**Construction Law multiple-choice questions [emphasis on remedies]**

**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. Although courts commonly hold that a contractor who follows a detailed design provided by the owner has a valid defense against liability to the project owner for a defect attributable to an error in the design, that defense may not apply in which one of the following circumstances?

a. When the contractor did not construct the work in strict compliance with the plans and specifications.

b. When the design, although defective, does not constitute malpractice under the applicable professional standard of care.

c. When the owner was not negligent in furnishing the design.

d. When there is no contractual privity between the contractor and the design professional who prepared the plans and specifications.

2. Several states have statutes that condition a residential owner’s right to recover damages for defective construction on a requirement that the owner must give the builder a notice and opportunity to correct the defect. What is one of the policy justifications for such a statute?

a. To prevent unnecessary litigation by giving contractors the opportunity to cure defects before the homeowner is allowed to sue.

b. To give homeowners new, substantive rights regarding remedies for construction defects.

c. To give the builder the opportunity to argue that the economic loss rule immunizes it from liability.

d. To maintain a clear boundary line between liability based on tort and liability based on contract.

3. Assume that today, for the first time, a building owner notices serious water intrusions in the lower level of the building and further investigation indicates that the general contractor who built the building under a contract with the owner failed to follow the plans and specifications relating to waterproofing for that area of the building. If the jurisdiction has enacted a ten-year statute of repose with respect to causes of action for defective construction, and if final completion of construction of the building occurred twelve years ago, which of the following statements is correct?

a. If the construction defect is deemed latent and the owner could not have discovered the problem in the exercise of due diligence until the defect manifested, under most statutes of repose, the contractor remains liable for the defective construction because the statute of limitations on the owner’s cause of action for defective construction was most likely tolled under the discovery rule.

b. The owner’s cause of action against the contractor for defective construction is most likely barred due to the statute of repose.

c. The owner will mostly likely still have a valid cause of action against the contractor for defective construction, but the discovery rule will most likely not operate to toll the running of the statute of limitations on that cause of action.

d. Whether the owner’s cause of action against the contractor for defective construction is barred due to the statute of repose depends on whether the plans and specifications relating to waterproofing were prepared by a design profession in direct contractual privity with the owner.

4. Under the economic loss rule, even in the absence of contractual privity between the design professional and the contractor, which of the following legal theories are most likely to support a contractor’s claim against the owner’s design professional for damages the contractor suffers that are attributable to acts and omissions of the design professional?

a. Breach of the design services agreement between the owner and the design professional.

b. Breach of contract due to the design professional’s obligation under the owner-design professional agreement to respond in a timely manner to requests for information concerning the proper interpretation of plans and specifications prepared by the design professional.

c. Negligent misrepresentation based on errors in the plans and specifications prepared by the design professional.

d. All the above.

**Answer key**

**1 = a**

**2 = a**

**3 = b**

**4 = c**