLE CHOICE

33. What is the name of the rule that generally excludes extrinsic evidence when interpreting a contract?

a. contra proferentem
b. the contextual approach
c. the parol evidence rule
d. none of the above

Answer: c

Comment: Exceptions to the parol evidence rule apply when necessary to prevent injustice.

Page: 69 Difficulty: Moderate Skill: Recall

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Chapter 9 Selected Contract Issues

TRUE FALSE

34. A statement by an architect to a contractor may be sufficient to establish that the architect is the owner's agent.

Answer: False Pages: 71-72 Difficulty: Difficult Skill: Applied

Comment: No statement between an agent and a third party can create an agency. See the diagram on page 72.

35. A sub-subcontractor would be covered by a one-tier labour and material payment bond.

Answer: False Page: 80 Difficulty: Easy Skill: Applied

Comment: Only subcontractors to the main contractor would be covered by a one-tier bond.

SHORT ANSWER

36. What type of agency relationship may be established by representations the owner makes in the construction contract documents? Who is that agency relationship between?

Answer: Apparent agency. Representations in the contract between the owner and the contractor may imply that an architect is the agent of the owner. To the extent the owner states in the contract documents that the architect may act for the owner, the owner will be accountable if the contractor relies on the architect.

Page: 71 Difficulty: Moderate Skill: Applied

37. What name is given to an agreement in which one party agrees to bear the financial loss of another party for a specified event?

Answer: An indemnity agreement.

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MULTIPLE CHOICE

38. Under a pay-when-paid clause, if the owner never pays the main contractor, when must the main contractor pay the subcontractors?

a. on the date the owner was due to pay the main contractor
b. a reasonable time after the payment was due
c. when the subcontractor has completed work under the subcontract
d. if the owner never pays, the main contractor is not required to pay the subcontractor

Answer: b

Comment: Pay-when-paid clauses do not create a condition precedent to payment.

Page: 78 Difficulty: Moderate Skill: Applied

39. Which of the following is true for pay-if-paid clauses between contractors and subcontractors where the contractor is unpaid by the owner?

a. in the absence of default by a subcontractor, they create the only possible excuse for a contractor who has not paid a subcontractor
b. they are never enforced by the courts
c. the triggering event for a pay-if-paid clause is a breach of contract between the contractor and the subcontractor
d. none of the above

Answer: a

Comment: A pay-if-paid clause may justify a contractor not paying a subcontractor even though that subcontractor completely performed the subcontract. Such clauses have been enforced by some courts, but generally courts avoid enforcing them if they can.

Page: 78 Difficulty: Difficult Skill: Applied

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40. Terms from which contract are typically incorporated by reference into subcontracts?

a. a similar subcontract between the main contractor and another subcontractor
b. the contract between the owner and the main contractor
c. a contract between the main contractor and a supplier
d. none of the above

Answer: b

Comment: Incorporation by reference is a way for the main contractor to assign to a subcontractor the responsibilities he has to the owner. Therefore, reference is made to the contract between the owner and the main contractor.

Page: 79 Difficulty: Moderate Skill: Applied

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Chapter 10 Getting to a Contract

TRUE FALSE

41. A request for quotation may be used as a preliminary step when negotiation is anticipated.

Answer: True Page: 92 Difficulty: Moderate Skill: Applied

42. Standing offers are typically open for a short period.

Answer: False Page: 93 Difficulty: Moderate Skill: Recall

Comment: Standing offers are used when the owner wants the option to call for specified services at an agreed price during a medium- to long-term time period.

SHORT ANSWER

43. What consequences result from tender documents that place risks on parties not well positioned to deal with those risks?

Answer: The prices submitted by tenderers will be disproportionately high compared to the risk they are required to bear. Potential bidders will be discouraged from submitting bids.

Page: 91 Difficulty: Difficult Skill: Applied

44. If an owner wants to negotiate with bidders after bids have been submitted, what steps should be taken?

Answer: The owner should clearly explain in the call for tenders that she intends to negotiate after the bids are submitted.

Page: 101 Difficulty: Moderate Skill: Applied

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MULTIPLE CHOICE

45. In which of the following project delivery models is the contractor most involved throughout the entire life of the project?

a. design-bid-build
b. design-build
c. design-build-operate-finance
d. construction management

Answer: c

Comment: In the design-build-operate-finance project delivery model, the contractor is involved in all stages except conceptualization.

Page: 112 Difficulty: Easy Skill: Applied

46. An owner urgently wants to select a contractor. However, the project details have not been finalized. Therefore, the owner wants to have a few contractors give rough price estimates, and then enter into negotiations with one or more of them. What type of delivery system is most appropriate for this situation?

a. request for qualifications
b. invitation to tender
c. request for quotation
d. request for standing offer

Answer: c

Comment: A request for quotation is appropriate when the procurement requirements are somewhat defined but not accurately known, and when further negotiation is anticipated.

Page: 92 Difficulty: Easy Skill: Applied

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47. A large private developer anticipates a complicated multi-stage residential development to be implemented over a six-year period. It is important that a good working relationship exist between the owner and the contractor because the owner wishes to have a single contractor for all stages. What type of delivery system is most appropriate for this situation?

a. request for qualifications
b. invitation to tender
c. request for quotation
d. request for standing offer

Answer: a

Comment: A request for qualifications will allow the owner to obtain a general impression from the applicants and then enter into negotiations.

Page: 92 Difficulty: Moderate Skill: Applied

48. Which of the following is good practice for an owner awarding a contract?

a. seeking clarity from a bidder regarding an ambiguity in a bid before awarding the contract
b. awarding the contract based on criteria not stated in the invitation for tenders
c. accepting a bid that does not comply with all the mandatory criteria stated in the invitation for tenders
d. refusing to negotiate with any bidders

Answer: d

Comment: Negotiating with bidders is bad practice and exposes the owner to potential lawsuits by other bidders.

Page: 101 Difficulty: Easy Skill: Applied

49. Which of the following models for project delivery would be inappropriate for a single residence project?

a. design-bid-build
b. design-build
c. design-build-operate
d. construction management

Answer: c

Comment: There is no significant operation phase for a single residence project.

Page: 112 Difficulty: Easy Skill: Applied

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ESSAY

50. If a call for tenders specifically requires that certain work be subcontracted out, and that the names of subcontractors that the contractor intends to use be given in the tender, why might a contractor intentionally omit the name of the subcontractor? What are the risks of doing this?

Answer: A contractor may obtain quotes from the various subcontractors and then enter in a price for that item which is a bit lower than any of the quotes he has received from any of the subcontractors. This will increase the likelihood of the contractor winning the job. Then, having obtained the job, the contractor is not bound to a particular subcontractor and can negotiate with the trades and get one of the subcontractors to meet the price he stated in the tender. The risk of doing this is that the contractor's bid may be rejected by the owner as non-compliant. But if the owner uses a broad privilege clause, and is otherwise impressed by the contractor's low price and overall bid, the omission may be viewed as a technical deficiency not amounting to non-compliance. However, if the owner awards the contract to the bid-shopping contractor, the owner runs the risk of being sued by other bidders who consider the owner to have accepted a non-compliant bid.

Pages: 106-107 Difficulty: Difficult Skill: Applied

51. An owner wants to implement a project which requires synergy between many different mechanical systems. How suitable is the construction management model of project implementation for this situation?

Answer: Under the construction management model, the owner enters into separate contracts with the various trade contractors. Unlike with the design-bid-build model, where there is a single contractor who is ultimately responsible for all work done on site, in the construction management model, each trade contractor is independently responsible to the owner. In a project requiring synergy between different aspects of the project, it may be difficult to determine which trade contractor is responsible if the system fails to perform. Certainly, where more than one trade contractor is at fault (which is usually the case), they will point fingers at each other and the owner will be caught in the middle of the blame game that results. Unlike with the design-bid-build model, the owner will not be able to turn to a single contractor and say: "You are responsible, fix it!" Therefore, the construction management model should not be used on innovative projects where operational synergies are required.

Pages: 112-113 Difficulty: Difficult Skill: Applied

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