

Quiz 2 multiple-choice, due Oct 6

Question 1

1 point

Which one of the following statements best describes the substantial performance doctrine?

- (A) The doctrine may permit a contractor to recover at least partial payment based on the contract price even if the contractor breached the contract.
- (B) The doctrine is a contract standard that requires certification of substantial completion by a designated third party (such as the project architect) before the owner has an obligation to make the final payment to the contractor.
- (C) The doctrine provides that if a contractor breaches the contract, it may not receive any further compensation following the breach, regardless of any work already performed.
- (D) The doctrine 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.

Question 2

1 point

Why would a design professional for a project routinely carry professional liability insurance even if it is not required by the design services contract?

- (A) Because if the design professional's client is the project owner, under the terms that commonly apply to contracts for design services, the client might later issue a change order requiring the design professional to secure professional liability insurance.
- (B) To protect against claims of ordinary negligence.
- (C) To secure immunity from liability to the design professional's client and others in the event that the design professional's services breach the applicable professional standard of care.
- (D) To shift to the insurer at least part of the risk of liability to the design professional's client and others in the event that the design professional's services breach the applicable professional standard of care.

Question 3

1 point

Which one of the following statements is correct with respect to a cardinal change?

- (A) A cardinal change does not constitute a material breach of contract if the change is ordered in writing by the project owner.
- (B) A change that can be adequately addressed by adjusting the contract price as contemplated under the contract's change order process can also normally be a basis for invoking the cardinal change doctrine.
- (C) Under the cardinal change doctrine, a court may determine that a change that is outside the scope of the work reasonably contemplated by the contracting parties constitutes a material breach of contract by the project owner.
- (D) The aggregate impact of a multiple changes cannot be the basis for invoking the cardinal change doctrine.

Question 4

1 point

Which one of the following statements correctly describes a key distinction between design specifications and performance specifications?

- (A) Design specifications are provided by the owner's design team, while performance specifications are provided by the construction team.
- (B) Design specifications describe with a great degree of specificity such details as the quantity and quality of the work to be performed and the materials to be used, while performance specifications specify the end result required rather than the means to that end.
- (C) Design specifications are based mostly on published reference standards, while performance specifications are tailored so that they can be satisfied only if a particular manufacturer's equipment is used.
- (D) Design specifications are normally used only in design-build projects, while performance specifications are normally used when an owner retains a construction manager as agent.

Question 5

1 point

Which of the following statements best describes the law on implied warranties in construction contracts as established in many jurisdictions?

(A) No warranties are implied in construction contracts.

A warranty of sound construction is implied in all construction contracts and an additional warranty of habitability is implied in a contract for residential construction between a builder-vendor and a residential consumer, but it may be possible for these warranties to be disclaimed or limited by express provisions in the contract.

(B)

(C) No warranties are implied in contracts for the construction of commercial projects, but an implied warranty of fitness for the intended use is implied in a contract for the construction of a single-family residence.

(D) A warranty of habitability is implied in a contract for construction of residential property only to the same extent that a warranty of habitability is implied in a residential lease in a given jurisdiction.

Question 6

1 point

In a design-build project, what is the most common reason that a guaranteed maximum price (GMP) for the work to be performed by the design-builder will not be established at the time the contract between the owner and the design-builder is signed?

(A) In a design-build project that contemplates a GMP, the owner will normally decline to accept a GMP proposal from the design-builder until the owner has approved the final plans and specifications for the project.

(B) Design-build projects are almost always priced on a cost-plus basis without any cap on the final price the owner will be obligated to pay.

(C) In a design-build project that contemplates a GMP, the design-builder will normally base its GMP proposal on owner-approved design details for the project that are more complete than the design details established at the time the contract between the owner and the design-builder is signed.

(D) In a design-build project that contemplates a GMP, the design-builder will normally be unwilling to estimate costs of the work until the owner has approved the final plans and specifications for the project.

Question 7

1 point

On a project for construction of a commercial building, the project owner supplied to the general contractor a complete set of plans and specifications for the building prepared by an architect hired by the owner. Those plans and specifications proved to be seriously defective. As a result of the problems with the plans and specifications, the general contractor's progress was significantly delayed, which caused the contractor to

incur additional expenses to complete the work. The general contractor is a relatively new business. Some of the defects in the plans and specifications would probably have been obvious to a more experienced general contractor. Under these circumstances, which one of the following statements is correct?

- (A) The Spearin Doctrine may provide to both the owner and the contractor a valid basis for a potential claim against the architect for damages attributable to the defective design, although an exception to the protection afforded to the contractor under the Spearin Doctrine may apply with respect to design defects that would have been obvious to a more experienced contractor.
- (B) While the owner cannot use the Spearin Doctrine as a valid basis for a potential claim against the architect for any damages the owner incurred that are attributable to the defective design, the Spearin Doctrine may provide a valid basis upon which the contractor could base a claim against the owner for the contractor's damages attributable to the defective design, although an exception to the protection afforded to the contractor under the Spearin Doctrine may apply with respect to design defects that would have been obvious to a more experienced contractor.
- (C) The potential liability of the architect to the contractor for damages attributable to the design defect will depend on whether the contract between the owner and the contractor included an express representation by the owner that the plans and specifications the owner supplied to the contractor were sufficient for the purposes of the project.
- (D) The Spearin Doctrine may provide to the contractor a valid basis for a potential claim against the owner for damages attributable to the defective design, and the fact that certain of the design defects might have been obvious to a more experienced contractor has no relevance to the potential application of the Spearin Doctrine.

Question 8

1 point

Which one of the following is an example of a differing site condition?

- (A) Unanticipated supply chain disruptions.
- (B) The existence at the site of either subsurface conditions that differ materially from those indicated in the "Contract Documents" or unknown physical conditions of an unusual nature that differ materially from those that would ordinarily be expected to exist.
- (C) Defects in the plans and specifications that a reasonably knowledgeable contractor would be unlikely to discover.
- (D) Details of the plans and specifications that the project owner knew or should reasonably have known were defective.

Question 9

1 point

Subcontracts often include either a pay-when-paid or pay-if-paid clause. Which one of the following statements accurately summarizes a standard that courts sometimes apply to determine whether such a clause is enforceable?

- (A) Even in a jurisdiction in which an unambiguous pay-if-paid clause is generally enforceable, a court may refuse to enforce the clause if the prime contractor failed in some duty owed to the subcontractor such as disclosing pertinent information or failing to properly administer the payment process.
- (B) A contractual provision literally written as a pay-when-paid is often judicially construed as a pay-if-paid clause (i.e., the clause may be judicially construed as a provision that expressly makes the general contractor's receipt of payment by the owner a condition precedent to the general contractor's obligation to pay the subcontractor).
- (C) Pay-if-paid clauses are generally unenforceable as written, while unambiguous pay-when-paid clauses are generally enforceable as written.
- (D) Even in a jurisdiction in which an unambiguous pay-if-paid clause is generally unenforceable on public policy grounds, a court will often enforce the clause as written if the clause appears in bold print and is separately initialed by the subcontractor.

Question 10

1 point

Which one of the following statements is correct with respect to a constructive change?

- (A) An order or directive from the project owner or the project owner's authorized representative to perform extra work may constitute a constructive change if the order or directive is not documented as a change in accordance with the change order provisions of the owner-contractor agreement
- (B) Under an owner-contractor agreement, only the contractor can issue a constructive change.
- (C) Under an owner-contractor agreement, only the initial decision maker can issue a constructive change.
- (D) A constructive change constitutes a material breach by the project owner of the owner-contractor agreement.