



ICE Law and Contract Management Examiners Report 2025

Examination for the ICE Certificate in Law and Contract Management (CLCM)



Examiners Report 2025

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Moderators Report

The Law and Contract Management Committee would like to thank all the examiners and exam centres for their support regarding the 2025 Examination that took place online.

The Module 1 paper showed improved performance this year, with an overall pass rate of 85%. Candidates demonstrated a stronger grasp of core legal principles across both contract and tort, generally showing confidence in areas such as contract formation, consideration, remedies, duty of care, breach, causation, vicarious liability, and occupier's liability. However certain topics including rectification, implied terms, private nuisance and aspects of occupiers' liability proved more challenging for some candidates.

Examiners noted that the main limitation on achieving higher marks was exam technique. While many candidates were able to identify the correct legal principles, they often did not apply them fully to the facts or provide a clear, reasoned conclusion. Missing steps such as defining the principle, applying it directly to the scenario, and drawing a justified conclusion. A more structured and methodical approach would significantly strengthen the overall quality of responses.

For the Module 2 paper, there was an encouraging increase in the pass rate to 57% compared with previous years, although the overall quality of answers remained mixed. Some candidates performed well by citing the relevant clauses and providing clear explanations. A strong working knowledge of the contract is essential for this examination, and many candidates struggled with key areas such as understanding compensation events particularly those relating to takeover, changes to the Scope from acceptance of defects, and Bill of Quantities issues, as well as the procedures for payment under an Option C contract, including the Prices and the Price for Work Done to Date. Performance across questions was consistent and stronger than in previous years, with average marks ranging from 13 to 14 out of 25.

Examiners highlighted several recurring issues with exam technique. A significant number of candidates continued to re-type the questions despite no marks being awarded for doing so, resulting in wasted time and incomplete answers. Marks were also lost where candidates failed to answer all parts of the question or approached the question from the wrong perspective for example, responding from the Project Manager's viewpoint when asked what the Contractor should do. Candidates are encouraged to read questions carefully, and ensure their answers are grounded in the contract rather than personal views of fairness. A methodical, contract-based approach would substantially improve both clarity and exam performance.

The Module 3 exam achieved a pass rate with 45% of candidates achieving a pass mark. Module 3 is aimed at those with both knowledge and some hands-on experience of civil engineering contract who may wish to further their knowledge or follow a career path in the direction of more challenging contract management and/or dispute management.

It is very much hoped that a number of candidates who sat the Module 1 and/or Module 2 Papers will in time apply to sit the Module 3 Paper.

The examiners give a considerable amount of time to set and mark papers for a small honorarium and deserve our grateful thanks. The candidates evidently make a considerable effort to assimilate all the material and present commendable scripts whether they pass or not.

Finally, all the candidates, whether or not they were successful this year are to be congratulated for the hard work put into learning all the law and contracts they have displayed.

It is our belief that knowledge and understanding of civil engineering law and contract procedures are prerequisites to competent project administration and management. Consequently, it is hoped that all candidates will concur with these sentiments and do their part to encourage their colleagues to likewise commit to advancing their own understanding and knowledge of civil engineering construction law and contract.

Pass marks

The pass marks were set at 40% for Module 1, 50% for Module 2 and 65% for Module 3.

	Module 1		Module 2 NEC		Module 3	
	Nr	%	Nr	%	Nr	%
2025	55	85	84	57	17	45%
2024	41	73	68	41	11	45
2023	55	85	79	45	16	75
2022	36	81	40	70	8	88
2021	39	84	48	81	5	100

A certificate is issued to a candidate who passes Module 1 and 2, or 3

Copies of the current curriculum, the two case lists and a revised reading list are all available on the ICE website <https://www.ice.org.uk/careers-learning/training/law-and-contracts/> or contact the Management Procurement and Law Department, Institution of Civil Engineers, One Great George Street, London SW1P 3AA, phone +44 (0)20 7665 2424 or email contractsanddisputes@ice.org.uk

The following pages are general comments on how the questions were answered and what the examiner was expecting. Each section of each module has a different examiner. Each exam script is then moderated by the LCMEC (Law and Contract Management Examination Committee) to ensure there is consistency between the examiners.

Module 1

Section 1

In general, this section was answered much better than the previous year, with 78% of candidates achieving a pass mark. Question 1, on contract formation was answered by 76% of candidates (42/55). Candidates seemed to struggle to gain maximum points available for breaking down offer, acceptance, consideration, and intention to create legal relations at each stage of the question and often missed points by not applying the law to the facts at hand. 72% of candidates answered Question 2, relating to contract formation and remedies available in lieu of performance. Candidates generally understood the concept of consideration and its applicability, but some candidates struggled to apply the remedies available to the facts of the question. In particular, the question on rectification was not particularly well answered. Question 3 was the least-answered question, with only 51% of candidates answering the question. This dealt with express and implied terms. While candidates were aware of how express terms may be incorporated into a contract, there was often a lack of detail when dealing with implied terms.

In terms of exam technique, candidates often lost marks by not addressing the question in a methodical manner. This would include not providing full answers identifying the relevant legal principle, defining the principle, applying it to the facts, and then giving a reasoned conclusion. Candidates often missed one or multiple of these steps. In practice, identifying the correct legal principle but then not applying it accurately to the facts and coming to a reasoned conclusion can be unhelpful in terms of deciding an appropriate course of action.

Question 1

This was the most popular question on the exam and was answered by 42 of 55 candidates. This question was answered well with an average score of 13/25 (pass), which was raised by some particularly high scores. Only 8 of the 42 (19%) candidates failed to receive a passing percentage.

Q1(a): There were many points available to candidates in the first part of the question, but few candidates managed to take full advantage of the points on offer. Candidates were often aware of offer, acceptance, consideration, an intention to create legal relations as parts of contract formation but failed to apply each one individually to the facts of the case and often missed individual points by not breaking down the facts individually. A key point to note when answering a long-form question would be to note how many points are available to ensure that any answer deals with at least the equivalent number of issues. In respect of specific points to note, candidates were not generally familiar with communication of notices and messages to business (*The Brimnes* and *Brinkibon v Stahag Stal GmbH*), which is where the majority of points were lost.

Q1(b): Candidates were generally aware of the postal rule, as well as how instantaneous communication would affect the same. Candidates often came to reasoned conclusions after applying all of the facts of the case and almost all candidates achieved a passing percentage on this question.

Question 2

This question was the second most popular question on the exam, with 40 of 55 candidates answering this question. It was also the most well-answered question on the exam with an average score of 15/25 (passing). Only 5 of the 40 candidates (12.5%) failed to receive a passing mark on this question.

Q2(a) Candidates were generally familiar with the concept of liquidated damages and the test for the same. There was little commentary on *ParkingEye v Beavis*, however most candidates provided a reasoned view as to whether the liquidated damages were a reasonable contractual clause and whether they would be applicable.

Q2(b) This question was not answered as well as questions (a) or (c). While candidates were often able to recognise that a mistake had been made and that rectification would be the likely remedy, they often did not apply the requirements for rectification in their entirety, losing out on marks. The parole evidence rule, while not often referenced by name, was often explained and candidates received points for this.

In respect of additional consideration, candidates were often aware of what constitutes valid consideration and therefore many came to reasoned conclusion as to whether extra payments to complete work would be required.

Q2(c) Most candidates that chose to answer this question were aware of the requirements for consideration and applied the law to the facts well. *Currie v Misa* was one of the most referenced cases across the exam by candidates and candidates demonstrated a good understanding of the law.

Question 3

Question 3 was the least popular question, with only 28 of 55 candidates attempting to answer the question. It was also the question that candidates seemed to struggle with the most, with 11 of 28 candidates (31%) failing to achieve a passing mark. The average score of 13/25 was mainly achieved due to the fact that where candidates answered the question well, they achieved high scores. This question dealt with express and implied terms and their incorporation into contracts. Candidates demonstrated a better understanding of how express terms may be incorporated into a contract, but some lost points by failing to apply each of the methods of incorporation (signature, reasonable notice, course of dealings) to the facts.

Many candidates struggled with implied terms and did not set out the terms implied by statute, which should have been simple marks to collect as no application of the facts was required.

Candidates also struggled to answer the question in relation to entire performance and substantial performance, and often did not reference any caselaw when answering the question. This meant that, while a reasoned conclusion was often found, full points could not be awarded.

Candidates often did not demonstrate a good understanding of quantum meruit or the ability to sue for loss of profit due to repudiation and many candidates failed to achieve a passing mark on Q3(d).

Module 1

Section 2

In general, this section was answered well, with the majority of candidates (84%) achieving a pass mark (40%) or above.

It was encouraging to see that the majority of candidates had a good grasp of the basics of a tort claim and had a clear understanding of the fundamental questions to be answered: (i) is there a duty of care? (ii) was that duty breached? (iii) did that breach of duty cause recoverable loss?

In terms of exam technique, candidates often lost marks by not providing full answers or applying the relevant legal principles to the facts and coming to a reasoned conclusion. That is the key in determining the merits of your case as a potential litigant in real life: the application of individual facts to the relevant law.

Candidates were mainly comfortable with explaining the principles of vicarious liability and occupiers' liability and with identifying and explaining where there had been a possible break in the chain of causation or contributory negligence.

Particular areas that candidates struggled with were in relation to private nuisance and occupiers' liability.

Question 4

This question was popular in Section 2, with 37 of the 51 candidates answering. 86% of the candidates who attempted this question achieved at least 10 marks (the overall pass mark) out of the 25 marks on offer.

Question 4(a)

This question was answered well, despite there being a lot of marks on offer (and to potentially lose). 92% of candidates achieved 5 marks or higher, and 41% achieved 9 marks or over, which was very pleasing to see. Candidates clearly set out the different elements of a tort claim and applied this well to the question.

Question 4(b)

There was a mixed response to this question with around half of the candidates scoring 4 or higher and the other half scoring 3 or lower. Generally candidates did well at identifying the two issues at hand (contributory negligence and novus actus interveniens) but struggled to apply these to the facts.

Question 4(c)

This question was answered fairly well, with most candidates being able to identify that this was an application of the 'eggshell skull rule' and that this was a psychiatric injury rather than a physical injury. Candidates generally lost marks for the application and for considering whether or not Linda was able to bring a claim in negligence.

Question 5

This was the least popular question in Section 2, with 27 of the 51 candidates answering. Candidates seemed to struggle the most with questions 5(c), 5(d) and 5(e). 77% of candidates passed this question.

Question 5(a)

This question was answered well, with candidates being successful in identifying that Minah has a potential claim in the tort of private nuisance given that she is the owner of the land and the smell is potential unreasonable interference, but also that the farm has been in business for 20 years and there is little that can be done given the character of the area so overall the interference is probably not unreasonable.

Question 15(b)

This question was also answered well, with candidates this time identifying that the noise probably is unreasonable interference given that the construction works were taking place for long hours and on weekends.

Question 5(c)

Most candidates were able to identify that Alexander does not have a direct proprietary interest in the land as a free-staying guest, however only a couple were able to identify that Alexander's business (providing violin lessons) has a particular sensitivity to building operations (*Robinson v Kilvert* (1889)).

Question 5(d)

Candidates were generally able to identify the issues, i.e. Vaughan Farm were suggesting that Minah had 'come to' the nuisance and that an Act of God caused the nuisance. Where candidates lost marks was when applying the law to the specific facts.

Question 5(e)

Most candidates were able to identify that Minah and Alexander could claim for an injunction and damages for loss of amenity, however few were able to identify that Alexander could also try and claim for loss of profits (although this would need to be reasonably foreseeable). The average number of marks received on this question was 2, and only 3 candidates were able to get all 4 marks.

Question 6

This was the most popular question in Section 2, with 43 of 51 candidates answering this question. This was also the question which got the highest pass rate – 97% of candidates who attempted this question achieved a score of 10 (the overall pass mark) or above for this question. Candidates did particularly well with answering question 6(a).

Question 6(a)

Candidates answered this question particularly well (with 25 of the 43 getting full marks) and were able to identify the different elements of the claim in negligence and apply them to the facts.

Question 6(b)

Most candidates identified that Freddie could try and raise contributory negligence for Francesca's failure to wear a seatbelt.

Question 6(c)

Most candidates identified that this question related to the *Bolam* case, however where candidates lost marks was applying the law to the facts of the question and identifying that over-the-counter pain medication was the usual advice (*Watt v Hertfordshire CC* (1952)) and no allowance will be made for an inexperienced doctor and it was clear that Dr Jones was acting in a hurry.

Question 6(d)

Candidates were largely able to identify that the two types of loss are pure economic loss and that the law of negligence doesn't give this the same level of protection, however where candidates lost marks was discussing whether the flight/ potential prize money was a foreseeable type of loss and not too remote.

Question 6(e)

This question was where candidates lost marks in Question 6 – candidates were generally able to identify that Freddie is an “occupier” under the Occupiers Liability Act 1984 and that Dan is a “visitor” however not all candidates were able to identify all three conditions of the OLA 1984 and apply them to the facts.

Module 2

Section 1

There was a mixed quality of answers across this section with a pass rate of 57%.

It was disappointing that some candidates scored particularly low marks which distorted the averages slightly this year and it is worth pointing out that a working knowledge of the contract is required for this examination.

Candidates who scored well cited the relevant clauses with a brief explanation of the clauses.

The compensation events need to be understood, and a considerable number of candidates failed to fully understand some of the compensation events in relation to take over, changes to the Scope arising from the acceptance of Defects and compensation events relating to the Bill of Quantities.

Candidates are expected to understand the procedures in relation to payment for compensation events under an option C contract with reference to the Prices and the Price for Work Done to Date.

Question 1

This question was the most popular question and was answered by 75 of the 84 candidates. It attracted an average score of 13 out of 25. 38 candidates achieved a pass mark in this question.

- a) This part was answered correctly by those who achieved a pass mark in this question recognising how the contract deals with ambiguities and inconsistencies.
- b) Those candidates that scored well in this question were able to identify the process of dealing with an inconsistency between Contractor's design and Client's Scope.
- c) This part of the question was not well answered with quite a few candidates failing to refer to clause 61.4 and the reasons listed in this clause.
- d) This part of the question was answered well by approximately half of the candidates who understood the principle and process of Contractor proposals for option A. Those that did not answer this part of the question correctly failed to refer to clause 16.1 and 16.2.
- e) Similarly for this part of the question, those that scored well demonstrated an understanding of Working Areas and how the Contractor can submit a proposal to add to the Working Areas.

Question 2

This was the second most popular question answered by 33 of the 84 candidates, averaging a mark of 11 although this average was affected by four low scores. 13 of the candidates achieved a pass mark.

- a) This part of the question was not well answered, and it was disappointing that a majority of candidates failed to refer to the early warning process.
- b) In general, most candidates were able to refer to the process for acceptance of Defects with reference to clause 45. Most of those that answered this well were able to refer to clause 60.1(1) first bullet point.
- c) This part of the question was not well answered with few candidates being able to identify compensation events relating to the Bill of Quantities for option B.
- d) In the main this was answered correctly by candidates with reference to the Price for Work Done to Date and the amount due.

- e) This part was not well answered with few candidates recognising the relevance of Y(UK)2 in relation to the final date for payment,

Question 3

This was the third most popular question, attempted by 31 of the 84 candidates, averaging a mark of 14, although this average was affected by one particularly low score.

- a) In the main, this part of the question was well answered with an understanding of payment for compensation events under an option C contract. Candidates would have benefitted from further reference to relevant clauses to support their answers.
- b) This part of the question was not well answered. Only 7 of the 31 candidates scored 3 or more in this question and there was a general misunderstanding of Disallowed Costs and what the Contractor gets paid under an option C contract.
- c) This part required an understanding of Defined Cost and the Schedule of Cost Components and those that answered this question well scored well in this part of the question. Candidates needed to refer to the definition of Defined Costs for option C with further reference to the Schedule of Cost Components. This part of the contract seemed to be well understood by the majority of candidates.
- d) The candidates who answered part (c) well also scored well in this part of the question which required an understanding of cost component 5 in the Schedule of Cost Components.
- e) The majority of candidates scored well in this part of the question by referencing clause 36 with good explanation of the acceleration procedure.

Question 4

This was the least popular question attempted by 28 of the 84 candidates, averaging a mark of 15. There were some good answers to this question. 18 of the 28 candidates achieved a pass mark of 13 or higher.

- a) This part was generally well answered by those that scored a pass mark. Those candidates who done well on this part of the question correctly referred to clause 12.3 as the mechanism to change the contract.

- b) Candidates scored well on this part of the question demonstrating an understanding of take over.
- c) Less than half of the candidates scored well on this part of the question with most candidates failing to understand that there is no compensation event for take over in circumstances where the Completion Date has passed.
- d) This part of the question required an understanding of Client liabilities and most candidates scored well by identifying that the Client is liable for a part of the works which is taken over.
- e) This part was well answered by most candidates who included X7 and clause 50.3 in their answers.
- f) In the main, this part of the question was well answered with most candidates identifying that X21 was relevant and those that referred to X21 showed a good understanding of this secondary option.

Module 2

Section 2

Those candidates looking back at past papers would be well advised to read the questions carefully and reflect on historical suggested answers which give an indication as to what the examiners are looking for. The examiners are looking for well thought through answers to a range of questions using the contract as the basis for these answers, not some arbitrary opinion of fairness.

Q5 was the most popular with 61 candidates attempted this and the average mark was 13 out of 25. For Q6, 45 candidates attempted this and the average mark was 14. Q7 had 41 candidates attempting this, returning an average mark of 13. Finally, 17 candidates attempted Q8, also returning an average mark of 13. These were much better marks than the past few years and quite consistent across the 4 questions.

Some comments which may be in addition to, or replacing those in similar reports are:

- Please do not re-type the questions in your answers, there is simply no need for this. No marks are available for this and you are wasting valuable time especially when some offered no answers to some parts of the questions or even didn't not a), b) c) etc. About 1/3 of the candidates still repeat the questions, so you are not heeding advice - please do not waste time and effort.
- If you do not answer a part or a question, which some candidates did, you will not score any marks.
- Surely candidates can identify that the issue is perhaps about an 'programme' then use the index (hard of soft format) to help point you to the relevant parts of the contract? A quick read over the clause(s), even when time is against you, might help shape some sort of answer, at worst worth a few marks.
- This statement is made every year but please carefully read and re-read the question. Do not rush this. Where it says "What should the *Contractor* do next?", then answering this from the perspective of the *Project Manager* is not going to get you any marks.
- Do an essay plan, reflect on the question, look in the contents and the index, make sure you have considered the broad range of matters that may be affected.

A few points on these questions:

- For Q5a, 8 marks were available you need to think about the consequence of the Contractor submitting a first programme late and after the first assessment date – a quick digital search of ‘programme’ should point you to clauses 50.5, 64.2 for example and then think about how can we put this right via clause 15. 5b was looking for you to study the payment part of ECC – the Project Manager still needs to produce a payment certificate but focus is on clause 50.4 as the Contractor failed to submit an application for payment.
- For Q6b, 7 marks were available for you to just walk through the early warning process in clause 15 and answer the specific questions being asked. Q6e offered 6 marks again for a theoretical answer to 3 questions – how do you include, report and pay KPIs? You must address all 3 questions.
- For Q7a, 9 marks were available for quite a common Site occurrence – an uncharted cable is found – many of the candidates rightly started with safety and went on to discuss using the early warning process to solve the problem, but also whether or not a compensation event might have occurred. You will never have all the facts in front of you so have to discuss the process around these issues.

In Q8c, candidates needed to be confident about how to deal with an unhappy client for 6 marks who thinks they know what the contract says but they are wrong. Then Q8d for 7 marks moves on to a delighted client but then asks a quite detailed question about bonus on a problematic job.

Module 3

Section 1

Question 1: This was the mandatory question. Most students did well in this question. Those who didn't, failed to mention any of the relevant cases to support their arguments as to whether a contract formed or not. Some of the poorer students just listed out a series of bullet points instead of meaningfully discussing the question.

Question 2: Only one student attempted this question. The student who did so, answered it very well with good reference to supporting case law. Their answer was concise but made the required points well. Well done to them.

Question 3: This was the most popular of the optional questions, with 13 out of 17 students attempting it. About half of the students did well in this question. Those who did clearly analysed the relevant parts of the OLA and knew the case law as it pertained to termination and liquidated damages. The students who did not pass this question showed no deep understanding of the underpinning legal points, and just gave a superficial analysis of the facts.

Question 4: Three out of 17 students attempted this question. A real mix of responses. One student barely scored any marks for giving very little meaningful analysis, and no case law. One scored practically full marks for giving an extremely detailed response which exceeded what I was expecting to see.

Module 3

Section 2

A total of 17 candidates took the paper. The overall standard was good. Total marks for both questions ranged from 12 to 50. With the exception of seven candidates, the remaining candidates' marks were in the range of 36 upwards, thus a high standard was achieved.

Question 5

This question was compulsory, all 17 candidates provided an answer. The Candidates were told that they were the Contractor. Marks awarded ranged from 5 to 25. The question was broken down into four parts and was about Defects.

Part (a) required the candidates to consider under which clauses of the contract would allow the Project Manager to notify Defects after the Supervisor had left the project. Six candidates scored full marks. The majority of candidates recognised that to notify Defects the Supervisor would need to delegate this power to the Project Manager pursuant to Clause 14.2. In the absence of the Supervisor it would be for the Client to advise the Contractor that the Project Manager may now act as Supervisor in accordance with Clause 14.4. Marks were lost if the relevant Clauses of the contract were not stated.

Part (b) required the candidates to decide on what actions they would take if the Project Manager were to refuse access to correct notified Defects. Two candidates scored full marks. The majority of candidates stated that in accordance with Clause 44.4 the Project Manager arranges for the Client to allow access. However many failed to mention that the Contractor should raise an early warning and instruction the Project Manager to attend an early warning meeting.

Part (c) required the candidates to discuss the different methods available to Project Manager to assess the cost of uncorrected Defects. Ten candidates scored full marks.

Part (d) required the candidates to describe what action they would take when the Project Manager issues a negative Certificate of £564,000 as an assessment of the cost of correcting the Defects. Only four candidates recognised that the question required the Contractor to issue a pay less notice pursuant to Option Y(UK)2. The remaining candidates discussed the process for referring the matter to adjudication.

Question 6

Fourteen candidates attempted this question, which related to termination. The Candidates were told that they were the Contractor. Marks awarded ranged from 7 to 25.

Part (a) The question related to the power of the Project Manager to issue a stop work notice and the consequences that flow from such a notification. Four candidates obtained full marks.

Most of the answers stated that the Project Manager has the power to stop work under Clause 34.1. Not all answers stated that this action is a compensation event. Additionally, the Contractor should raise an early warning followed by an instruction for the Project Manager to attend an early warning. To obtain full marks the candidate should state what would be discussed at the early warning meeting to keep the site safe and secure and to minimise abortive costs.

Part (b) The question related to initiating termination by the Contractor once the stop notice is not lifted after thirteen weeks. Nine candidates obtained full marks. The answer required a detailed discussion on the termination process quoting the reason, procedure and the amount due to the Contractor. The answer also required a statement that on receipt the Project Manager should issue a termination certificate, promptly.

Question 8

Three candidates attempted this question, which was related to the calculation of the Price for Work Done to Date and share calculation where the Defined Cost is in Stirling and Euros. Marks ranged from 6 to 15.

All the answers contained some simple errors. Two answer incorrectly applied the exchange rate in converting Euros to Stirling. Other errors related to converting the Euro payment to Stirling in calculating the PWDD, whereas Clause 50.7 states that payments made by the *Contractor* in a currency other than the *currency of the contract* are included in the amount due as payments made in the same currency.

Institution of Civil Engineers

Examination for the ICE Certificate in Law and Contract Management [CLCM] 2025

Module 1: Law [English and Scots Law]

ICE Certificate in Law

Tuesday 10th June 2025

Time permitted: 10:00 to 13:20 [3 hours 20 minutes]

There are three questions in Section 1 and three questions in Section 2.

Answer any **two** questions from **each section**; a total of **four** questions.

Please answer Section 1 and Section 2 via Microsoft Word [unless agreed otherwise] using separate headings for each section.

All questions carry equal marks.

Please indicate on your word document if your answers will be based on Scots Law.

References to cases and legislation should be quoted where possible.

Reference to documents during the examinations

Copies of Statutes and Statutory Instruments may be taken into the Examination.

Institution of Civil Engineers disclaimer; all names and characters in the question papers are fictional and any resemblance to any actual persons or businesses is purely coincidental.

Module 1

Section 1

Liam is a Pokémon card trader who sources rare cards from collectors around the world. He advertises them online and has a small shop in Camden, London, where he is the only employee.

On 5 April, Ethan, a Pokémon card enthusiast, meets with Liam at his shop in Camden to view a rare 1st Edition Charizard card. During the meeting, Liam hands Ethan the details of the card, including its condition and authenticity, and quotes a special offer price of £12,000 if Ethan purchases the card before 25 April, when there is a major trading card convention in London.

On 14 April, Ethan sends a letter to Liam stating that he would only be willing to pay £10,000 for the card, as he had received an offer for a similar 1st Edition Charizard from a rival trader, Max's Collectibles, at a lower price of £10,500.

Ethan's text message fails to deliver due to an error with the post and does not reach Liam until 23 April. In the meantime, having not heard from Liam, Ethan contacts Max's Collectibles and accepts their offer of £10,500.

On reading Ethan's letter on 23 April, Liam immediately replies by post on the same day agreeing to accept the lower price of £10,000 for the card and posts the letter at 3 PM. However, earlier that day, at noon, Mia, Ethan's sister, had emailed Liam on Ethan's behalf explaining that Ethan had decided to take up the offer from Max's Collectibles instead. Liam, who had been busy with customers, did not see the email until 5 PM. Ethan received Liam's letter on 24 April.

- a] **Explain the points to consider whether Ethan is legally bound to [20 marks] purchase the Pokemon card from Liam.**
- b] **What difference might it have made if Mia had waited until 5 PM on [5 marks] 23 April to email Liam explaining that Ethan had decided to buy the card from Max's Collectibles instead?**

Total Marks [25 marks]

Module 1

Section 1

Question 2

Fairway Leisure Limited ["Fairway Leisure"] operates golf courses across the UK. As part of their expansion plans, they plan to open a new course in Oxford and renovate their existing course in Cambridge. Fairway Leisure wants the works completed and the courses fully operational by the start of spring, as this is the peak season for new memberships.

For the construction of their new Oxford course, they contract with GreenScape Construction Limited ["GreenScape"] to design and construct the course for a total contract sum of £500,000. The contract states that the works must be completed by 15th March, and if they are not, GreenScape will be liable to pay Fairway Leisure liquidated damages of £75,000 per week.

As part of the renovation of their Cambridge course, the club manager contacts Fred, a local landscaper and long-time club member, to handle re-turfing and landscaping. After exchanging emails, they agree on a price of £8,000 and a completion deadline of 15th March. A formal contract is drafted, but due to a clerical error, the price is mistakenly written as £18,000 instead of £8,000. Both the club manager and Fred sign the contract without noticing the mistake.

As the 15th March deadline approaches, it becomes clear that both projects are delayed. The Oxford course is ultimately completed four weeks late due to delays caused by GreenScape and their subcontractors. Fairway Leisure brings a breach of contract claim against GreenScape for £300,000 in liquidated damages, but GreenScape argues that this amount is excessive.

At the Cambridge course, Fairway Leisure, keen to reopen on time for a major golf championship in April that is expected to bring in an additional £60,000 in revenue, offers Fred an extra £2,000 to ensure the landscaping is completed by 15th March. Fred agrees and successfully meets the deadline.

When preparing his invoice, Fred notices that the written contract mistakenly lists £18,000 instead of the £8,000 agreed in the emails. He submits an invoice for £18,000, arguing that the signed contract is binding and Fairway Leisure cannot rely on the pre-contractual emails. Fairway Leisure insists that the correct amount is £8,000, pointing to the email correspondence as evidence. Furthermore, the club manager, frustrated by what he perceives as Fred's dishonesty, refuses to pay the extra £2,000 promised for timely completion.

- a) In regards to the Oxford course, advise Fairway Leisure whether GreenScape is liable to pay liquidated damages of £300,000 as a result of their breach of contract for late performance [5 marks]
- b) In regards to the Cambridge course, advise Fairway Leisure whether they are liable to pay Fred:
- i £8,000 or £18,000 pursuant to the signed contract; [7 marks] [7 marks]
 - ii The £2,000 extra agreed for finishing the works on time. [7 marks] [7 marks]
- c] Would Fairway Leisure still have an enforceable contract with Fred if, instead of agreeing to pay the monetary sums referred to in exchange for Fred's works, they had agreed with him to provide him free, unlimited rounds of golf for 3 years? [6 marks]

Total Marks [25 marks]

Module 1

Section 1

Question 3

Amelia runs a bakery and recently decided to refurbish her shop. She entered into a contract with Oliver of Gourmet Interiors Limited for the supply of custom-made marble countertops. Oliver handed Amelia a written 'Note' describing the countertops and specifying the price of £250 per slab. This is the first time that Amelia has spoken to Oliver as she had not refurbished her bakery before.

On the front of the Note was a reference, 'See back of this page.' On the back were 30 clauses, one of which included the following:

'Clause 15. The customer must pay any extra sum if a different quality marble needs to be used in the event that there are supply issues prior to the date of delivery.'

Amelia told Oliver to proceed with the delivery, and 8 slabs were delivered to the bakery, although one of the slabs is cracked. Neither Oliver nor Amelia signed the Note.

Amelia also entered into a second contract with Ben, a contractor, to install the countertops and repaint the bakery's interior for £5,000, and a third contract with Sophie for ongoing maintenance after the refurbishment was completed.

Ben installed the countertops, including the cracked slab, but failed to repaint part of the bakery's seating area. When Amelia asked him to complete the work, Ben stated that he was too busy. As a result, Amelia had to hire another painter to finish the job at an additional cost of £300. Frustrated, she has refused to pay Ben any part of his contract price.

After the refurbishment, Amelia decided she did not need all the aftercare services and has been ignoring Sophie's calls.

Oliver is now demanding £2,400 from Amelia, citing that he had to go out of his way to find a different marble for the bakery due to supply chain issues, but Amelia insists she is only liable to pay £2,000.

Question 4

Kasim has recently started a new role at The Big Screen Cinema Group. He has had experience working at a different cinema, so when he started at The Big Screen Cinema Group, his manager told him that he did not need to attend their health and safety induction training. The induction training is usually mandatory for those who work at The Big Screen Cinema Group.

A couple of weeks into his new role, Kasim notices that the popcorn machine is nearly empty. He thinks about asking one of his colleagues to show him how to do it, as it is a different model than the one, he is used to, but he feels embarrassed about doing so, and so he decides against it. Unfortunately, in the process of refilling the machine, he catches his finger, which starts bleeding heavily. His manager helps him to bandage it up and then tells him that he should go to the hospital to get it checked out.

Linda, one of the customers waiting in line for popcorn [who is some distance away from Kasim], sees the bleeding and faints. It turns out that Linda has an underlying personality disorder, and she develops a fear of going out in case she witnesses another accident. As a result, she loses her job.

On Kasim's walk to the hospital, he decides to text his wife, letting her know what has happened. While looking down at his phone, he loses his footing and trips over a rock, before landing on his injured hand. The bandaging comes loose, and his hand starts bleeding again. When he gets to the hospital, the doctors advise that the cut is very deep and that he will need to take three weeks off work for it to heal properly.

- a] Advise Kasim whether he has a claim in tort against The Big Screen Cinema Group for his loss of earnings and what would be required to establish to succeed in establishing liability. [12 marks]**
- b] What impact could Kasim's actions have on his claim against The Big Screen Cinema Group. [6 marks]**
- i. failing to ask for help from a colleague: and**

ii. **falling on his injured hand?**

c] **Advise The Big Screen Cinema Group whether they could be liable for [7 marks]
Linda's loss of earnings.**

Total Marks

[25 marks]

Question 5

Minah owns a farmhouse on the coast of England. Minah currently has her friend Alexander staying with her in her outhouse building – she is not charging him any rent. Alexander has recently retrained as a violin teacher and has asked Minah if he can begin giving some lessons while he is staying in the outhouse, thinking the area will be quieter than his usual central London apartment and that this will be a good place to launch his new career.

Minah has two neighbours, Vaughan Farm and Arabella Farm. Vaughan Farm breeds cattle for the food market – their business has been going for over 20 years. Arabella Farm grows house plants for sale. They are currently expanding operations and so are building a new greenhouse on their farm. Operations have fallen behind schedule, so construction is taking place from 5am until past 11pm every day [including weekends] to get the greenhouse built in time and not lose out on any future sales.

The neighbouring farms are both currently causing problems. Firstly, when the wind blows in a certain way, the smell from Vaughan Farm makes it unbearable for Minah to sit outside in her garden. Secondly, the noise from the construction of the greenhouse is making it impossible for Alexander's students to concentrate on their violin lessons, and so many students begin cancelling their classes.

- a] **Advise Minah whether she has any claim against Vaughan Farm [6 marks]**

- b] **Advise Minah whether she has any claim against Arabella Farm [6 marks]**

- c] **What problems may Alexander have in establishing a claim against Arabella Farm which Minah will not face? [4 marks]**

Vaughan Farm say they cannot have any liability to Minah because:

- i. Minah has only just bought the property and the problems existed before her ownership and occupation; and**
- ii. the wind is a purely natural event over which they have no control.**

d] Would Vaughan Farm defences have merit based on each of these [5 marks] arguments?

e] If Minah and Alexander succeed in establishing liability against Vaughan Farm and Arabella Farm, what potential remedies will be available to them? [4 marks]

Total Marks [25 marks]

Module 1

Section 1

Question 6

Freddie is driving his car home from the pub, after having had a few pints with his friends. Because he has been drinking, he loses concentration and does not notice a 'Stop' sign at the end of the road, which leads him to bump into Francesca's car. Francesca is not wearing a seat belt at the time.

Francesca is taken to hospital and is seen by Dr Jones, a newly qualified junior doctor. Dr Jones is in a rush to see other patients, and so initially dismisses Francesca, telling her to rest and take over-the-counter pain medication [as is the usual treatment for a head injury]. On her way out, however, Dr Jacobs, a more senior doctor, tells her to come back as she can tell that the injury is more serious. Francesca is diagnosed with severe whiplash and head injuries, meaning that she needs to take a couple of weeks off work.

Francesca works in an office job, however in her spare time, she does weight-lifting and often competes in competitions. As a result of her injuries, she is unable to train for 3 months and is therefore unable to compete in a competition in Paris which was due to take place the following month. She had already booked her flights to Paris which were £400. The competition also had a potential prize money of £200,000. Francesca had been training for a number of years for this competition and was the favourite to win.

Francesca's husband, Dan, is so angry about the incident and the aftermath that he finds out where Freddie lives and manages to gain access to Freddie's garden. He begins trashing the place. Freddie has recently been having work done on his garden and there are various loose stones which need to be fixed. Dan slips on one of the loose stones and drops his phone, which smashes.

- a] **Advise Francesca what she will be required to establish in any claim [6 marks] she has against Freddie for her loss of earnings?**

- b] **What defences may Freddie have against Francesca's claim for [3 marks] losses?**

- c] **If Dr Jacobs had not intervened, would Dr Jones have breached his [4 marks] duty of care?**

d] Advise Francesca on the likelihood of recovering the cost of flights [5 marks] and/or the potential prize money?

e] Advise Freddie whether he is liable for the damage to Dan's phone. [7 marks]

Total Marks [25 marks]

Points for Answer

Module 1

Section 1

Question 1:

a)		Marks
	Ethan will be legally bound to purchase the Pokémon card from Liam if a legally binding contract has come into existence between Ethan and Liam.	[1 mark]
	This requires an agreement between the parties consisting of offer, acceptance, consideration, and an intention to create legal relations.	[1 mark]
	The details provided by Liam to Ethan appear to contain an offer. There is a clear expression of willingness on the part of Liam to enter into a contract with Ethan for the sale of the card for a specific price.	[2 marks]
	Ethan's reply is not an acceptance because he does not agree to Liam's terms. Acceptance must exactly fit the offer (<i>Jones v Daniel 1894</i>).	2 marks]
	A counter-offer occurs where the offeree attempts to vary the terms of the offer or to introduce new terms that do not exactly match the original offer.	[1 mark]
	Typically, a counter-offer destroys the original offer (<i>Hyde v Wrench (1840)</i>).	[1 mark]
	Ethan's reply appears to constitute a counter-offer to pay a lower price for the card, and this in turn destroys Liam's original offer.	[1 mark]
	Mia's email appears to be an attempt to revoke the counter-offer on Ethan's behalf.	[1 mark]
	An offer can be validly withdrawn provided the withdrawal is unequivocal and communicated before acceptance takes place.	[1 mark]
	It does not make a difference that Mia emailed Liam on Ethan's behalf, as notification by a third party of an offer's withdrawal is effective (<i>Dickinson v Dodds (1872)</i>).	[2 marks]
	Notices sent to a business should be treated as having been communicated when they ought to have come to the attention of an appropriate member of staff acting in a normal and competent business-like manner (<i>The Brimnes 1975</i>).	[2 marks]
	Messages transmitted by instantaneous means during ordinary business hours would normally be regarded as having been communicated upon receipt (<i>Brinkibon v Stahag Stal GmbH (1983)</i>).	[2 marks]
	Strong candidates ought to discuss whether it is reasonable to expect Liam to have picked up the email during business hours, particularly if he has limited personnel working at his shop (<i>The Brimnes 1975</i>).	[1 mark]
	If Ethan validly withdrew his offer before acceptance took place, Ethan would not be legally bound to purchase the card from Liam. Credit also given to recognition that the Postal Rule does not apply to instantaneous communication.	[2 marks]
	Total	[20 marks]
b)	Provided Liam's letter of acceptance is correctly sent and addressed, its content will be deemed to have been communicated to Ethan at the time of sending, i.e., at 3 p.m. (<i>Adams v Lindsell (1818)</i>)	[3 marks]
	The postal rule does not apply to instantaneous communication, but the principle of communication upon sending may still be relevant.	[1 mark]
	Therefore, if Mia had waited until 5 p.m. to send the email, there would likely be a valid contract between Ethan and Liam, as Liam's acceptance would have been communicated before the withdrawal.	[1 mark]
	Total Marks	[25 Marks]

Question 2:

a)		Marks
	Liquidated damages could be a penalty clause if not a genuine estimate of the level of damages.	[1 mark]
	The test as to whether they are a genuine estimate of the level of damages is not whether the LDs are reasonable, but whether there is a substantial discrepancy between the level of damages stipulated in the contract that was likely to be suffered. The test is objective. (Alfred McAlpine Capital Projects v Tile Box Ltd (2005)) Good candidates will refer to the Supreme Court ParkingEye v Beavis [2015] UKSC.	[2 marks]
	Candidates should provide a reasonable view on whether the £300,000 sum of LDs was likely to be suffered due to the late opening of the Oxford course. Factors could include that the sum approx 60% of the value of the works and that it was a new course, which might have taken some time to build up membership.	[2 marks]
	Total	[5 marks]
b) i	Candidates should demonstrate a good understanding of the requirement of ‘consideration’ in the formation of a contract. Candidates should identify that whilst there is an express written term to pay £18,000, there is the potential equitable remedy available of rectification to reflect their contractual intention.	[1 mark]
	Given that both parties missed the error in the contract, there appears to have been a common mistake where both parties mistakenly believed that the document gave effect to their common intention of agreeing £8,000.	[1 mark]
	The requirements for rectification are that the parties had a common continuing intention in respect of a particular matter in the contract, there was an outward expression of accord, the intention continued at the time of the execution of the instrument sought to be rectified, and by mistake, the instrument did not reflect that common intention. Candidates should comment on whether these appear to be satisfied – they likely are.	[3 marks]
	The parole evidence rule does not apply to rectification, so Fairway Leisure should be able to rely upon the pre-contractual emails (Joscelyne v Nissen (1970)).	[2 marks]
	Total	[7 marks]
ii)	Fred is under an existing contractual duty to complete the works by 15th March.	[1 mark]
	Performance of an existing contractual duty owed to the other party shall not be sufficient consideration (<i>Stilk v Myrick (1809)</i>) (1 mark) , and Fred has provided no extra consideration to complete the works on time. (1 mark)	[2 marks]
	However, if performance of an existing contractual duty confers a practical benefit on the other party and the contract is entered into freely without duress or fraud, then this can constitute valid consideration, and the promise to make a bonus payment is therefore enforceable (<i>Williams v Roffey Bros & Nicholls (Contractors) Limited (1991)</i>).	[2 marks]
	Candidates should apply this to the facts to reach a conclusion. Given that the Cambridge course will be able to host the tournament, arranged after the initial contract with Fred, and obtain the increased profits, and there was no evidence of duress or fraud, then Fairway Leisure appears liable to pay the extra £2,000.	[2 marks]
	Total	[7 marks]

c)	A binding contract requires consideration.	[1 mark]
	Consideration is a benefit to the promisor and a detriment to the promise (<i>Currie v Misa (1875)</i>).	[1 mark]
	Consideration need not be adequate but must be sufficient (i.e., have some value), and the courts will generally not be concerned with whether it constitutes a good bargain (<i>Currie v Misa (1875)</i>).	[2 marks]
	Applying this to the scenario, Fairway Leisure and Fred appear free to enter into the contract and agree to provide free rounds of golf in consideration of the works. The contract will therefore still be enforceable.	[2 marks]
		[6 Marks]
	Total Marks	[25 marks]

Question 3:

a)	The Note is not signed, so it is not incorporated by signature. As this is the first time that Amelia and Oliver are engaging into a contract, the terms are unlikely to be incorporated by course of dealings.	[2 mark]
	The clause may nevertheless be incorporated by reasonable notice. The notice is given before the formation of the contract. The clause is likely to be contained in a contractual document as it is described as a 'Contract Note.' The clause may be incorporated by notice, given the reference to 'See Back,' even if Amelia does not actually read it.	[3 marks]
	Onerous clauses, however, require additional steps to be drawn to the other party's attention. The clause may be regarded as an onerous one, as the price is a significant term, so clear notice should be given of any right to vary it.	[3 marks]
	As no special attention has been brought to the clause, it may therefore not form part of the contract.	[1 mark]
		[9 marks]
b)	Terms may be implied into a contract: By statute, such as by the relevant sections of the Sale of Goods Act 1979 or the Supply of Goods and Services Act 1982; By custom, for example of a location or trade practice; 'Implied in law,' by the courts as a matter of policy, e.g. as in <i>Liverpool City Council v Irwin (1976)</i> ; 'Implied in fact,' by the courts on the facts of a case, e.g. as in <i>The Moorcock (1889)</i> .	[2 marks]
	The following terms are implied into the contract by the Sale of Goods Act 1979: that the goods are of satisfactory quality; that the goods are reasonably fit for purpose; that the goods correspond with any description by which they are sold.	[3 marks]
		[5 marks]
c)	Ben's painting is not precise and exact, so he has not performed the contract precisely and exactly. Without any exception to the 'entire performance' rule (<i>Cutter v Powell [1795]</i>), Amelia would not have to pay. However, an exception to the 'entire performance' rule exists where the doctrine of substantial performance applies.	[3 marks]
	He may sue for performance if he has substantially performed the contract, e.g. <i>Hoenig v Isaacs (1952)</i> , <i>Bolton v Mahadeva (1972)</i> . On the facts, only part of the seating area in the entire bakery has not been completed as required in the contract. He is therefore likely to have substantially performed the contract.	[2 marks]
	His right to payment is, nevertheless, subject to a deduction in respect of the defects, by way of set-off or counterclaim. He will therefore only be entitled to £4,700 (£5,000 - £300).	[2 marks]
		[7 marks]

d)	Sophie has not completed the work, so she is not entitled to sue for the price of it.	[1 mark]
	However, she has been prevented from performing the contract by Amelia. Whilst she cannot sue for the contract sum, she may sue for the value of the work she has done so far, i.e., a quantum meruit. Alternatively, she may sue in contract for the loss of profit caused to her by Amelia's repudiation of the contract (<i>Planche v Colburn</i> [1831]).	[3 marks]
		4 marks
	Total	25 marks

Section 2

Question 4

a)	Candidates should identify that this claim concerns employer's liability (1 mark). In order for an employer to be liable, an employer/ employee relationship must first be established. It is clear from the question that Kasim is a staff member, and not a subcontractor (1 mark)	[2 marks]
	In order to succeed in a claim for employer's liability, Kasim must demonstrate (i) duty, (ii) breach, (iii) causation and (iv) loss	[1 mark]
	Employers owe a duty of reasonable skill and care regarding the safety of their employees	[1 mark].
	<u>Duty of Care</u> The Big Screen Cinema Group have a duty to provide safe premises, plant, equipment, machinery and material (1 mark) and a duty to provide a safe system of work (1 mark). This extends to ensuring that employees have had the relevant health and safety induction when they start at The Big Screen Cinema Group and that they are adequately supervised in situations (1 mark).	[3 marks]
	<u>Breach of Duty</u> Candidates should consider whether The Big Screen Cinema Group breached their duty of care: <ul style="list-style-type: none"> The standard that The Big Screen Cinema Group need to meet is a reasonably competent employer (1 mark). The employee was dealing with potentially dangerous equipment and the Big Screen Cinema Group did not provide him with the relevant health and safety training (1 mark). Breach of duty is therefore likely overall (1 mark). 	[3 marks]
	<u>Causation / Loss</u> Candidates should determine whether The Big Screen Cinema Group's breach of duty caused Kasim's losses in fact. Applying the 'but for' test (<i>McWilliams v Arrol</i> (1962) or <i>Barnett v Chelsea & Kensington Hospital Management Committee</i> (1969)), The Big Screen Cinema Group will be liable for Kasim's injuries because but for The Big Screen Cinema's breach of duty, it is likely that Kasim would not have suffered his injuries (1 mark). Kasim's hand injury was foreseeable and not too remote, using the principles from <i>Hadley v Baxendale</i> (1854) (1 mark).	[2 marks]
		[12 marks]
b)	Regarding point (i), candidates should identify that The Big Screen Cinema Group could try and claim that Kasim was at least partly to blame for his losses by raising the argument of contributory negligence (Law Reform (Contributory Negligence) Act 1945) (1 mark). Kasim has worked at a cinema before and so would likely be aware of the potential dangers of the popcorn machine (1 mark), but he did not ask his colleagues	[4 marks]

	for help because he was embarrassed (1 mark). However, contributory negligence would not extinguish The Big Screen Cinema Group’s liability altogether, it would only reduce it (1 mark).	
	In relation to point (ii), candidates should note that the actions of Kasim texting while walking to the hospital, tripping over a rock and landing on his injured hand could represent a <i>novus actus interveniens</i> (1 mark) that breaks the chain of causation of The Big Screen Cinema Group’s negligence for at least some of the losses, if it were found that his injury had been worsened as a result of falling over and landing on his injured hand (1 mark).	[2 marks]
		[6 marks]
c)	Candidates should identify that Linda has a potential claim in negligence against The Big Screen Cinema Group (1 mark). The elements of duty and breach are as set out above and there is no need for candidates to repeat these.	[1 mark]
	<p><u>Causation / Loss</u> Applying the ‘but for’ test (<i>Barnett v Chelsea & Kensington Hospital Management Committee</i> (1969)) (1 mark), The Big Screen Cinema Group will be liable for Linda’s injuries because but for their breach of duty in failing to provide Kasim with adequate training, therefore causing him to get his hand trapped and start bleeding, it is likely that Linda would not have suffered her injuries (1 mark).</p> <p>Pursuant to the ‘eggshell skull rule’, a defendant must take the victim as they find them (<i>Smith v Leech Brain</i> (1962)). The Big Screen Cinema Group must therefore take Linda as she is with her condition and cannot avoid liability for her losses (1 mark).</p> <p>Candidates should note that this is a psychiatric injury rather than a physical injury (1 mark).</p> <p>Candidates should discuss the facts which will include discussion of ‘underlying personality disorder’ and ‘some distance away’. Candidates should come to a reasoned conclusion as to whether the losses are reasonably foreseeable and not too remote (2 marks).</p>	[6 marks]
		[7 marks]
	Total Marks	[25 marks]

Question 5:

a)	<p>Minah may have a claim against Vaughan Farm in the tort of private nuisance (1 mark). Candidates should identify that a direct proprietary interest in the land affected is required (<i>Hunter v Canary Wharf Ltd</i> (1997)) (1 mark). Minah is the owner of the land, so she has sufficient interest to bring a claim (1 mark).</p> <p>Candidates should identify that the smell from Vaughan Farm is a potential nuisance through unreasonable interference (1 mark). Candidates should consider whether the interference is unreasonable – probably not, having regard to the character of the area, given Minah lives in a farmhouse, and there is likely little that could be done (1 mark). Further, given that the farm has been in business for over 20 years, Vaughan Farm may have acquired a right to commit any nuisance anyway through prescription as an easement (<i>Fay v Prentice</i> (1845)) (1 mark).</p>	[6 marks]
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b)	<p>Minah may have a claim against Arabella Farm in the tort of private nuisance (1 mark). Minah is the owner of the land, so she has sufficient interest to bring a claim (1 mark).</p> <p>Candidates should identify that the noise from Arabella Farm is a potential nuisance through unreasonable interference with the enjoyment of the property/ loss of amenity (1 mark). Candidates should consider whether the interference is unreasonable – likely due to the hours of construction operations (1 mark) and the fact that they are taking place on weekends too (1 mark). While Arabella farm have a genuine reason for the long hours and weekend construction in falling behind on schedule in not wanting to lose out on potential sales, this is unlikely to be found reasonable (1 mark).</p>	[6 marks]
c)	<p>Alexander does not have a direct proprietary interest in the land affected as a free-staying guest (1 mark). He will therefore not have standing to make a claim against Arabella farm (1 mark).</p> <p>Secondly, it could be found that Alexander’s business has a particular sensitivity to building operations of Arabella Farm (1 mark) – violin lessons are not ordinary use of the land (<i>Robinson v Kilvert</i> (1889))(1 mark).</p>	[4 marks]
d)	<p>In relation to point i), Vaughan Farm are suggesting that Minah has “come to” the nuisance (1 mark) – this defence has failed previously and will not assist them if they have caused a nuisance (<i>Miller v Jackson</i> (1997)) (1 mark).</p> <p>In relation to point ii), Vaughan Farm are suggesting that an Act of God caused the nuisance only, and that this should provide them with a defence as succeeded in <i>Nichols v Marsland</i> (1876) (1 mark). This case can clearly be distinguished, however, because the wind is not a particularly great or unforeseeable event, and wind blowing is no more than normal (1 mark). In any event, the arguments raised in <i>Nichols</i> were doubted in <i>Greenock Corp v Caledonian Rly</i> (1917) (1 mark).</p>	[5 marks]
e)	<p>Candidates should identify that Minah and Alexander could claim for:</p> <ul style="list-style-type: none"> a) an injunction to stop Vaughan Farm and Arabella Farm from causing the nuisance caused by each (1 mark); and/or b) damages to compensate Minah and Alexander for loss of amenity (1 mark) and to cover the loss of Alexander’s profits (1 mark), although query whether Alexander’s losses were reasonably foreseeable in the circumstances (1 mark). 	[4 marks]
Total Marks		[25 marks]

Question 6:

a)	<p>Candidates should identify that Francesca has a claim in negligence against Freddie (1 mark). In order to succeed in a claim for negligence, Francesca must demonstrate (i) duty; (ii) breach; (iii) causation; and (iv) loss (1 mark).</p>	[2 marks]
	<p><u>Duty of Care</u> Freddie owed Francesca a duty of care pursuant to the <i>Donoghue v Stevenson</i> (1932)/ <i>Caparo Industries plc v Dickman</i> (1990) line of authorities; a duty of care to other road users is an established category (1 mark).</p>	[1 mark]
	<p><u>Breach of Duty</u> Freddie undoubtedly breached this duty of care by driving whilst drunk (1 mark).</p>	[1 mark]
	<p><u>Causation/ Loss</u></p>	[2 mark]

	Freddie caused Francesca’s injuries and subsequent losses (1 mark) and those losses were of a foreseeable type and not too remote (1 mark) .	
b)	Candidates should identify that Freddie can claim that Francesca was at least partly to blame for her losses by raising the argument of contributory negligence (Law Reform (Contributory Negligence) Act 1945) (1 mark) . Failure to wear a seat belt has been held to amount to contributory negligence (<i>Froom v Butcher</i> (1976)) (1 mark) . However, contributory negligence in this case shall only reduce Freddie’s liability and not extinguish it altogether (1 mark) .	[3 marks]
c)	Dr Jones will have breached his duty of care if he acted outside a reasonable body of professional opinion, as per the test in <i>Bolam v Friern Hospital Management Committee</i> (1957) (1 mark) . Candidates should provide a reasoned opinion, which may include the fact that the question refers to rest and taking over-the-counter pain medication being the usual advice (<i>Watt v Hertfordshire CC</i> (1952)) (1 mark) but no allowance will be made for an inexperienced doctor and it was clear that Dr Jones was acting in a hurry (1 mark) – breach of duty is therefore likely (1 mark) .	[4 marks]
d)	Candidates should identify that the two types of loss (the cost of the flight and potential prize money) are pure economic loss (1 mark) . The law of negligence does not give the same level of protection to economic interests as it does to physical interests (<i>Hedley Byrne v Heller</i>) (1 mark) . Economic losses can be recovered where they are consequential upon physical damage (1 mark) . Candidates should discuss whether the cost of the flight was a foreseeable type of loss and not too remote and reach a reasoned conclusion (1 mark) . Candidates should recognise that the potential prize money is not foreseeable and is too remote to be claimed (1 mark) .	[5 marks]
e)	Freddie is an “occupier” under the OLA 1957 and the Occupiers Liability Act 1984 (“OLA 1984”), as someone who has sufficient degree of control over the premises (1 mark) . Dan is not a “visitor” but a trespasser, as he did not have permission to visit Freddie’s garden – therefore, the OLA 1984 applies (1 mark) <u>Duty of Care</u> Section 1(3) of the OLA 1984 has three conditions which must all be satisfied in order to establish that an occupier owes a duty to a trespasser (1 mark) . Applying these requirements to the facts, candidates should consider: <ul style="list-style-type: none"> • whether Freddie aware of the danger or has reasonable grounds to believe that it exists – presumably Freddie knows of the works being done to his garden (1 mark); • whether Freddie had reasonable grounds to believe that a trespasser would be in his garden, whether or not they had lawful authority to do so – not likely that Freddie knew about this, Dan did not have the lawful authority to be there (1 mark); and • whether the risk was one against which Freddie in all the circumstances of the case may reasonably be expected to provide some protection – this is not likely given that Freddie did not know that Dan was there (1 mark). <p>The OLA 1984 also applies to <u>persons</u> rather than objects – Freddie would have no liability for Dan’s phone under the OLA 1984 (1 mark). A duty of care is therefore not likely to be owed to Dan.</p>	[7 marks]
	Total Marks	[25 marks]

Institution of Civil Engineers

Examination for the ICE Certificate in Law and Contract Management (CLCM) 2025

Module 2: NEC 4 (English and Scots Law)

Tuesday 17th June 2025
Time permitted: 10:00 to 13.20 (3 hours 20 minutes)

There are four questions in Section 1 and four questions in Section 2.

Answer any **two** questions from **each Section**; a total of **four** questions.

Please answer Section 1 and Section 2 Word (unless agreed otherwise) using separate headings for each section.

All questions carry equal marks.

References to contract clause numbers, cases and legislation should be quoted where possible..

Please indicate on your word document if your answers will be based on Scots Law.

Reference to documents during the examinations

Copies and published amendments of NEC4 Engineering and Construction Contract (ECC), NEC4 Engineering and Construction Subcontract (ECS), Statutes, CDM Regulations and CESMM4 may be taken into the Examination. The use of the internet during this exam is prohibited.

Institution of Civil Engineers disclaimer; all names and characters in the question papers are fictional and any resemblance to any actual persons or businesses is purely coincidental.

Section 1

Question 1

You are the *Project Manager* for a large commercial development under NEC4 ECC Option C contract. The Scope includes drawings and specifications and requires *Contractor* design for M&E installations to the development. All other works are designed by the *Client*.

The drawings show the surface water pipework to be uPVC, but the specification refers to precast concrete pipes.

The *Contractor* queries the pipe material to be used in the works due to the difference between the Scope documents.

- a) **What clauses are relevant and how should you as *Project Manager* proceed?** [4 marks]

Subsequently, it is identified that the *Contractor's* design for the mechanical installations does not comply with the *Client's* requirements stated in the Scope. The *Client* is keen that its Scope is complied with. The *Project Manager* instructs the *Contractor* to change its design.

- b) **What are the relevant clauses that deal with this and does the *Contractor* have to change its design?** [5 marks]

The *Contractor* says that its design has been approved as part of its tender and therefore any change to its design will be a compensation event.

Following the *Project Manager's* instruction, the *Contractor* notifies a compensation event to cover the change to its design.

- c) **Is the *Contractor* correct and how should the *Project Manager* respond? Also, what are the relevant clauses?** [5 marks]

The *Contractor* then requests that the *Client* uses the *Contractor's* design, with the *Client's* Scope being changed to match the *Contractor's* design in order to deliver cost savings

- d) **What clauses would deal with this scenario and how might this be valued under the contract? If this were an option A contract, how would the cost savings be valued?** [6 marks]

On a separate issue, the *Contractor* has identified an area off site for stockpiling topsoil and some soil stabilisation works but wants to ensure that it gets paid for time spent working within this area off site.

- e) **How can the *Contractor* ensure it gets paid for any works done at this area off site?** [5 Marks]

Total Marks [25 Marks]

Section 1

Question 2

A contract is awarded for some infrastructure works under an NEC4 ECC Option B with secondary Option X16 and Y(UK)2 incorporated. The period for payment stated in the Contract Data part one is 21 days after the date on which the payment becomes due.

Part of the works includes the construction of a bridge, and the Scope details the concrete to be used in the construction of the bridge is to be 50N concrete.

After the bridge is constructed, the *Supervisor* overhears some of the *Contractor's* staff discussing the ordering of the concrete for this bridge abutment and the *Supervisor* is concerned that incorrect specification of concrete has been ordered.

- a) **What options are available to the *Supervisor* and the *Project Manager*?** [5 marks]

It is discovered that the *Contractor* has ordered 40N concrete for this bridge in error.

- b) **Discuss the contractual position and some options available to the *Contractor* and *Project Manager*** [8 marks]

Part of the works is for the installation of drainage adjacent to the new bridge. The method of measurement identified in the Contract Data is CESMM. The *Contractor* informs the *Project Manager* that the Bill of Quantities for some on the drainage has not been prepared in accordance with CESMM and there are items missing in the Bill of Quantities.

- c) **Is the *Contractor* entitled to a compensation event?** [5 marks]

The *Contractor* submits its next application for payment to the *Project Manager* before the next assessment date which is 1 July.

- d) **Discuss the difference between the amount due and the Price for Work Done to Date?** [4 marks]

- e) **What is the final date for payment?** [3 marks]

Total Marks [25 marks]

Section 1

Question 3

A contract is awarded for the installation of new foul sewer infrastructure works including new pipelines, manholes and pumping stations. The contract is NEC4 ECC option C.

The *Client* requires additional lengths of pipework and manholes to be installed and a compensation event [CE01] is implemented at £95,000. The *Contractor* completes the works associated with CE01 and its actual Defined Cost plus Fee is £62,500.

- a) **How much should the *Contractor* be paid for CE01 and what are the relevant clauses?** [6 marks]

Several months later, there is an issue with water ingress to some manholes along the route of the pipeline. The *Contractor* accepts responsibility for the water ingress and carries out remedial works to correct the issue which is successful.

In the *Contractor's* next payment application, it submits claim for the costs associated with rectifying the manholes. The *Project Manager* does not accept these costs and does not include the costs in the certificate.

- b) **Is the *Project Manager* correct in refusing to certify payment for costs associated with correcting the issue of water ingress to the manholes?** [5 marks]

In the subsequent application for payment, the *Contractor* includes costs for two quantity surveyors who have started working on this project but are working from home. The *Contractor* states that these quantity surveyors are necessary to provide the works and are therefore an applicable cost under option C contract.

- c) **Is the *Contractor* entitled to payment for these quantity surveyors and how might the *Contractor* and *Project Manager* deal with this?** [8 marks]

The *Contractor* also includes costs for electricity charges to its site compound in its payment application.

- d) **Is the *Contractor* entitled to payment for these electricity charges?** [2 marks]

Towards the end of the project, the *Client* requires the works completed earlier and notifies the *Project Manager* to instruct the *Contractor* to accelerate the works.

- e) **How can the *Project Manager* and *Contractor* deal with the *Client's* requirement for an earlier Completion date?** [4 marks]

Total Marks [25 marks]

Section 1

Question 4

A contract for a new school has been awarded under NEC4 option A with secondary options X7, X10, X15, X21 incorporated. The Completion Date is 30 April 2025.

Shortly after the Contract Date, the *Client* realises that it forgot to include retention in the contract and instructs the *Project Manager* to include retention when assessing *Contractor* payment applications.

- a) **How can retention be included in the assessment of the amount due to the *Contractor*?** [5 marks]

The *Client* is anxious to start to use parts of the new school even though the *Contractor* has not achieved Completion by the Completion Date. To allow the school staff to start to prepare some classrooms, the *Client* takes possession of part of the building on 30 May 2025, whilst the *Contractor* is working on the remainder of the building.

- b) **What clauses deal with the *Client* starting to use parts of the building?** [3 marks]

The *Contractor* is not happy that the *Client* is starting to use parts of the building as this is causing disruption to the *Contractor's* planned activities. The *Contractor* notifies a compensation event to the *Project Manager*.

- c) **How should the *Project Manager* respond?** [5 marks]

The *Contractor* is not happy that the *Client* is starting to use parts of the building as this is causing disruption to the *Contractor's* planned activities. The *Contractor* notifies a compensation event to the *Project Manager*.

- d) **As the *Client* is now using part of the building, how does this affect the *Contractor's* liability?** [2 marks]

- e) **As the *Contractor* is now late in achieving Completion, how might this affect the amount due to the *Contractor*, now that the *Client* has started to use some of the building?** [5 marks]

Separately, the *Contractor* wishes to propose that the *Client* changes its Scope to include a tracial-type roof which will result in significant savings over the life span of the roof.

- f) **How might the *Contractor* propose this and how should the *Project Manager* respond?** [5 marks]

Total Marks 25 marks

Section 2

Question 5

A *Contractor* has recently commenced working on an NEC4 ECC contract using Option B. Setting things up has been quite hectic and unfortunately the *Contractor* does not submit the first programme for acceptance by the date stated in the Contract Data and the first assessment date was yesterday.

- a) **What does the contract say about this and what should the *Project Manager* do now?** [8 marks]

It also appears the *Contractor* completely forgot to submit the application for payment and rushes this through, one day after the assessment date.

- b) **What does the contract say about this and what should the *Project Manager* do now?** [6 marks]

Things calm down a little, an Accepted Programme is put in place and the *Contractor* submits a second application for payment in good time and is paid in full. However, the payment is late, by one week.

- c) **How should the *Project Manager* deal with this?** [3 marks]

It also transpires that there was an arithmetical error in the *Contractor's* application, which was not spotted or corrected by the *Project Manager*. This resulted in a significant over-payment to the *Contractor*.

- d) **How does the contract deal with this this?** [4 marks]

A future application for payment contains an item flagged as 'on account' as the compensation event has not yet been implemented.

- e) **Can payment be made for this?** [4 marks]

Total Marks [25 marks]

Section 2

Question 6

A contract is awarded using NEC4 ECC Option C with secondary Options X1 and X20. Within Contract Data part one there were some matters listed which the *Client* wanted to be included in the Early Warning Register. One such matter was 'Disruption by protestors' as the project had received some local objections. The *Contractor* added no further matters within Contract Data part two that it wanted to be included in the Early Warning Register.

- a) **What is the role of the Early Warning Register and what information does it contain?** [4 marks]
- b) **Who creates and upkeepes the Early Warning Register, when is it reviewed and is there a maximum number of columns the Early Warning Register should have?** [7 marks]

As it happened, there were a number of peaceful protests during the *works* which did cause the *Contractor* to be disrupted as they slowed the workforce getting into the Site. The *Contractor* notified a compensation event under 60.1(14) stating this was a *Client's* liability by virtue of listing this in the Contract Data part one.

- c) **As Project Manager, how do you respond to this?** [4 marks]

Part way through the contract, the *Client* wants to alter one of the Key Performance Indicators because the *Client* considers that the target stated in the Incentive Schedule is too difficult to achieve.

- d) **Does the contract allow this?** [4 marks]
- e) **What is the process for including, reporting and paying Key Performance Indicators?** [6 marks]
- Total Marks [25 marks]**

Section 2

Question 7

You're a contractor on an NEC4 Engineering and Construction Contract (ECC) main Option C. The *Client* has designed the *works*. Work is proceeding well until the *Contractor* discovers an uncharted cable but fortunately does not damage it.

- a) **What should the *Contractor* do here?** [9 marks]

The solution is to simply protect the cable with concrete and not move it. As this is a *Client* designed scheme, this change will need to be put into effect by the *Project Manager*.

- b) **What should the *Project Manager* do here?** [4 marks]

4 days pass and still the *Contractor* awaits formal communication. They know what is required, but not the exact dimensions.

- c) **Can the *Contractor* proceed at risk with the approximate solution?** [4 marks]

The next day a revised programme is due to be submitted.

- d) **Should the *Contractor* show the likely additional works on the revised programme?** [4 marks]

The next day the instruction is given.

- e) **Must the *Contractor* obey this instruction and can clause 65 proposed instruction still be used here?** [4 marks]

Total Marks [25 marks]

Section 2

Question 8

A *Contractor* has recently been awarded an NEC4 ECC contract using Option A incorporating secondary Option X5, X6 and X7. Time is of the essence for this project as it involves replacement of a bridge and parts of a local road damaged during recent severe storms and floods.

The first programme is submitted by the *Contractor* and shows everything required in clause 31.2. Planned Completion is shown as being before the Completion Date and the *Client* is delighted.

- a) **If the *Project Manager* accepts this programme, does the Completion Date change?** [3 marks]

This becomes the Accepted Programme. A few days later, the *Project Manager* notices a significant error in the programme, the piling works have been incorrectly programmed. This will delay planned Completion by 2 months, pushing planned Completion after the Completion Date. The *Client* is not happy.

- b) **What should the *Project Manager* do next?** [5 marks]

No mitigation measures can solve the problem, and the *Client* considers the Accepted Programme stands as a promise so the *Contractor* must achieve the earlier planned Completion date submitted by the *Contractor* and accepted by the *Project Manager*.

- c) **Is the *Client* correct and what should the *Project Manager* do with this programme?** [6 marks]

Good progress is made and the *Contractor* claws back some of the delay but then some physical conditions are encountered which result in an implemented compensation event changing the Completion Date to 4 weeks later.

- d) **If the *Contractor* managed to achieve Completion before the revised Completion Date, would they still get a bonus?** [7 marks]

- e) **Is there any way to bring forward the Completion Date here and would this guarantee earlier Completion?** [4 marks]

Total Marks [25 marks]

Points for Answer

Module 2

Section 1

	Section 1– Points for answer	
	Question 1	
a)	What clauses are relevant and how should you as <i>Project Manager</i> proceed?	
	The <i>Contractor</i> should notify the <i>Project Manager</i> of the inconsistency in the Scope documents and the <i>Project Manager</i> states how the matter should be resolved. [17.1]	[1 mark]
	Notification should be issued in accordance with communication provisions [13.1, 13.2, 13.7]	[2 marks]
	<i>Project Manager</i> should give an instruction to change the Scope [14.3]	[1 mark]
	Total	[4 marks]

b)	What are the relevant clauses that deal with this and does the <i>Contractor</i> have to change its design?	
	The <i>Project Manager</i> should notify the <i>Contractor</i> of the inconsistency in the <i>Contractor's</i> design [17.1]	[1 mark]
	<i>Project Manager</i> should instruct the <i>Contractor</i> to change its design [14.3]	[1 mark]
	Scope includes “instruction given in accordance with the contract” [11.2(16)]. <i>Contractor</i> obeys an instruction [27.3]	[2 marks]
	The <i>Contractor</i> provides the works in accordance with the Scope [20.1]	[1 mark]
	Total	[5 marks]

c)	Is the <i>Contractor</i> correct and how should the <i>Project Manager</i> respond? Also, what are the relevant clauses?	
	No, the <i>Contractor</i> is not correct.	[1 mark]
	Any acceptance by the <i>Project Manager</i> does not change the <i>Contractor's</i> obligation to provide the works or liability for its design. There is no concept of approval of <i>Contractor's</i> design. [14.1]	[1 mark]

	Following the notification of compensation event, the <i>Project Manager</i> should respond within one week [61.4] . The <i>Project Manager's</i> response should be that it is not one of the compensation events in the contract [61.4] .	[2 marks]
	A change to the <i>Contractor's</i> design to comply with the <i>Clients</i> Scope is not a compensation event to [60.1(1), second bullet point]	[1 mark]
	Total	[5 marks]

d)	What clauses would deal with this scenario and how might this be valued under the contract?	
	Clause 16.1 , the <i>Contractor's</i> proposal to change the <i>Client's</i> Scope is submitted to the <i>Project Manager</i>	[1 mark]
	The <i>Project Manager</i> responds within 4 weeks, as per cl. 16.2 , either accepting proposal, instructing quotation for proposed instruction or stating that the proposal is not accepted.	[2 marks]
	For option A contract, the assessment of the <i>Contractor's</i> proposal is in accordance with clause 63.12 and the Prices are reduced by multiplying the effect of the compensation event by the <i>value engineering percentage</i> . The value engineering percentage is stated in Contract Data part 1 and the default is 50%. Assessment is then a change to the Activity Schedule [63.14]	[3 marks]
	Total	[6 marks]

e)	How can the <i>Contractor</i> ensure it gets paid for any works done at this area off site?	
	Working Areas are defined in 11.2(20) and this area for topsoil storage and soil works falls within the definition of Working Areas.	[1 mark]
	Working Area is important for payment of Defined Cost [11.2(31)] as per Schedule of Cost Components	[2 marks]
	<i>Contractor</i> can submit proposal to add this area to the Working Area [16.3] and it should be accepted by the <i>Project Manager</i> .	[2 marks]
	Total	[5 marks]

	Section 1– Points for answer	
	Question 2	
a)	What options are available to the <i>Supervisor</i> and the <i>Project Manager</i>?	
	The <i>Supervisor</i> should inform the <i>Project Manager</i> and request the <i>Project Manager</i> to notify an early warning [15.1]	[1 mark]
	The early warning process should be discussed to include [15.2]. [15.3], [15.4].	[3 marks]
	In the event of incorrect concrete being supplied, need to discuss the options available such as testing of the structure, design checks.	[1 mark]
	Total	[5 marks]

b)	Discuss some options available to the <i>Contractor</i>.	
	The concrete supplied and poured to the bridge abutment is not in accordance with the Scope and is a Defect [11.2(6)]	[1 mark]
	The <i>Contractor</i> is required to correct the Defect, regardless of whether the <i>Supervisor</i> has notified the defect [43.2]	[1 mark]
	The <i>Contractor</i> could propose the acceptance of the defect [45.1]	[2 marks]
	For the <i>Contractor</i> to propose the acceptance of the 40N concrete, it would have to demonstrate that 40N concrete would be adequate for the bridge.	[1 mark]
	If the <i>Project Manager</i> is prepared to consider accepting the Defect, the <i>Contractor</i> provides a quotation for reduced Prices and/or an earlier Completion Date [45.2]	[1 mark]
	If it is acceptable to the <i>Project Manager</i> , the <i>Project Manager</i> changes the Scope, the Prices and the Completion Date accordingly. [45.2] Such a change to the Scope is not a CE, 60.1(1), first bullet point	[2 marks]
	Total	[8 marks]

c)	Is the <i>Contractor</i> entitled to a compensation event?	
	The Bill of quantities is not Scope – 56.1	[1 mark]
	[60.6, first bullet point] – A compensation event arises from correcting the Bill of Quantities to comply with the rules of the <i>method of measurement</i> . [60.6, second bullet point] – A compensation event arises from correcting the Bill of Quantities due to ambiguity or inconsistency	[2 marks]
	[60.7] – <i>Contractor</i> is assumed to have taken the Bill of Quantities as correct	[1 mark]

	[63.15] – A compensation event for work which has no Bill of Quantity item, the change is a new priced item in accordance with <i>method of measurement</i> unless parties agree otherwise	[1 mark]
	Total	[5 marks]

d)	Discuss the difference between the amount due and the Price for Work Done to Date	
	50.3 The amount due is PWDD plus other amounts due to the <i>Contractor</i> , less amounts to be paid by or retained by the <i>Contractor</i> .	[1 mark]
	Some examples of amounts due or to be retained. Advance payment (X14), Bonus for early completion (X6), interest, and Retention (X16), delay damages (X7)	[1 mark]
	[11.2(30)] PWDD is. <ul style="list-style-type: none"> Quantity of work completed in BoQ by rate and Proportion of lump sum completed. Completed work is work without notified Defects the correction of which will delay following work.	[2 marks]
	Total	[4 marks]

e)	What is the final date for payment?	
	Y2.2 The due date is seven days after the assessment date.	[1 mark]
	Y2.2 Final date for payment is 21 days after the due (as stated in Contract Data)	[1 mark]
	The final date for payment is therefore 28 days after the assessment date – 29 July in this instance.	[1 mark]
	Total	[3 marks]
	Total marks	[25 marks]

	Section 1– Points for answer	
	Question 3	
a)	How much should the <i>Contractor</i> be paid for CE01 and what are the relevant clauses?	

	<i>Contractor</i> should be paid £62,500 for CE01.	[1 mark]
	PWDD is forecast Defined Cost plus Fee [11.2(31)]	[1 mark]
	When compensation event is implemented, Prices, Key Dates and Completion Date are changed [66.2]	[1 mark]
	Prices for option C is the total of the Activity Schedule [11.2(32)]	[1 mark]
	The difference between the value of the implemented CE01 and the amount paid for CE01 will be included in the pain/gain calculation [54.1 and 54.2]	[2 marks]
	Total	[6 marks]

b)	Is the <i>Project Manager</i> correct in refusing to certify payment for costs associated with correcting the issue of water ingress to the manholes?	
	No, the <i>Project Manager</i> is not correct. Under option C contract, the <i>Contractor</i> gets paid its costs for correcting Defects.	[1 mark]
	The water ingress to the manholes is a Defect [11.2(6)]	[1 mark]
	<i>Contractor</i> gets paid its Defined Cost plus Fee [11.2(31)]	[1 mark]
	Disallowed Costs [11.2(26)] only includes the correction of Defects after Completion, and the correction of a Defect caused by the <i>Contractor</i> not complying with a constraint in the Scope.	[2 marks]
	Total	[5 marks]

c)	Is the <i>Contractor</i> entitled to payment for these quantity surveyors and how might the <i>Contractor</i> and <i>Project Manager</i> deal with this?	
	Defined Cost is the cost of the components in the Schedule of Cost Components less Disallowed Cost. [11.2(24)]	[2 marks]
	Schedule of Cost Components is used to establish what is an applicable Defined Cost	[1 mark]
	Cost component 1, third bullet point (added in January 2023 amendments) provides for payment of <i>Contractor's</i> people who are working from home, if stated in Contract Data.	[2 marks]
	<i>Contractor</i> may propose to the <i>Project Manager</i> that additional people are assessed as if listed in the Contract Data.	[1 mark]
	<i>Project Manager</i> should assess the costs of the quantity surveyors if they are Providing the Works, and the <i>Project Manager</i> should act as stated in contract [10.1] and in spirit of co-operation [10.2]	[2 marks]
	Total	[8 marks]

d)	Is the <i>Contractor</i> entitled to payment for these electricity charges?	
	Yes, electricity charges to the site compound are an applicable Defined Cost [SCC, 51]	[2 marks]
	Total	[2 marks]

e)	How can the <i>Project Manager</i> and <i>Contractor</i> deal with the <i>Client's</i> requirement for an earlier Completion date?	
	<i>Project Manager</i> cannot instruct an acceleration. <i>Project Manager</i> can only instruct changes to Scope or Key Dates [14.3]	[1 mark]
	<i>Project Manager</i> may propose acceleration to the <i>Contractor</i> . If <i>Contractor</i> is prepared to consider it, <i>Contractor</i> submits a quotation [36.1]	[1 mark]
	If quotation is accepted, Prices, Completion date, key dates are changed and revised programme is accepted. [36.3]	[1 mark]
	Acceleration is only by mutual agreement and costs are not assessed as a compensation event.	[1 mark]
	Total	[4 marks]

	Section 1– Points for answer	
	Question 4	
a)	How can retention be included in the assessment of the amount due to the Contractor?	
	As X16 is not incorporated in the contract, there is no mechanism for deducting retention from <i>Contractor</i> payments.	[1 mark]
	The <i>Project Manager</i> does not have authority to amend the contract. The <i>Project Manager</i> can only change the Scope or a Key Date [14.3]	[2 marks]
	The only mechanism for adding X16 is by an agreement between <i>Client</i> and <i>Contractor</i> [12.3] but note why should a <i>Contractor</i> agree to adding retention without some other benefit to the <i>Contractor</i> included in that agreement.	[2 marks]
	Total	[5 marks]

b)	What clauses deal with the <i>Client</i> starting to use parts of the building?	
	Take over is dealt with in clause 35.	[1 mark]
	The <i>Client</i> may take over the works before Completion has been certified [35.2]	[1 mark]
	<i>Project Manager</i> certifies take over within one week of the date of take over [35.3]	[1 mark]
	Total	[3 marks]

c)	How should the <i>Project Manager</i> respond?	
	The <i>Project Manager</i> responds within one week or longer period, if agreed [61.4]	[1 mark]
	The <i>Project Manager</i> should respond that it is not one of the compensation events in the contract and therefore there will be no change to Prices or Completion Date. [61.4]	[2 marks]
	Cl. 60.1(15) provides that it is a compensation event if take over is certified before both Completion and the Completion Date, which is not the case in this instance.	[2 marks]
	Total	[5 marks]

d)	As the <i>Client</i> is now using part of the building, how does this affect the Contractor's liability?	
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	The <i>Client</i> becomes liable for Loss of or damage to part of the works taken over [80.1]	[2 marks]
	Total	[2 marks]

e)	As the <i>Contractor</i> is now late in achieving Completion, how might this affect the amount due to the <i>Contractor</i>, now that the <i>Client</i> has started to use some of the building?	
	The amount due is detailed in cl. 50.3 which includes amounts to be deducted or retained from the <i>Contractor</i> .	[1 mark]
	As X7 is incorporated, the <i>Contractor</i> will pay delay damages for each day from the Completion Date until Completion [X7.1]	[2 mark]
	Delay damages will be reduced from the date on which the <i>Client</i> has taken over the works –based on benefit to the Client [X7.3]	[2 marks]
	Total	[5 marks]

f)	How might the <i>Contractor</i> propose this and how should the <i>Project Manager</i> respond?	
	The <i>Contractor</i> may propose the <i>Client's</i> Scope is changed as per X21.1 .	[1 mark]
	<i>Project Manager</i> will need to discuss with <i>Client</i> and design team before responding to <i>Contractor</i> .	[1 mark]
	If <i>Project Manager</i> is prepared to consider the change, <i>Contractor</i> submits quotation [X21.2]	[1 mark]
	<i>Project Manager</i> responds within period for reply [X21.3] . If quotation is accepted, the Scope, Prices, Completion date and Key Date are changed [X21.5]	[1 mark]
	The change to the Scope is not a compensation event	[1 mark]
	Total	[5 marks]
	Total marks	[25 marks]

Module 2

Section 2

Question 5		
a)	What does the contract say about this and what should the <i>Project Manager</i> do now?	
	Clause 50.5 tells us that if no programme is identified in the Contract Data, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the <i>Contractor</i> has submitted a first programme to the <i>Project Manager</i> for acceptance showing the information which the contract requires.	[2 marks]
	The <i>Project Manager</i> needs to act as stated in the contract (10.1) and retain such monies accordingly under the third bullet of clause 50.3.	[2 marks]
	Not having an Accepted Programme in place will cause management problems and could even delay Completion so the <i>Project Manager</i> should notify an early warning to the <i>Contractor</i> and try to jointly solve the problem.	[2 marks]
	Under clause 64.2 the <i>Project Manager</i> will need to assess all compensation events until the Accepted Programme is in place. Another 'incentive' to work together to sort this out.	[2 marks]
	Total	[8 marks]

b)	What does the contract say about this and what should the <i>Project Manager</i> do now?	
	Clause 50.1 makes it clear that it falls to the <i>Project Manager</i> to assess the amount due at each assessment date and clause 51.1 expects that the <i>Project Manager</i> certifies a payment within one week of each assessment date.	[2 marks]
	Clause 50.2 states that the <i>Contractor</i> submits an application for payment to the <i>Project Manager</i> before each assessment date setting out the amount the <i>Contractor</i> considers is due at the assessment date. This has not happened.	[2 marks]
	Therefore clause 50.4 applies which says If the <i>Contractor</i> does not submit an application for payment before the assessment date, the amount due at the assessment date is the lesser of <ul style="list-style-type: none"> • the amount the <i>Project Manager</i> assesses as due at the assessment date, assessed as though the <i>Contractor</i> had submitted an application before the assessment date, and • the amount due at the previous assessment date. As there was no previous assessment date, the amount will likely be Nil.	[2 marks]
	Total	[6 marks]

c)	How should the <i>Project Manager</i> deal with this?	
	Clause 51.2 provides that if a certified payment is late then interest will be due. The clause goes on to say that Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made and is included in the first assessment after the late payment is made.	[2 marks]
	Clause 51.4 is also applicable and states that interest is calculated on a daily basis at the interest rate and is compounded annually.	[1 mark]
	Total	[3 marks]

d)	How does the contract deal with this?	
	Clause 51.3 says that if an amount due is corrected in a later certificate in relation to a mistake, then interest on the correcting amount is paid.	[2 marks]
	The clause goes on to state that interest is assessed from the date when the incorrect amount was certified until the date when the changed amount is certified and is included in the assessment which includes the changed amount.	[1 mark]
	Again, clause 51.4 is also applicable and states that interest is calculated on a daily basis at the interest rate and is compounded annually.	[1 mark]
	Total	[4 marks]

e)	Can payment be made for this?	
	Payments for Option B are determined mainly through clause 50.3 and 11.2(30). These set out the 'rules' and use the Bill of Quantities to determine the Price for Work Done to Date.	[2 marks]
	As the compensation event is not yet implemented (under clause 65.1) then the Prices and therefore the Bill of Quantities are not changed. So, payment cannot be made.	[2 marks]
	Total	[4 marks]
	Total marks	[25 marks]

	Question 6	
a)	What is the role of the Early Warning Register and what information does it contain?	
	The Early Warning Register is defined in clause 11.2(8). It is a register of matters which are listed in the Contract Data (as entered by the <i>Client</i> and <i>Contractor</i>) and the risks which the <i>Project Manager</i> or the <i>Contractor</i> has notified as an early warning matter	[2 marks]

	The Early Warning Register includes a description of the matter and a and the way in which the effects of the matter are to be avoided or reduced.	[1 mark]
	The Early Warning Register is basically used as a risk management tool, consisting of the matters both Parties decided at tender stage, together with any subsequently notified early warnings. It is therefore a live document	[1 mark]
	Total	[4 marks]

b)	Who creates and upkeeps the Early Warning Register, when is it reviewed and is there a maximum number of columns the Early Warning Register should have?	
	Clause 15.1 states that the <i>Project Manager</i> enters early warning matters in the Early Warning Register.	[1 mark]
	Clause 15.2 states that the <i>Project Manager</i> prepares a first Early Warning Register and issues it to the <i>Contractor</i> within one week of the starting date	[1 mark]
	At any early warning meeting, which can be initiated at any time by either <i>Project Manager</i> or <i>Contractor</i> , those attending make and consider proposals for how the effect of each matter in the Early Warning Register can be avoided or reduced (clause 15.3, 1st bullet); they also decide which risks have now been avoided or have passed and can be removed from the Early Warning Register (clause 15.3, 4th bullet).	[2 marks]
	Clause 15.4 states that the <i>Project Manager</i> revises the Early Warning Register to record the decisions made at each early warning meeting and issues the revised Early Warning Register to the <i>Contractor</i> .	[1 mark]
	Clause 11.2(8) states a minimum amount of information that is to be shown on the Early Warning Register, two columns stating a description of the matter and way in which the effects of the matter are to be avoided or reduced. Nowhere does it state that these requirements and these only must be stated, so it is up to the <i>Project Manager</i> and <i>Contractor</i> if they feel that other columns could be added to the Early Warning Register to allow them to better manage the contract.	[2 marks]
	Total	[7 marks]

c)	As <i>Project Manager</i>, how do you respond to this?	
	Any such matters stated in Contract Data part one and two do not contractually allocate such risk to either Party. In the main, clauses 60.1 (compensation events) and clause 80.1 (Client's liabilities) are the parts of the contract that allocate risk to the Parties.	[2 marks]
	If the <i>Project Manager</i> decides that the event notified by the <i>Contractor</i> is not one of the compensation events stated in the ECC (which is likely	[2 marks]

	in this case), the <i>Project Manager</i> notifies the <i>Contractor</i> that the Prices, Completion Date and the Key Dates are not to be changed (clause 61.4).	
	Total	[4 marks]

d)	Does the contract allow this?	
	The contract does not permit this. Clause X20.5 allows the <i>Client</i> to add a Key Performance Indicator and associated payment to the Incentive Schedule but may not delete or reduce a payment stated in the Incentive Schedule.	[2 marks]
	The <i>Client</i> should therefore be satisfied at tender stage that the target itself is realistic but also that the payment stated is appropriate and change may only be made via clause 12.3, with agreement from both Parties.	[2 marks]
	Total	[4 marks]

e)	What is the process for including, reporting and paying Key Performance Indicators?	
	Key Performance Indicators (KPIs) are included in the contract if secondary Option X12 or X20 is stated in Contract Data part one, 1st bullet. With Option X12, they are a sub-provision within the partnering provisions	[2 marks]
	If X12 is included, the KPIs are set at tender stage by the <i>Client</i> and a Partner (which may be the <i>Contractor</i> in our case) is paid the amount stated in the Schedule of Partners if the target stated for a KPI is improved upon or achieved. A KPI and associated payment to the Schedule of Partners may be added, but a payment stated in the Schedule of Partners may not be deleted or reduced. There are no KPI reporting provisions in Option X12 for the KPIs. The payments are made as part of the 2nd bullet in clause 50.3 when assessing the amount due.	[2 marks]
	If X20 is included, the KPIs are set at tender stage by the <i>Client</i> and the <i>Contractor</i> is paid the amount stated in the Incentive Schedule if the target stated for a KPI is improved upon or achieved. A KPI and associated payment to the Incentive Schedule may be added, but a payment stated in the Incentive Schedule may not be deleted or reduced. At the intervals stated in the Contract Data, the <i>Contractor</i> reports to the <i>Project Manager</i> their performance against each of the KPIs and include forecast final measurement against each indicator. The payments are made as part of the 2 nd bullet in clause 50.3 when assessing the amount due.	[2 marks]
	Total	[6 marks]
	Total marks	[25 marks]

	Section 2 – Points for answer	
	Question 7	
a)	What should the <i>Contractor</i> do here?	
	The starting point would be to work with the <i>Project Manager</i> to sort the best solution out. The cable's 'owner' will need to be contacted and established if it is live or dead, needs to be moved or just needs protecting.	[2 marks]
	The discussions could be initiated through the early warning process, not for the fact that the cable has been found but that the consequences (relocating or protecting) could cause delay to Completion, for example. This should be notified under clause 15.1 in a form that can be read, copied and recorded (13.1).	[3 marks]
	An early warning meeting should be arranged under clause 15.2 and the cable owner invited to attend ideally.	[2 marks]
	At the meeting those who attend seek solutions and decide actions, as per clause 15.3. The Early Warning Register needs to be revised by the <i>Project Manager</i> and then issued to the <i>Contractor</i> .	[2 marks]
	Total	[9 marks]

b)	What should the <i>Project Manager</i> do here?	
	The <i>Project Manager</i> needs to give an instruction to change the Scope under clause 14.3, complying with clause 13.	[2 marks]
	The <i>Project Manager</i> should also notify this as a clause 60.1(1) compensation event under clause 61.1, instructing the <i>Contractor</i> to submit a quotation under clause 61.2.	[2 marks]
	Total	[4 marks]

c)	Can the <i>Contractor</i> proceed at risk with the approximate solution?	
	No, the communication needs to be correctly issued by the <i>Project Manager</i> , observing clause 14.3/13.	[2 marks]
	The <i>Contractor's</i> obligation is to Provide the Works in accordance with clause 20.1 so to not follow this would be a breach.	[2 marks]
	Total	[4 marks]

d)	Should the <i>Contractor</i> show the likely additional works on the revised programme?	
	Strictly, as the Scope has not yet been formally changed, then this could be considered to not be 'remaining work' under clause 32.1.	[2 marks]
	It's a tricky one as you know something has to be done but not sure when the instruction will be given or what it will actually contain. The	[2 marks]

	<i>Contractor</i> cannot be sure of this and is basically on hold here until the instruction arrives.	
	Total	[4 marks]

e)	Must the <i>Contractor</i> obey this instruction and can the proposed instruction clause 65 still be used here?	
	Yes, the <i>Contractor</i> must obey, according to clause 27.3	[2 marks]
	It is too late to use clause 65, as the instruction has already been given. The parties can still work together quickly to implement the compensation event.	[2 marks]
	Total	[4 marks]
	Total marks	[25 marks]

	Question 8	
a)	If the <i>Project Manager</i> accepts this programme, does the Completion Date change?	
	No, acceptance of the programme will not change the Completion Date, there is no clause which says this.	[3 marks]
	Total	[3 marks]

b)	What should the <i>Project Manager</i> do next?	
	Notify an early warning under clause 15.1 as the matter could delay Completion. Instruct an early warning (15.2) and set about trying to solve the problem if possible (15.3).	[3 marks]
	Also instruct a revised programme to be submitted under 32.2.	[2 marks]
	Total	[5 marks]

c)	Is the <i>Client</i> correct and what should the <i>Project Manager</i> do with this programme?	
	No, the <i>Client</i> is not correct. Planned Completion may fluctuate throughout the contract period because of things like good or bad progress. It is not a promise but a best intention.	[2 marks]
	Acceptance comes with an explanation in clause 14.1. It does not change the <i>Contractor's</i> obligations to Provide the Works and the <i>Contractor</i> will still be liable for delay damages should it achieve Completion after the Completion Date.	[2 marks]
	The <i>Project Manager</i> should accept this programme unless one of the reasons applies under clause 31.3.	[2 marks]
	Total	[6 marks]

d)	If the <i>Contractor</i> managed to achieve Completion before the revised Completion Date, would they still get a bonus?	
	The relevant clause here is X6.	[1 mark]
	X6 is not restricted to providing a bonus based upon the original Completion Date.	[1 mark]
	Note the definition of the Completion Date in clause 11.2(3). It is the <i>completion date</i> unless later changed in accordance with the contract. So it can change.	[2 marks]
	X6.1 works using the (latest) Completion Date and compares this to the earlier of Completion and the date on which the <i>Client</i> takes over the works. So yes, the <i>Contractor</i> would still get a bonus.	[3 marks]
	Total	[7 marks]

e)	Is there any way to bring forward the Completion Date here and would this guarantee earlier Completion?	
	One way would be by agreement of the Parties, clause 12.3	[1 mark]
	The other way would be to follow the acceleration process in clause 36.	[1 mark]
	There still would be no guarantee to achieve Completion by this date, hence the provision of X7 delay damages.	[2 marks]
	Total	[4 marks]
	Total marks	[25 marks]

Institution of Civil Engineers

Examination for the ICE Certificate in Law and Contract Management (CLCM) 2025

Module 3: (English and Scots Law)

ICE Certificate in Law

Wednesday 25th June 2025

Time permitted: 09.30 to 13.30 (4 hours)

Section 1 is based on “sample” contractual provisions from non-NEC contracts and Section 2 is based on NEC4.

Answer **Question 1** and **one other** from Section 1 and answer **Question 5** and **one other** from Section 2.

Please answer Section 1 and Section 2 within a Word document, using separate headings for each section.

All questions carry equal marks.

References to cases and legislation should be quoted where possible.

Reference to documents during the examinations

Statutes, NEC4 Engineering and Construction Contract (ECC), NEC4 Engineering and Construction Subcontract (ECS), NEC4 Engineering and Construction Short Subcontract (ECSS) and other standard forms of building contracts may be taken into the Examination and published amendments. The use of the internet during this exam is prohibited.

Institution of Civil Engineers disclaimer; all names and characters in the question papers are fictional and any resemblance to any actual persons or businesses is purely coincidental.

References to Cases and Acts should be quoted where possible.

Please indicate on the outside of the answer booklets if your answers are given under Scots Law.

Institution of Civil Engineers disclaimer; all names and characters in the question papers are fictional and any resemblance to any actual persons or businesses is purely coincidental.

Section 1 – Compulsory Question

Question 1

Refer to the following chronology of events:

- On 29 September 2024, Big Dev Company Limited (“BDCL”) invited Spring Harper Construction Limited (“SHCL”) to meet on site on 3 October 2024 to discuss a construction project including M & E work. A dropbox link containing general project information was provided to SHCL on 30 September 2024 to inform the discussions on site.
- On 5 October 2024, SHCL issued BDCL with a budget quotation for carrying out initial survey works.
- Later on 5 October 2024, BDCL requested SHCL to provide a cost for SHCL to provide SHCL project management from the week commencing 10 October 2024, until May 2025.
- On 6 October 2024 at 11:08, BDCL requested SHCL to send through its “prelims” as soon as possible.
- On 6 October 2024 at 12:27, SHCL issued BDCL with a budget quotation of SHCL’s M&E project management costs / prelims.
- On 6 October 2024 at 14:54, SHCL provided an updated quotation based on a 35-week programme. This quotation was based on a series of rates for each of SHCL’s project management staff. It also stated the following:
 - “an overhead and profit percentage is to be added to these rates at 16%”;
 - “value will be assessed on actual hours / days work”; and
 - “specialist subcontractors, materials, plant requirements will all be charged at nett cost plus 21%”
- On 17 October 2024, there was a project kick off meeting.
- On 24 October 2024, SHCL commenced work on the project.

(a)	Is there an enforceable contract between SCHL and BDCL?	[8 marks]
(b)	Assuming that there is an enforceable contract between the parties, what are its express terms?	[5 marks]
(c)	Assuming that there is an enforceable contract between the parties, what terms are implied into the contract and why?	[12 marks]
	Total Marks	[25 marks]

Section 1

Question 2

Confab Homes Limited (“Confab”) was contracted by Anywhere Housing Association (“AHA”) to construct 100 dwellings in Leeds. 25 of the dwellings had a south facing balcony. It became apparent shortly after practical completion of the project that Confab failed to correctly install a vapour control membrane beneath the deck of the 25 balconies as shown on AHA’s standard design detail. This was a breach of contract.

AHA is adamant that it is entitled to knock down the 25 dwellings which exhibit the issue. Confab is adamant that a remedial solution should be accepted at a significantly lower cost.

(a)	Advise the parties on the merits of their respective positions	[10 marks]
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AHA assesses the cost of knocking down the 25 dwellings and deducts this amount from an amount due to Confab on another unrelated contract between the parties.

(b)	Does AHA have the right to do this? What might affect the answer to this question?	[8 marks]
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During an adjudication on the issue, Confab adduces an email it had received from AHA which states that *“we have noted that the vapour control membrane is missing on dwellings 1-10. Given that the balconies are south facing, this should not be an issue.”*

(c)	What is the potential significance of the email above from AHA?	[7 marks]
	Total Marks	[25 marks]

Section 1

Question 3

Townsend Engineering Limited (“Townsend”) was contracted by Whoville Borough Council (“WBC”) to construct a new landfill site, including a leachate treatment system. Townsend performed poorly from the outset and is now 23 weeks in delay.

The contract between the parties states that Townsend shall pay WBC £10,000 per day between the Completion Date and the date of practical completion.

Over the 2024 Christmas holiday period, whilst works were still ongoing, a student mistakenly wanders into the site. The student trips and falls into an unprotected excavation and injures his ankle.

(a)	Does Townsend or WBC have any liability to the injured student?	[9 marks]
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WBC has had enough of Townsend’s poor performance (and poor H&S) and decides to terminate the contract 45 days after the Completion Date has elapsed.

(b)	What is the effect of the termination on the liquidated damages provision?	[8 marks]
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In an adjudication following Townsend’s termination, it seeks to argue that the liquidated damages in its contract are unenforceable.

(c)	What arguments might be available to Townsend and why?	[8 marks]
	Total Marks	[25 marks]

Section 1

Question 4

Alice, an experienced architect, agrees to informally assist her friends, Ben and Clara, in designing and overseeing a major landscaping project in their garden. There is no written agreement or discussion about fees, but Alice provides professional advice, arranges for work to be carried out, and regularly visits the site. Due to Alice’s oversight, significant structural defects emerge in the construction, leading to financial losses for Ben and Clara.

Advise Ben and Clara on whether they can bring a negligence claim against Alice, considering:

(a)	Whether Alice owed a duty of care in the absence of a contract	[10 marks]
(b)	The standard of care expected of Alice in this situation	[8 marks]
(c)	Any potential defences Alice might raise	[7 marks]
	Total marks	[25 marks]

Section 2

Question 5 - Compulsory Question

You are the Contractor.

The Contract is an ECC Option A. The project is the construction of an extension to a local authority cemetery. There is substantial reprofiling of the ground which falls North to South, To the Northern end there is a new chapel and car park. The graveyard is surrounded by a service road 5m wide with kerbs and surface water gullies. The Prices is £7,890,000

Due to budget constraints the local authority can only have a visiting *Project Manager* and *Supervisor* both of whom are employees of the authority. As the *Contractor* commenced the reprofiling works it became clear that there were errors in the topographical survey. The *Supervisor* and *Contractor* made a verbal agreement that any anomalies would be sorted by the *Contractor* and later confirmed by the *Supervisor*. This arrangement worked well initially but as the works progressed and intensified the paperwork was not completed and basically the *Contractor* corrected errors in the service road alignment by getting the kerb layer to “bone in by eye” the kerblines. Gullies were also repositioned to capture the revised low points.

Two months before completion the *Supervisor* leaves the authority and is not replaced. The *Project Manager* certifies completion and arranges for an as-built survey for inclusion in the health and safety file. This shows that there are differences in level and alignment from that in the Scope. The *Project Manager* raises fifteen Defects. The *defect correction period* is four weeks.

(a)	Discuss the process that would be necessary to give the <i>Project Manager</i> authority to issue Defect notifications.	[5 marks]
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The *Contractor* accepts five of the Defect notifications but disputes responsibility for the rest. The *Contractor* seeks permission from the *Project Manager* to access the Cemetery to correct the five Defects. This is refused by the *Project Manager* who requires all Defects to be corrected

(b)	Is the <i>Project Manager</i> entitled to do so? Discuss the actions available to the <i>Contractor</i>.	[5 marks]
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The *Project Manager* assesses the cost of correcting the Defects by others and issues a negative payment certificate of £564,000.00

(c)	Under which clause can the <i>Project Manager</i> assess the cost and what are differences if access is denied	[5 marks]
(d)	What action should the <i>Contractor</i> take on receipt of the negative payment certificate and by when.	[10 marks]
Total Marks		[25 marks]

Section 2

Question 6

You are the *Contractor*

The contract is an NEC4 ECC Main Option C to extend the runway to Minchester airport. The works involve constructing a 300m cut and cover tunnel to cater for a main road that circumnavigates the airport. The runway can then be extended over the tunnel. You have completed the tunnel and remain on programme to complete 6 weeks before the Completion Date.

You share an open plan office with the *Project Manager* and *Supervisor*. The *Project Manager* calls on you and says he has some bad news. He explains that he has just come from a meeting with the *Client* who has says that the airport which is privately owned is to be sold and all capital works is to be suspended until the outcome of the due diligence process is completed. He hands you an instruction to stop work..

(a)	What authority does the <i>Project Manager</i> have to take such action? What actions should you take on receiving such an instruction??	[10 marks]
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It is now 15 weeks after receiving the instruction, Your Chief Executive Officer summons you to head office and explains that he has just received advance notice that the company has been successful in a recent tender for work for the local water authority near the airport and would like to discuss the process for terminating the contract with the airport owners and transferring the staff to this new contract.

(b)	Explain the contractual process that you would need go through? What action does the <i>Project Manager</i> need to take on receiving such a request?	[15 marks]
	Total Marks	[25 marks]

Section 2

Question 7

You are a *Consultant*.

You have been awarded a contract by a coastal local authority (The *Client*) to prepare tender documents for a project to demolish old port berthing bays on the river estuary and redevelop the landward side for luxury apartments and restaurants etc. Your contract is an NEC4 Professional Services Main Option E. The *Client* has limited experience of NEC contracts.

The *Client* has stated that the tender should be a design and build and be a lump sum price. It should include the following requirements: -

1. Parent Company Guarantee.
2. Retention of 3%.
3. BIM compliant.
4. Performance Bond of £10m.

The *Client* has provided you with some old as built drawings of the Port buildings, Statutory Authority location plans of their depth and location. Ground investigation reports. The area was heavily bombed during the last war. There has been a UXO (Unexploded ordinance) survey and the provision of an ALARP (As Low as Reasonably Practicable) risk assessment is included in the GI survey but there still remains a risk of UXO being found.

In a report format advise the *Client* of the following:-

(a)	The structure of the tender documents, including the instructions for tendering	[5 marks]
(b)	How the as built information will included in the tender	[3 marks]
(c)	How is the risk of UXO's treated	[5 marks]
(d)	How is the PCG, retention, BIM and the bond included in the contract including an explanation of any additional information required and acceptance criteria	[12 marks]
	Total Marks	[25 marks]

Section 2

Question 8

You are the *Project Manager*

The project is the construction of a wind farm on the Northeast Coast. The main contract is an NEC Option C. The Total of the Prices is £85,000,000 with a fee percentage of 6%.

Section 5 of Contract Data Part 1 includes the following:-

The *currency of the contract* is the **£ sterling**
 The *assessment interval* is **monthly**
 The *interest rate* is 5% per annum above the **Bank of England base rate**.

The *Contractor's share percentage* and the *share ranges* are

Share range		Contractor's share percentage
Less than	80%	75%
from	80% to 90%	65%
from	90% to 100%	50%
from	100% to 110%	65%
from	110% to 120%	80%
Greater than	120%	100%

The *exchange rates* are those published on the penultimate Thursday of the month by HMRC

The rotary blades are manufactured in Germany and paid for in Euros.

The Contractor submits its application for payment No 8 to you for certification. The Defined Cost is £23,000,000 and €6,500,000. The exchange rate is €1.18 = £1. Your forecast of the Defined Cost before the next assessment date is £3,500,000 and €65,000.

(a)	What is the Price for Work Done to Date and how is it calculated?	[10 marks]
(b)	At Completion the Total of the Prices is £93,000,000. The Defined Cost is £91,000,000 and €10,000,000. The exchange rate at Completion is €1.17 = £1. Calculate the amount due to the Contractor.	[15 marks]
	Total Marks	[25 marks]

POINTS FOR ANSWER

Module 3 – Section 1

Question 1 Compulsory Question

1a) This question seeks to examine the candidate's knowledge of contract formation. Suggested points to note:

- Budget Quotation dated 6 October is likely to be a valid offer.
- Additional mark for correct case reference as to what amounts to a valid offer e.g. *Storer v Manchester City Council*
- Acceptance likely to have taken place at kick off meeting on 17 October 2024, but could be argued otherwise depending on exact facts.
- Additional mark for correct case reference as to what amounts to a valid acceptance e.g. *Jones v Daniel*
- Fact that no formal contract was executed is irrelevant

1b) This question seeks to examine the candidate's knowledge of how express terms become incorporated, and their ability to spot them on the facts

Suggested points to note:

- Reference to relevant case law on incorporation of express terms e.g. *Bannerman v White*, *Schawel v Reade* etc
- On the facts, like express terms include terms of updated quotation based on 35-week programme, including the OHP %, value to be based on actual hours, 21% mark up.
- Marks available for sensible discussion on what terms are essential.

1c) This question seeks to examine the candidate's knowledge of implied terms.

Suggested points to note:

- Payment, suspension and adjudication under HGCRA 1996
- Satisfactory quality, goods as described etc under Sale of Goods Act 1979
- Services to reasonable skill and care etc under Sale and Supply of Goods and Services Act 1982
- Interest on late payment under Commercial Debts (Interest) Act

- Credit given for any relevant implied terms. List above is non-exhaustive.

Question 2

2a) This question seeks to examine the candidate's knowledge of mitigation.

Suggested points to note:

- Only reasonable steps need to be taken.
- Courts will adopt sensible approach and will not weigh up actions in fine scales.
- Marks available for relevant cases in this area e.g. British Westinghouse v Underground Electric
- Marks awarded for noting what reasonable steps might be in this scenario.

2b) This question seeks to examine the candidate's knowledge of cross contract set off. Suggested points to note:

- Equitable set off might apply. Marks awarded for concluding that this doctrine rarely applies.
- Answer might be affected by the contents of each contract i.e. if they both contain an express cross contract set off provision.

2c) This question seeks to examine the candidate's knowledge of estoppel:

- Equitable estoppel might apply. Marks awarded for discussing each of the required elements and sensibly concluding whether or not the estoppel has arisen.
- Elements of equitable estoppel broadly include:
 - Assurance
 - Reliance
 - Detriment or loss
 - unconscionable conduct

Question 3

3a) This question seeks to examine the candidate's knowledge of Occupiers Liability. Suggested points to note:

- Occupiers Liability Act 1984 is relevant. Both potentially liable, but dependant on number of factors i.e. danger, proximity etc.
- Candidates to go through analysis of who the occupier is, what the premises are, who the trespasser is and what duty is owed to them (if any).
- Possible breach of HSWA 1974 also as unprotected excavation.

3b) This question seeks to examine the candidate's knowledge of contract terms. There are three possibilities:

- The liquidated damages apply up to the point of termination
- The liquidated damages clause falls away entirely because it does not have express wording to deal with a termination scenario
- The liquidated damages continue to apply until the works are completed by others.
- Marks awarded for sensible discussion of the points above. Credit given for awareness of UKSC decision in Triple Point v PTT.

3c) This question seeks to examine the candidate's knowledge of penalty clauses. Suggested points to note:

- A clause will be a penalty if it is a secondary obligation, which imposes a detriment out of all proportion to the legitimate interest it seeks to protect. Similar formulations acceptable.
- Marks for mentioning relevant cases e.g. Cavendish Square Holdings, Parking Eye v Beavis or similar.
- Liquidated damages here are likely to be enforceable as they are not extravagant, unconscionable or exorbitant.

Question 4

4a) Whether Alice owed a duty of care despite the absence of a contract.

A professional architect can owe a duty of care in tort even without a contract, provided that they assumed responsibility for providing skilled services.

Similarly, Alice is an experienced architect who provided professional advice and oversaw the project, suggesting an assumption of responsibility.

Courts will consider whether Ben and Clara relied on Alice's expertise and whether it was reasonably foreseeable that her advice could cause them financial loss.

Given Alice's active role in the project, a duty of care is likely to be established.

4b) The standard of care expected of Alice in this situation.

The standard of care is that of a reasonably competent architect (*Bolam v Friern Hospital Management Committee* [1957]).

Alice's professional skills create an expectation that she will meet industry standards.

If her oversight caused structural defects due to a failure to meet this standard, she may have breached her duty.

4c) Any potential defences Alice might raise.

No contractual obligation: Alice might argue there was no contract, but *Burgess* confirms that this does not preclude a duty of care.

No reliance or causation: If Ben and Clara made independent decisions or altered plans without Alice's input, she may argue that her advice was not the cause of the defects. She could also argue that the structure failings were beyond her remit.

Contributory negligence: If Ben and Clara failed to take reasonable steps to mitigate the issues, Alice may argue for a reduction in damages under the Law Reform (Contributory Negligence) Act 1945.

Module 3 – Section 2

Question 5 – Compulsory Question

Answer Points

- a) *Project Manager* to notify Defects
- Under the contract only the *Supervisor* can notify Defects to the *Contractor*
 - The *Supervisor* can delegate this power to the *Project Manager* pursuant to clause 14.2, however the *Supervisor* should notify the *Contractor* before the delegation takes effect.
 - The *Supervisor* has left the authority so unable to delegate.
 - The *Client* can therefore notify the *Contractor* pursuant to clause 14.4 that the *Project Manager* can carryout actions of the *Supervisor*.
- b) Dispute concerning Defects
- Under the contract the *Contractor* must comply with a notice of a Defect
 - The *Contractor* can refer the matter to the *senior representatives* or ultimately the *Adjudicator*
- c) Uncorrected Defects
- Clause 46 provides that the *Project Manager* assesses the cost of correcting uncorrected defects at the end of the *defect correction period*
 - This is mandatory there is no “may” but there is a “shall” in the clause
 - If access is provided the cost is assessed as requiring the *Client* to employ Others to correct the Defect (Clause 46.1)
 - If access is denied then the cost is assessed as if the *Contractor* corrected the Defect (Clause 46.2)
- d) Negative Payment Certificate
- The *Contractor* should rely on Y(UK)2
 - The payment certificate issued by the *Project Manager* is the notified sum
 - A negative certificate means that the *Contractor* owes money to the *Client*
 - Clause Y2.3 provides that if the *Contractor* is not to pay the certified sum to the *Client*, then it should notify the *Client* no later than seven days before the final date for payment that it will not be paying.
 - The notice should state the amount the *Contractor* considers due and the basis on which it was calculated.

Question 6

Answer Points

- a) Instruction to Stop work
- The contractual authority comes to the *Project Manager* pursuant to Clause 34.
 - On receiving the instruction the *Contractor* should instruct the *Project Manager* to attend an Early Warning Meeting to discuss the implications of stopping work. Matters to discuss would include
 - Agreeing what is required to keep the site safe and secure.

- Agreeing what Equipment is to be retained on site to deal with weather effects e.g. pumps,
- Treatment of subcontracts issuing similar notices to each subcontractor.
- Agreeing the value of Plant and Materials on site at time of the notice.
- Agreeing the cost of laying off all non-essential site operatives.
- Agreeing which members of the site staff can be retained for the duration of the shutdown.
- The *Project Manager* should have issue a notice of a compensation event under and instruction to quote under 61.(2) and quote 60.1(4)
- The *Project Manager* should accept the notification and issue a compensation event with an assumption concerning the expected duration of the work suspension

b) Termination

- Core Clause 9 applies to termination.
- The stop notice has been in place for a period greater than 13 weeks.
- Termination can be initiated by the *Contractor* pursuant to Clause 91.6.
- The termination process is determined from the Termination Table.
- The Reason is R19.
- The Procedure is P1 and P4
- The Amount due is A1 and A2
- The answer should include a description of what P1, P2, A1 and A2 requires.
- As the main contract is an Option C, then Clause 93.3 and 93.6 applies.

Question 7

Answer Points

a) Structure of Tender Documents

- The tender documents should be:-
 - Volume 0 - Instruction to tenderers, which is the rules of the tender competition.
 - Volume 1 – Contract Agreement, completed Contract Data Part 1, Contract Data Part 2 to be completed by the tenderers.
 - Volume 2A – Scope (as the contract is a design and build it would be limited to Client's Requirements.)
 - Volume 2B - Scope (this would contain the Contractor's design)
 - Volume 3 - Site Information

b) As built information

- The appropriate volume for information concerning the site is Volume 3.

c) UXO risk

- Explanation on the use of early warnings and how Clause 15 operates

- Statement that within Contract Data Part 1 there is opportunity to identify risks to be included in the risk register. This informs the Contractor before the contract is made.
- Discussion on clauses 60.1(12) and 60.2

d) PCG, retention, BIM and the bond

- These would be brought into the contract by inclusion of secondary options
 - Option X4 Ultimate holding company guarantee.
 - Option X10 Information modelling
 - Option X13 Performance bond and
 - Option X16 Retention
- Explanation of what additional information is required as follows:-
 - Option X4 requires the format of the guarantee to be included in the Scope. The *Project Manager* is required to accept.
 - Option X10 requires details of the Information Execution Plan to be accepted by the *Project Manager*. Reference to the Practice Note published by NEC.
 - Option X13 requires the amount of the bond to be stated in Contract Data. The bond is submitted by the *Contractor* for acceptance by the *Project Manager*.
 - Option X16 contract data states the percentage to be deducted from the Price for Work Done to Date at each assessment. There is the facility to have a retention free amount. Half the retention is repaid at completion. The remaining amount is repaid at the date the Defects Certificate is due to be issued.

Question 8

Answer Points

a) Price for Work Done to Date

- For an Option C contract, the Price for Work Done to Date is the total Defined Cost which the *Project Manager* forecasts will have been paid by the *Contractor* before the next assessment plus the fee.
- Clause 50.7 states that payments made by the *Contractor* in a currency other than the *currency of the contract* are included in the amount due as payments made in same currency.
- Payments of Defined Cost not in the *currency of the contract* are converted to the *currency of the contract* using the *exchange rate* to calculate the Fee.

Application No 8		
	€	£
Defined Cost £		£23,000,000.00
Defined Cost €	€ 6,500,000.00	
Forecast Defined Cost £		£3,500,000.00
Forecast Defined Cost €	€ 65,000.00	
		£26,500,000.00
	€ 6,565,000.00	£5,563,559.32
		£32,063,559.32
Fee	6.00%	£1,923,813.56
	€ 6,565,000.00	£28,423,813.56

- The PWDD is £28,423,813.56 and €6,565,000.00

b) Amount Due

- The amount due is the Defined Cost at Completion plus the fee, plus or minus the *Contractor's Share*.
- Payments not in the *currency of the contract* are converted to the *currency of the contract* to calculate the *Contractor's share* using the *exchange rate*.

Completion		
	€	£
Defined Cost £		£91,000,000.00
Defined Cost €	€ 10,000,000.00	
		£91,000,000.00
	€ 10,000,000.00	£8,547,008.55
		£99,547,008.55
Fee	6.00%	£5,972,820.51
	€ 10,000,000.00	£96,972,820.51
	Sterling	£96,972,820.51
	Euro €10000000/1.17	£8,547,008.55
		£105,519,829.06
Total of the Prices	£93,000,000.00	113.46%
Price for Work Done to Date	£105,519,829.06	
	Difference	-£12,519,829.06
	110%	-£9,300,000.00
	3.46%	-£3,219,829.06

Share Range		Contractor's share percentage	Total of the Prices - Price for Work Done to Date	Amount £
Less than	80%	75%		£0.00
from	80% to 90%	65%		£0.00
from	90% to 100%	50%		£0.00
from	100% to 110%	65%	£-9,300,000.00	£-6,045,000.00
from	110% to 120%	80%	£-3,219,829.06	£-2,575,863.25
Greater than	120%	100%		£0.00
			Total	£-8,620,863.25
Sterling		£96,972,820.51	£-8,620,863.25	£88,351,957.26
			Amount Due	£88,351,957.26
				€ 10,000,000.00