

**QUESTIONS AND OUTLINE ANSWERS ON THE PROFESSIONAL PRACTICE EXAMINATION  
SEPTEMBER 2007  
PAPER 1 & PAPER 2**

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**Paper 1**

**Question 1**

- 1.1 What is the South African Council for the Architectural Profession and what are its principal functions and activities?**
- 1.2 What is the South African Institute of Architects and what are its principal functions and activities? (Alternatively you may answer this question in respect of the South African Institute of Architectural Technologists)**

*(20 marks)*

**Answer 1**

The South African Council for the Architectural Profession (SACAP) is a body of eleven persons appointed by the Minister of Public Works to administer the Architectural Professions Act.

Principle functions and activities of SACAP:

- Protect members of the public in their dealings with members of the architectural profession
- Register architects and maintain a register of professional architects, professional senior architectural technologists, etc
- Supervises architectural education in SA.
- Prepare and publish Rules of Professional Conduct and prosecute offenders against any of these Rules
- Publish annually a Recommended tariff of Fees
- Liaise with Council for the Built Environment (CBE) and its constituent members

The South African Institute of Architects (SAIA) is a voluntary body most of whose members are architects. It comprises eleven semi-autonomous provincial institutes.

Principle functions and activities:

- Serves the interests of its members as architects
- Liaises with overseas national and international architectural bodies
- Promotes an interest in good architecture
- Collaborates with other bodies in the interests of the built environment and heritage, publication of standard building agreements and building standards.
- Supports its members in the practice of architecture and publishes a practice manual for their guidance.
- Publishes architectural periodicals.

South African Institute of Building Technologists (SAIAT) is a voluntary body "open to holders of a National Diploma in Architectural Technology or further qualification including a university degree in architecture".

Principal functions and activities:

- Represents members and promotes and advances their interests
- Interests itself in improving education and awards student prizes.
- Publishes a periodical “Architectnology”

### **Question 2**

**The National Building Regulations speak of ‘rational design’ and ‘deemed to comply’ requirements. Explain these two concepts, showing how they differ from each other. Illustrate your explanation with two examples involving rational design and deemed to comply requirements.**

**(10 marks)**

### **Answer 2**

“Rational design” means “any design involving a process of reasoning and calculation and may include any such design based on the use of a code of practice or other relevant technical document”.

“Deemed to comply” requirements means the rules set out in SABS 0400. Should any building design be carried out in accordance with such rules, the design shall be deemed to comply with the relevant National Building Regulations.

### **Question 3**

**In your own words, provide short definitions of eight of the following terms to make clear their meaning:**

- 3.1 Floor space ratio**
- 3.2 Development plan**
- 3.3 Servitude**
- 3.4 Latent defect (as used in the context of the JBCC Agreements)**
- 3.5 Builder’s lien**
- 3.6 Breach of contract**
- 3.7 Damages**
- 3.8 Prescription (as used in the context of a claim for damages)**
- 3.9 Penalty (as used in the context of the JBCC Agreements)**
- 3.10 Time bar**

**(24 marks)**

### **Answer 3**

- 3.1 “Floor space ratio’ is a town planning control: it is the ratio of the total area of all floors of a building to the area of the plot on which it is built – the town planning scheme will lay down the maximum value of such ratio.
- 3.2 “Development plan” is a plan of the site of a building project showing the footprint of the building, the general layout of the site with respect to internal roads and parking, landscaping, building lines and

servitudes. It may be accompanied by calculations to show compliance with coverage, floor space ratios and parking requirements.

- 3.3 "Servitude" is a portion of a site over which others than the owner may have right of access over, under or on the site. Commonly servitudes existing in favour of a local authority to provide services such as stormwater or sewerage drainage or water or electricity supply, but may also be in favour of the community for access across the property.
- 3.4 "Latent defect" is a defect in goods, materials or workmanship in a building which cannot be detected by normal visual inspection at any time before the issue of the defects list at the end of the defects liability period.
- 3.5 "Builder's lien" is the common law right of a builder, who is in possession of land and buildings erected thereon, on which he has spent money and/or labour and materials and for which payment is due and the amount has been determined, to retain possession until payment has been made.
- 3.6 "Breach of contract" is the failure of one of the parties to a contract to comply with one or more of his obligations under the contract to do something or not to do something.
- 3.7 Damages is the sum of money claimed by a party to a contract from the other party whom he alleges has breached the contract and thereby caused him financial loss.
- 3.8 Prescription is the expiry of a period of time within which a party who has suffered financial loss due to some breach by the other party may claim damages or compensation for such loss. In a contract he would have three years within which to make such claim counted from the date when he became aware of the breach and loss, or ought reasonably to have become so aware.
- 3.9 "Penalty" is an amount of money, calculated at the rate of Rx per day, week or month, during which a building remains incomplete after the date by which is ought to have been completed.
- 3.10 "Time bar" is a period of time set down in a contract for one of the parties to perform some action, failing which he forfeits some right.

#### **Question 4**

**How should the principal agent handle each of the following situations? Give reasons for your answers:**

- 4.1 **The principal agent invited four building contractors to tender for building a house, advising them that tenders should be submitted by 12 noon on Friday 13th February. By 12 noon on Friday 13th February, three of the tenderers have handed in their tenders, but the fourth, Sharp Construction, has not done so. The tenderers wait while the principal agent opens the tenders in the presence of the employer and declares the result. A few minutes later Simon Sharp comes rushing in with his tender, saying that he has been delayed by heavy traffic. The employer wants the principal agent to open the tender, but the other tenderers object, saying that Sharp Construction is out of time.**
- 4.2 **The principal agent receives tenders for additions to the Second National Bank at Tweespruit. The tender documents do not state that the employer reserves the right not to accept the**

lowest or any tender. The lowest tender is submitted by Alpha Construction, and the second lowest is submitted by Beta Construction. The Bank instructs the principal agent to accept Beta's tender, because Beta is a client of the Bank's whereas Alpha is not. Alpha objects, alleging that the employer is obliged to accept the lowest tender and threatens sue for damages for breach of contract...

- 4.3 The principal agent received tenders for the factory workshop. Zenith Construction's tender of R4 300 000 was the lowest, and Zero Construction's tender of R 4 650 000 was the next lowest. The principal agent, duly instructed by the employer, accepted Zenith's tender and instruct him to submit his priced bills of quantities for checking. Two days later he receives a telephone call from Zenith advising him that he made a mistake in his tender - he did not add in the p.c. items, which amount to R300 000, and he wants to amend his price to R4 600 000 or alternatively to withdraw his tender.

*(18 marks)*

#### **Answer 4**

- 4.1 The employer is fully entitled to have the late tender opened, to consider it and if deemed favourable, to accept it, and the principal agent is obliged to comply with the employer's request to open it. The stipulation that tenders must be submitted by a particular time is for the benefit of the employer who may, if he wishes, waive this requirement. (He has no obligation, contractual or otherwise, to the other tenderers, to observe this stipulation. He has no contract with the tenderers; when he calls for tenders, he is not making an offer which becomes a contract which the tenderer accepts by submitting a tender, it is merely an invitation to submit prices.)
- 4.2 The employer is free to accept, or not to accept, any tender, and there is nothing implied in the invitation to contractors to submit tenders that the employer will be obliged to accept lowest tender. A tender is merely an offer which the employer may accept or reject at will..
- 4.3 Once the tender has been accepted, a binding contract comes into existence conferring legal rights and obligations on both parties. The contractor is now bound by the contract; he is obliged to carry out and complete the work for which he tendered for the price that he quoted. Any failure to do so would be breach of contract entitling the employer to cancel the contract and to claim damages.

#### **Question 5**

**An overseas charitable organisation wishes to fund the design and erection of a community centre in a rural village in Ciskei to serve an impoverished community. They wish the community to be consulted at every step of the project to ensure that it meets their needs and desires. They have invited a select number of architectural professionals to submit proposals as to how, if they were appointed for the project, they would set up and administer an appropriate consultative programme. You are one of the architectural professionals who has been invited to submit such proposals. Draft a short (1.5 to 2 pages) memorandum setting out your proposals in broad outline.**

**(25 marks)**

**Answer 5**

There is no “model answer” for this question as there are probably several different ways of approaching the problem, and marks should be awarded consistent with the feasibility and practicability of the proposals made. Proposals should acknowledge and respond to the following potential problems: most of the members of the community are illiterate or at best semi-literate; their comprehension of English is weak or even non-existent, they are not unanimous about their requirements and priorities, they have difficulty in conceiving a three-dimensional object from a two-dimensional graphic representation; there are cultural differences between the members of the community on the one hand and the members and agents of the charitable organisation on the other.

**Question 6**

**The client has appointed the architectural professional to render full services in respect of the design and erection of a large dwelling house, the budget price for which is R2.5-million, excluding fees.**

**The professional prepares preliminary proposals which please the client very much, and the client urges him to prepare full construction drawings and tender documentation as quickly as possible.**

**Tenders are invited, and the lowest tender is R3.0-million. The client is very disappointed; he tells the architectural professional that he cannot afford to spend R3.0-million on the house. Nor is he prepared to let the architectural professional revise the design to save R0.5-million, as he thinks this will spoil the design which he likes so much. He decides to abandon the project. When the architectural professional send his client an account for professional fees, the client says that he does not intend to pay as he will not be using the drawings. Can the client adopt this attitude? Discuss the rights of the architectural professional and his client.**

**(13 marks)**

**Answer 6**

The failure of the architectural professional to design a house that can be built for R2.5-million is breach of contract, entitling the employer to cancel the contract with his professional and relieves him of the of the obligation to pay the professional. There is no rule of law that allows an architectural professional a 10% margin of error – there is a contractual provision to that effect in the SAIA Client/Architect Agreement. In practice, the courts tend to take the view that the architectural-professional should not be considered negligent if he erred by no more than 10%, and that an error of 10% or less should not be grounds entitling the employer to cancel.

## Paper 2

### Question 1

1.1 What is a building subcontract?

1.2 What are the principal points of difference between

- A domestic subcontract (also known as a non-nominated subcontract),
- A nominated sub-contract
- A selected subcontract, and
- A direct contract in terms of clause 22 of JBCC Principal Building Agreement

1.3 In respect of each, comment on the following:

- Principal contractor's liability for delays to practical completion caused by the fault of the subcontractor/direct contractor
- Principal contractor's liability for expense or loss arising from the replacement of an insolvent subcontractor/direct contractor

*(20 marks)*

### Answer 1

A building subcontract is an agreement between a building contractor and another independent building contractor (usually working in a limited specialised field) called a subcontractor, in terms of which the subcontractor undertakes to the contractor to perform an agreed portion of certain building work which the contractor has contracted to perform for the employer who owns the land and is the promoter of the building work. There is no privity of contract between the employer and the subcontractor; the contractor is responsible to the employer for any default on the part of the subcontractor and the subcontractor has no claim on the employer for payment.

A domestic subcontract is a subcontract which the contractor has decided to award to a subcontractor of his own choice; the employer has no right to approve or disapprove of such subcontract or the subcontractor concerned. The contractor is wholly at risk for any default of the subcontractor.

A nominated subcontract is a subcontract in which the nature and extent of work and the subcontractor concerned are determined by the employer or his agent, and the contractor is obliged to enter into a subcontract with the nominated subcontractor to perform the specified work. The contractor is liable for any default of the subcontractor save that where the default of the nominated subcontractor delays the contractor in the completion of his contract he is entitled to an extension of time, and where the subcontract is cancelled due to the default or insolvency of the subcontractor or the default of the employer or his agents, any additional cost incurred in the completion of the subcontract works shall be to the account of the employer.

A selected subcontract is similar to a nominated subcontract save that where the default of the selected subcontractor delays the contractor in the completion of his contract the contractor is not entitled to an extension of time, and where the selected subcontract is cancelled for any reason other than the default of the

employer or his agents, any additional cost incurred in the completion of the subcontract works shall be to the account of the contractor.

A direct contractor is an independent contractor engaged by the employer to carry out certain work on the site of a contract between the employer and a building contractor while the building contractor is still in possession of the site. The building contractor is not responsible in any way for the due performance by the direct contractor of his contract with the employer, and any delay that the direct contractor may cause the building contractor in the completion of his works shall entitle the building contractor to an extension of time. Any additional cost incurred in the completion of the works that are the subject of the direct contract that arises from the default of the direct contractor or his replacement is the liability of the employer.

## **Question 2**

**You are the architectural practitioner for a small shopping centre, for which a quantity surveyor, a structural engineer and an electrical engineer have also been appointed. The form of agreement is the JBCC Series 2000 Principal Building Agreement, and in terms of clause 5.1 the client appoints the quantity surveyor as the principal agent, and you and the structural and electrical engineering consultants as agents. Clause 5.4 states that the principal agent may delegate certain of his duties to other agents.**

**2.1 What do you understand by the term 'delegate'?**

**2.2 In the example given above, what duties, if any, do you consider that principal agent should delegate to the architectural practitioner and the other agents?**

**2.3 What duties may the principal agent not delegate to the other agents?**

**(15 marks)**

## **Answer 2**

To delegate means to entrust to some other person (another agent in this case) the responsibility of carrying out certain duties which the delegator (the principal agent) owes to some third party (the employer). The principal agent has no general power to delegate to another agent any of the duties which he has in terms of the building contract; can only delegate to another agent those duties which are specifically stated in clause 5.0

I consider that the principal agent should delegate to the architectural practitioner the following duties: regularly to inspect the works to ensure compliance with the contract; to issue contract instructions (including drawings) relating to the architectural work, to issue practical completion lists, works completion lists and defects lists. He should delegate similar duties to the other agents, the right to issue instruction and lists being limited to instructions and lists relating to the work for which they are responsible.

The principal agent may not delegate to other agents the authority to bind the employer, such as to issue interim or final payment certificates or certificates of practical completion, works completion or final completion, revise the date for practical completion, give or receive any notices on behalf of the employer.

### Question 3

The contractor considers that the progress of the works has been delayed by the failure of the structural engineer to provide structural details timeously, and he applies to you, as the principal agent for the contract, for a revision of the date for practical completion and adjustment of the contract value. What actions does JBCC PBA require the contractor to take before you may consider his application? When you are satisfied that he has taken such actions, what are your obligations with respect to the application?

*(20 marks)*

### Answer 3

The actions which the JBCC PBA requires the contractor to take are:

- Give the principal agent reasonable and timeous notice (in writing) of the circumstance which he considers might cause a delay (clause 29.4.1)
- Take any reasonable practical steps to avoid or reduce the delay (clause 29.4.2)
- Within 20 working days of the date from which he became aware or ought reasonably to have become aware of the potential delay notify the principal agent of his intention to submit a claim for the revision to the date for practical completion (clause 29.4.3)
- Within sixty working days of the delay ceasing, submit a claim for the revision of the date for practical completion to the principal agent, in which he states the relevant clauses of 29.1, 29.2 or 29.3 on which he relies, the particulars of the cause of delay and the calculation of the extension period claimed (clauses 29.5 and 29.6)

Within 20 working days of receipt of such claim the principal agent shall (in writing) grant, refuse or reduce the period claimed and determine the revised date for practical completion. In respect of each revision granted he shall identify the circumstances and the relevant subclause and he shall give reasons for reducing or refusing any claim. (clause 29.7)

### Question 4

Describe the nature of the risks in relation to a building project for which each of the following forms of insurance is intended to provide indemnity. During the course of the contract (prior to practical completion) who would normally bear such risks? (Choose any four forms of insurance).

- 4.1 third party liability
- 4.2 works risk
- 4.3 professional indemnity
- 4.4 employer's liability
- 4.5 lateral support insurance.

*(24 marks)*

#### Question 4

- 4.1 Third party liability covers the risk of injury to or the death of some person other than the contractor or the employer or any employee or agent of either, or loss or damage to any property of some person other than the contractor or the employer or any employee or agent of either, that is a direct consequence of the occupation of the works and/or the execution of the works by the contractor. During the course of the contract the contractor would normally bear such risks.
- 4.2 Works risk is the risk of loss or damage to the works. The contractor is normally at risk for such loss or damage prior to practical completion, but he is excused liability in a number of instances listed in clause 8.5.
- 4.3 Professional indemnity covers claims that may be made against any member of the professional team for financial loss incurred by the employer arising from some act of negligence on the part of the professional in carrying out his professional duties to the employer.
- 4.4 Employer's liability is the liability of the contractor for the death of or injury to any workman employed by the contractor on the contract works. By law the contractor is obliged to effect employer's liability insurance in respect of such employees, and the claim of any employee against the contractor is limited to the amount of compensation paid to him in terms of such insurance.
- 4.5 Lateral support insurance is insurance against the risk of collapse of neighbouring ground and damage to neighbouring property arising from construction work on the site (especially excavation) which can lead to such collapse or damage. In common law the employer carries the liability for any such collapse or damage.

#### Question 5

**Practical completion is the stage where, in the opinion of the contractor, the works are complete in almost all respects and can effectively be used for their intended purpose with little inconvenience to the employer. On practical completion the contractor ceases to be liable for loss or damage to the works, and he is not liable to perform any additional work ordered after the date of practical completion.**

**Works completion is the stage where all outstanding work has been completed, including any defects that were apparent at the date of practical completion. The certificate of works completion absolves the contractor from the liability to carry out and complete any work under the contract that had not been listed on the works completion list. He remains liable only for the rectification of defects that become apparent after the date of practical completion.**

**Final completion is the stage where the contractor has completed all the contract works in all respects and satisfactorily remedied all the defects that were apparent prior to the date of final completion. He remains liable to rectify any defects that were not apparent prior to the date of final completion but have become apparent not later than five years after the date of final completion.**