



PROFESSIONAL PRACTICE EXAMINATION

MARCH 2010

**PAPER 1: The Architectural Professional as a Practitioner
Architectural Services to a Client**

CLOSED BOOK EXAMINATION

Question one

30 marks

- a) The General Provisions of **the Act**
- i) Give the date on which the Architectural Act was assented to and signed by the President **2 marks**
 - ii) What does section one of **the Act** comprise of? **2 marks**
 - iii) Section 3 of **the Act** outlines the composition of council; briefly outline the number and representativity of the council **10 marks**
- b) Copy and complete the following table in relation to sections 18 **the Act** which deals with the various registration categories: **9 marks**

	Category of Registration
i	
ii	
iii	
iv	
v	
vi	
vii	
viii	
ix	

- c) Answer the following question in respect of the term “reservation of work”
- i) The kind of work reserved for Professional Architects in terms of section 7(6) of the Architects Act no 35 of 1970 **5 marks**
 - ii) What substantial change does the proposed Identification of Work framework aim to bring about? **2 marks**

Answer to question one

- a)
- i) **November 26 2000 (2 marks)**
 - ii) Section 1. : **Definitions (2 marks)**
 - iii) Section 18

- **7 registered persons²**, excluding candidates(at least **4 must actively practise³** in the profession) who
 - i. must be **nominated⁴ by a voluntary association⁵ and any registered person⁶**
 - ii. must **represent the categories of registered persons⁷**
- **2 professionals⁸** in the service of the state
- **2 members of the public⁹** nominated through an **open public¹⁰** process

b)

	Category of Registration
i	Candidate Draughtsperson ¹
ii	Candidate Architectural Technologist ²
iii	Candidate Senior Architectural Technologist ³
iv	Candidate Architect ⁴
v	Professional Draughtsperson ⁵
vi	Professional Architectural Technologist ⁶
vii	Professional Senior Architectural Technologist ⁷
viii	Professional Architect ⁸
ix	Specific categories prescribed by the Council ⁹

c).

i) The kind of work reserved for Professional Architects in terms of section 7(6) of the Architects Act no 35 of 1970 is :

- The **designing and planning**, and¹
- The **supervision of the erection** of²
 - **Buildings and structures³** within the area of jurisdiction of a local authority or within a proclaimed township.
 - Additions **extending** the architectural area of, and architectural **alterations** to buildings⁴ and structures within the area of jurisdiction of a **local authority or within a proclaimed township⁵**

It will be acceptable for a candidate to simply say that:

The **designing and planning**; and **supervision of the erection** of; all **new works** and **additions and alterations** to existing buildings and structures within the area of jurisdiction of a **local authority or within a proclaimed township**.

ii) To change the reservation of work to identification of work. The restrictions will be based on **type, sensitivity and complexity** of work and **not on the 500m²** rule.²

Question two

35 marks

- a) In terms of the SACAP Code of Professional Conduct, Board Notice 154 of 2009 of the Government Gazette, rule 4 : Professional Responsibilities: answer the following questions:
- i) Describe the relevance of this rule **2 marks**
 - iii) . Give the items that you need to set out in a confirmation of appointment. **16marks**
 - iv) Describe one specific way a practitioner would ensure that this rule is adhered to. **2 marks**
- b) In terms of rule 5 of the SACAP Code of Professional Conduct, Board Notice 154 of 2009, establishment of an Architectural Practice and carrying on of a Business sets out the requirements for establishment of a practice.
- i) Give the requirements of what must be set out on the letterhead of a practice. **5 marks**
 - ii) Explain the relevance of each item you have listed in b(i) above. **10 marks**

Answers to question two

a)

i) *2 marks for the correct answer*

The relevance of this rule is to give direction to professionals on their basic responsibilities in their professional dealings with members of the public with regards to work commissions.²

ii) *2 marks for each of the eight correct responses*

- The scope of work²
- The services to be provided⁴
- The allocation and limitation of responsibilities⁶
- Fee payable for work or services, the method of calculating it (if appropriate) and the stage(s) at which it will be payable⁸
- The budget(if applicable) or other cost limit for the project, work or service, and the method and implication of estimating costs¹⁰
- The provisions for termination of the agreement¹²
- Details of the professional indemnity insurance¹⁴
- Provision for dispute resolution¹⁶

iii) By using either the PROCSA ²agreement **or** the SAIA Client Architect Agreement².

b)

i) LETTERHEAD REQUIREMENTS

one mark each for the correct response

- Name of the **architectural practice** and **type of practice**. ¹
- The **names** of the **principals** and their **registration numbers** ²
- The **category of registration** of the principals ³
- The **professional designation and qualification** of all **principals that are not registered** with the Council.⁴
- **Physical and postal address, telephone, fax, CIPRO and VAT registration numbers, if applicable** ⁵

ii) RELEVANCE OF LETTERHEAD REQUIREMENT

ITEM	RELEVANCE
1. Name and type of practice	• The name of the practice gives an indication of the category of registration

	<p>of the majority shareholding principal.</p> <ul style="list-style-type: none"> • The Code requires that professionals do not mislead the public with regards to the type of service they are legally permitted to undertake. • For example a practise with majority shareholding held by a draughtsperson cannot go by the name: ARCHITRAVE ARCHITECTS.
2. Name of Principals and their registration numbers	<ul style="list-style-type: none"> • It is important that the names are clearly printed on the letterhead so that members of the public may check the authenticity of their claim • It is easy to check a name and a registration number in case of fraudulent individual the registration number is a control mechanism.
3. The category of registration	<ul style="list-style-type: none"> • This is to confirm the competency of the principals.
4. The professional designation and qualification of all principals that are not registered with the Council.	<ul style="list-style-type: none"> • The Code requires that, unless permission is sought a registered person cannot enter into a professional relationship with any registered person unless they are a member of a closely allied profession.
5. Physical and postal address, telephone, fax, CIPRO and VAT registration numbers, if applicable	<ul style="list-style-type: none"> • This information is relevant for administrative purposes

Question three

20 marks

- a) Describe in detail the process of issuing technical documentation to the contractor during the construction period. **10 marks**
- b) Your practice employs a new office assistant who is experienced in general secretarial duties but has not worked in an architectural practice before. His duties include filing correspondence, drawings, trade literature and manufacturers' samples of building materials and other practice related documentation. Write a memo to explain to her how the filing system in your office is organised. **10 marks**

Answers to question three

a) ISSUING OF TECHNICAL DOCUMENTATION

- A dated list all documents issued to the contractor must be kept
- All documentation issued must be recorded
- All drawing issued for construction must be stamped 'issued for construction' with green ink
- All documents issued must bear the date of issue, a revision suffix and for drawings a unique number
- The contractor must sign for the receipt of all documentation received; the date and time must be recorded on the Architects Instruction, Site instruction or Issue slip

b) FILING SYSTEM IN AN ARCHITECTURAL OFFICE

MEMO

To : Office Assistant
From: Junior Partner
Date: 17 March 2010-03-30
Subject: Filing system

Dear Ms Office Assistant

As part of your duties you will be required to manage all documents in this practice. I will outline to you how the filing is arranged.

Our document files are colour – coded to distinguish between the three types of records>

1. Business and Administration records – Red
2. Project Documentation – Blue
3. Project Drawing – Grey

Business and Administration

These are filed in the red files. They are filed as originals. Backup scanned copies are saved in the 'Z' drive under Business and Admin file. You will find several folders such as:

HR
Finance
Insurance
Correspondence

Project Documentation

These are filed in blue files. A file index is kept in the Green file in Mr Dlamini's Personal Assistants office. The documents are filed according to the following Alpha Numeric system
AB/03/2010/ FE/as

AB – initials for the client starting with the last name e.g Mr Bryce Adams

03/2010 – The month and year of project initiation e.g. March 2010

FE – Name of the Project Architect responsible for the project – e.g Mr Egan Fellows

as – name of the administrative assistant opening the file – e.g Ms Alice Smith

Project Drawing

Copies of all original drawings are kept in the filing cabinet in alphabetic order for a period of up to 2 years after the completion of a project. You will notice that they have original stamps on them. Labelled back up CDs are kept in the archive room with scanned copies. You will notice that the shelves are labelled according to year and alphabet. Most project drawings are also saved in the Project drawing Directory on the 'z' drive.

Mr Dlamini's PA will give you a table that outlines the period of retention for each type of document. Under no circumstances are you to destroy any document without instruction. Hope you find this in order

Junior Partner

The idea is for the candidates to show an understanding of the importance of an well organised document retention system in the office of an architect. The memo above is just an example and it should be expected thta candidates will outline varying filing methods. The examiner must be satisfied that the answer given is reasonable.

Question four

20 marks

Board Notice 31 Of 2009 published in the government gazette on 13 March 2009, states that:
"The South African Council for the Architectural Profession has in terms of section 13(k) of the Architectural Profession Act, 2000 determined the conditions relating to, and the nature and extent of continuing professional development required in order to qualify for the renewal of registration as contemplated in section 22(2) of the said Act"

Answer the following questions with respect to the above.

- a) When did the CPD policy first come into operation? **2 marks**
- b) How long is the SACAP registration cycle for Professionals? **2 marks**
- c) What is the minimum amount of credits that a Professional needs to accumulate in a normal registration cycle? **2 marks**
- d) State the three categories of activities, giving specific examples that a professional must be engaged in in order to fulfil the continuing professional development requirement. **6 marks**
- e) What role do voluntary associations play in the implementation of this requirement? **4 marks**
- f) Mention at least two responsibilities of the registered professional in terms of the recording and auditing of the CPD claims. **4 marks**

Answers to question four

- a) **1 January 2007**
- b) **5 years**
- c) **25 credits**
- d) **Category one: Developmental activities e.g. conferences, seminars, workshops, lectures**
Category two: Work Based Activities e.g. Full time architectural work or lecturing
Category three: Individual Activities e.g . membership of a recognised Voluntary Association. *Please see enclosed CPD booklet for more examples.*
- e) **They present category one activities**
They also validate activities presented by third parties.
- f) **To obtain the necessary credits**
To retain proof of credits claimed, as SACAP may conduct an audit to verify the correctness of the claimed credits
To return expired registration certificate to SACAP with an application for renewal of registration
To submit credits no later than 30 days after the completion of each annual cycle
To ascertain that category 1 activities are validated for CPD credits

Question five

20 marks

A former colleague of your from university approaches you to go into business with him as a new architectural practice.

- a. Briefly explain the difference between the following types of practices; a private company, incorporated company, close corporation and a partnership. (10 marks)
- b. Give motivation for the selection of type of practice that you would recommend to your friend. (10 marks)

Answers to question five

Private company

General

- Number of shareholders can be between 1 and 50
- Shareholders do not need to be active in the business
- A declaration of the particulars of the directors, the company officers and auditors needs to be made to the Registrar of Companies
- A statement of guarantee of the source of capital needs to be made.
- must register with Registrar of Companies (CIPRO)
- not required to file interim reports with the CIPRO
- may not be listed on the Stock Exchange

Liability

- Liability is limited – Directors are not individually liable

Succession

- The company has continuing legal persona – perpetual succession
- A full scope annual audit is required

Dividends and Profits

- The Directors decide on whether to share all the profits or retain a portion for future years.

Incorporated company

General

- Must be registered with the Registrar of Companies
- All directors must be involved in the day-to-day running of the company
- Directors are paid salaries
- The liability of the directors is unlimited
- In the event of death or retirement of a director, the remaining directors may buy the shares or offer them to a new director

Liability

- Liability is unlimited
- Directors are jointly and severally responsible

Succession

- The company has continuing legal persona – perpetual succession
- A full scope annual audit is required

Dividends and Profits

- The Directors decide on whether to share all the profits or retain a portion for future years.

A Close Corporation

General

- Easiest and cheapest to establish
- Must be registered with the Registrar of Companies
- Does not need to submit a full scope annual audit
- Can have between 1 and 10 members
- Members must be natural persons
- All members must be actively in the management and business activities

Liability

- Members are not individually liable

Succession

- A cc has a legal persona and therefore perpetual succession
- Change in membership involves only lodging of an amended Founding Statement with the Registrar of Companies

Taxation

- Members are registered as provisional taxpayers
- Vehicle maintenance, rental of office space, telephone accounts and entertainment are deductible business expenses

Dividends and Profits

- The Members decide on whether to share all the profits or retain a portion for future years.

A Partnership

General

- The maximum number of partners in an Architectural practice is 20
- There must be utmost faith and full disclosure
- All partners actively participate in the day-to-day running of the partnership

Liability

- All Partners are jointly and severally liable for all debts and obligations of the partnership.

Succession

- The partnership does not have perpetual succession. It is dissolved when one or more partners resigns or dies.

Dividends and Profit

- All profits must be allocated to the partners as income.

Answer to the second part of the question will be dependent to large extent on the reasoning of the candidates. The examiner must determine the validity of the argument based on the characteristics of the different form. This section will account for 8 marks of the total marks.



PROFESSIONAL PRACTICE EXAMINATION MARCH 2010

**PAPER 2: Contract Law and Building Contracts
The Resolution of Building Disputes**

OPEN BOOK EXAMINATION

100 marks

Question one

20 marks

DEFINITIONS

- A CONTRACT is an agreement between two parties that is enforceable in a court of law. A contract brings about rights and obligations for both parties.
- A DEBT is any money or service that one party is under obligation to pay or render to another
- EIUSDEM GENERIS also known as the 'same class' rule in a contract when a general word or phrase is followed by a series of specific words or phrases, the meaning of the general word or phrase is restricted to the same category as the specific words or phrases, for example in a clause referring to damage by fire, storm, floods, earthquake and other disasters, the word other disasters cannot refer to damage by riot, because the specified words are all natural disasters and yet riot damage is due to human action.
- PRESCRIPTION can be defined as :
 - The time in which a creditor may call or seek legal recourse against a debtor for performance of an obligation. Prescription does not affect the validity of the contract, but the time and manner of instituting an action, **or**
 - The right to use the property of another. It requires the use of the land to have been open, continuous, exclusive, and under claim of right for the appropriate statutory period.
- REPUDIATION is the act of a party who indicates by his actions that he is no longer prepared to abide by the terms of the contract. Repudiation constitutes a breach of contract.
- a. CONSIDERATIONS FOR DECIDING ON WHETHER TO USE THE MINOR WORKS AGREEMENT
 - 1. It is ideal for use where,
 - The contract is for minor works of simple content
 - The employer appoints:
 - A principal agent only to administer the contract
 - Such other agents for specific aspects of the works
 - Direct contractors for specialised work or installation not to be undertaken by the contractor
 - The work is suitable but not limited for use where:
 - A contractor is a small to medium enterprise

- The employer carries the major liabilities related to the works
 - The employer is responsible for the primary insurances related to the works
- It is not ideal for use where,
 - Nominated or selected subcontractors need to be used
 - Escalation (Contract Price adjustment) provisions are required
 - The work is of a complex nature
 - The construction period is anticipated to be more than nine months
 - Sectional Completion is required
 - The Contract Documentation is not complete at tender stage.

Question two

20 marks

- a. The employer has a right to deduct penalties at the agreed rate for the delay in practical completion. (Practical completion occurs when the principal agent has inspected the works and is satisfied that the works have reached practical completion. Clause 24.3.1 PBA)
- b. The employer can claim penalties when the contractor fails to bring the works to practical completion on the agreed date(30.1 PBA). Details of the penalty amount due at a rate per calendar day from the date of practical completion must be stated in the contract data of the agreement (30.2 PBA).

c.

<i>Penalty</i>	<i>Damage</i>
<i>Predetermined amount per day after the practical completion day</i>	<i>Calculated based on the loss suffered as a result of the delay</i>
<i>The suffering party does not have to prove that he has suffered damages</i>	<i>The suffering party must prove that he suffered damage as a result of the delay</i>
<i>The courts are reluctant to interfere with the penalty provisions in a contract although they may reduce them if they feel that they are excessive</i>	<i>May be applicable in the PBA in case penalties were not elected at the signing of the contract</i>
<i>The amount of the penalty and the manner in which it is calculated must be shown in a recovery statement</i>	
<i>Where the contract stipulated sectional completion; separate penalty provision may be applicable for each section,</i>	
<i>Does not apply in an N/S Agreement</i>	

d. **DIFFERENCE BETWEEN AN INTERIM CERTIFICATE AND A PRACTICAL COMPLETION CERTIFICATE**

An interim statement is issued at various stages in the contract on progress of the work. On large contracts it is often issued on a monthly basis to compensate the contractor on the work that he has done at that stage. Several interim certificates may be issued in a project.

A practical completion certificate is issued when the project has reached a completion stage where the employer may make use of the building satisfactory. All the major works must be completed. Only one practical completion certificate is issued in a project unless sectional completions have been agree on.

- e. Practical completion occurs when the principal agent has inspected the works and is satisfied that the works have reached practical completion. (Clause 24.3.1 PBA)
- f. The principal agent must have been inspecting the works at appropriate intervals during which he would give guidance to the contractor on the standard and state of completeness required for practical completion. (Clause 24.1 PBA)
- g. The principal agent must draw the contractors attention to section 4.0 of the PBA Contract Data EC

Question three

30 marks

The contractor is entitled to additional preliminaries in respect of the 10 –day extension of time in respect of delay caused by:

- Late issuance of a contract instruction (Clause 29.2.4 PBA)
- Late supply of materials and goods for which the employer is responsible (Clause 29.2.11 PBA)

Where the contractor fails to identify the amount of preliminaries in a lump sum contract, preliminaries shall be deemed to be 7.5% of the contract sum(Clause 10.3.1 JBCC Preliminaries)

Thus preliminaries will be: 7.5% of R25 000 000.00 = 1 875 000.00

Of this, 75% will be varied in proportion to the construction period as compared with the initial period i.e 75% of R 1 875 000.00 = 1 406 250

Preliminaries per day = 1 406 250/200 = 7031.25

The 20 days extension therefore entitles the contractor additional preliminaries to the tune of:

7031.25 x 20 = R140 620

See attached Payment Certificate.

Question four

25 marks

Clause 40.0 of the Principal Building Agreement makes for the resolution of disputes arising out of the contract to be resolved by one of three methods.

- a. Outline the difference between the three methods 15 marks
- b. Common law provides litigation as another means of resolving a dispute.
 - i. What makes litigation different from the three methods above.? 5 marks
 - ii. Comment, giving reasons, on which method of resolution you find to be the most preferable in a medium scale private sector building contract. 5 marks

Arbitration	Adjudication	Mediation
The parties freely and voluntarily agree to submit any dispute that may occur to the	The parties freely and voluntarily agree to submit any dispute that may occur to the	The parties freely and voluntarily agree to submit any dispute that may occur to the

impartial judgement of a third party. This is done at the point of concluding the contract. The parties may not always agree with the choice of the arbitrator depending on the wording of the contract	impartial judgement of a third party of their choice. An adjudicator may be appointed when a dispute arises	impartial judgement of a third party of their choice
The arbitrators judgement is final	The courts cannot enforce the award of the adjudicator	The mediators opinion is not final and binding
Parties may be represented by Legal Advisors and/or Counsel		No legal representation is permitted
The arbitrator does not have to be an officer of the law	The adjudicator does not have to be an officer of the law	Mediation has the potential to preserve goodwill as both parties often make concessions and agree to accept less.
An arbitrator is usually an expert in the field	An adjudicator is usually an expert in the field and is required to perform his duty with proper skill, diligence and care	A mediator is usually a person that is respected in the field and that the parties feel will give an unbiased opinion.
An arbitrator has judicial immunity	An adjudicator does not have any judicial immunity and thus is liable to the parties for any lack of skill, diligence or care in carrying out his duties.	
Arbitration is a private matter and is therefore seldom subjected to the press.	Adjudication is a private matter	Mediation is a private matter
Arbitration is recognised as a legitimate alternative means of resolving disputes		The court may overturn the opinion given by the mediator
It is governed by the Arbitration Act 42 of 1965	It is not governed by any legislation	There is no legislation governing this method of dispute resolution.
Arbitration may be concluded in a shorter time than litigation.	The JBCC Rules on adjudication requires that the adjudicator must conclude within 20 working days.	The idea of going for mediation is to save time and resources. It should be concluded in a short period of time.
There are procedural rules that govern the conducting of arbitration.	There is no set procedure however the JBCC publishes Adjudication Rules which may be used.	The procedure of mediation is determined by the the mediator in consultation with the parties.
The cost of arbitration is borne largely by the unsuccessful party however the arbitrator may apportion the costs between the parties.		The costs of the mediator are borne equally between the two parties.

Any five differences should warrant full marks.

HOW IS LITIGATION DIFFERENT FROM THE OTHER DISPUTE RESOLUTION METHODS OUTLINED ABOVE.

Litigation is a judicial process governed by a statute where an officer of the court, a magistrate or a judge, presides and gives a judgement. It is usually a lengthy process as a judgement may only be made after all facts have been heard and substantiated. The judgement is based on the officer of law satisfaction beyond reasonable doubt one party has suffered damages and thus must be compensated by the other party. The parties of the contract do not have any say in who the presiding officer is.

The parties may seek leave to appeal to a higher court if they are not satisfied with the judgement.

CHOICE OF THE BEST METHOD

It is envisaged that the Candidates will select Arbitration as the best dispute resolution method.

The biggest advantage can be summarised as follows:

- Time saving
- Cost saving
- Confidentiality
- Normally the award in arbitration is not challenged
- An expert in the field helps with the resolution of the dispute.

Question five

8 marks

	Nominated	Selected	Direct
1.	Nominated by the employer	Selected by the contractor	Employed by the employer
2.	Works part of the main contract	Works part of the main contract	Works not part of the main contract
3.	The employer is liable for any delays caused by this type of subcontractor	The contractor is liable for default as a result of delays caused by this subcontractor	The employer is liable for any delays caused by this type of subcontractor