**Construction Law multiple-choice questions [emphasis on construction law doctrine]**

**Notes: These questions are primarily intended for use in law school courses; for courses in other programs, some of these questions may require clarifications or modifications to adjust for the students’ more limited exposure to some legal concepts. Because these questions are offered for review purposes, an answer key is included at the end of the questions.**

1. A typical differing site conditions clause found in construction contracts:

(a) Allocates to the contractor, to a significant extent, the risk that conditions at the project site may be materially different than what the contract documents indicate, and in that way the clause essentially alters the risk allocation that usually applies under the common law, but the clause does not alter the risk allocation that would traditionally apply under the common law when the contractor encounters unknown conditions of an unusual nature.

(b) Essentially incorporates into the construction contract the risk allocation principles of the common law.

(c) Allocates to the owner, to a significant extent, the risk that conditions at the project site may be materially different than what the contract documents indicate, and in that way the clause essentially alters the risk allocation that would traditionally apply under the common law, but the clause does not alter the risk allocation that would traditionally apply under the common law when the contractor encounters unknown conditions of an unusual nature.

(d) Allocates to the owner, to a significant extent, the risk that conditions at the project site may be materially different than what the contract documents indicate, and the clause also allocates to the owner, to a significant extent, the risk that the contractor may encounter unknown conditions of an unusual nature, and in those ways the clause essentially alters the risk allocation that would traditionally apply under the common law.

2. Which statement about the Spearin doctrine is **not** true as that doctrine is customarily applied?

(a) A contractor can use the doctrine as a "shield" against an owner's claim of defective construction.

(b) When an owner issues design specifications, which dictate how the contractor is to go about its work, there is an implied warranty that following the design will lead to a result acceptable to the owner.

(c) The owner’s warranty based on the Spearing Doctrine will void express warranties made under the terms of the contract by the contractor against defects in the project.

(d) A contractor can use the doctrine as a "sword" by showing that the project was more expensive to build than it anticipated because of defective specifications.

3. The substantial performance doctrine:

(a) provides that if a contractor breaches the contract, it may not receive any compensation, regardless of any work already performed.

(b) may permit a contractor to recover at least partial payment based on the contract price even if the contractor breached the contract.

(c) requires that the owner must pay the contractor the entirety of the construction contract price as long as the contractor substantially completes the project on time.

(d) is a contract standard that requires certification by a designated third party before an owner can terminate a construction contract based on default by the contractor.

4. What method of proving delay damages is especially appropriate for a contractor to use in a claim for lost productivity when performing repetitive work under similar conditions (i.e., the conditions concerning performance of the work are similar before and after the delaying event, except for the impact of the delay)?

(a) the measured mile method.

(b) Eichleay formula.

(c) the total cost method.

(d) the diminution in value method.

5. Why should a well-drafted construction contract generally include a provision relating to changes affecting the contractor’s scope of work?

(a) A clause to govern how changes will affect the contract schedule and price is necessary because project owners have a right under the common law to order changes in the scope of work unilaterally as long as the change does not amount to a cardinal change.

(b) For most projects, changes affecting the work should be anticipated and the owner should be given the right by contract to order changes unilaterally and, therefore, a contractual process should be available to determine and document what impact changes will have on the contract schedule and price.

(c) Local building codes normally require that construction contracts include change clauses in order to address potential changes in building code standards.

(d) A clause to govern how changes will affect the contract schedule and price is necessary because project owners have a right under the common law to order changes in the scope of work unilaterally as long as the change does not amount to a constructive change.

**Answer key**

**1 = d**

**2 = c**

**3 = b**

**4 = a**

**5 = b**