

# PRACTICE EXAM 17: OHIO BUSINESS AND LAW SIMULATION (50 QUESTIONS)

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**50 Questions — 120 Minutes Recommended**

1. An Ohio contractor operates as a limited partnership with one general partner and two limited partners. The general partner manages all operations. The two limited partners contribute capital but do not participate in management. A \$300,000 judgment is entered against the limited partnership arising from defective plumbing work. The partnership's assets are \$180,000. What is the personal liability exposure for each type of partner?

- A. All three partners are equally liable for the remaining \$120,000 at \$40,000 each
- B. Only the limited partners are liable because they provided the capital that funded the defective work
- C. All partners are shielded from personal liability because limited partnerships provide blanket protection
- D. The general partner is personally liable for the remaining \$120,000 while the limited partners' exposure is limited to their capital contributions

2. An Ohio contractor operates a commercial HVAC business as a sole proprietorship. The contractor's annual net income is \$195,000. The contractor is considering converting to an S corporation. A tax advisor explains that only the salary portion would be subject to FICA under the S corp. If the contractor sets a reasonable salary of \$105,000 with \$90,000 in distributions, what is the approximate annual FICA savings compared to the sole proprietorship?

- A. Approximately \$13,770 calculated as 15.3% of the \$90,000 in distributions that would no longer be subject to selfemployment tax
- B. Approximately \$29,835 calculated as 15.3% of the full \$195,000 which is eliminated entirely under the S corp
- C. Zero because S corporation shareholders pay FICA on all income including distributions

D. Approximately \$16,065 calculated as 15.3% of \$105,000 which represents the additional FICA burden of the salary

3. A contractor's business plan projects that the company will achieve a twentyfive percent gross profit margin in Year 1. The plan's financial projections show Year 1 revenue of \$1,500,000 and cost of revenue of \$1,200,000. A bank loan officer reviewing the plan performs a quick verification calculation. Does the financial data support the claimed twentyfive percent margin?

A. No because  $\$1,200,000$  divided by  $\$1,500,000$  equals eighty percent cost ratio which yields only a twenty percent margin

B. Yes because  $(\$1,500,000 - \$1,200,000) \div \$1,500,000 = \$300,000 \div \$1,500,000 =$  twenty percent not twentyfive percent revealing an internal inconsistency in the business plan

C. Yes because the twentyfive percent margin matches the financial data when calculated correctly

D. No because the gross profit margin should be calculated on cost of revenue not on revenue

4. An Ohio contractor holds an OCILB electrical license and wants to add a plumbing license. The contractor passed the Business and Law exam thirtytwo months ago. The contractor has five years of documented plumbing trade experience. What exams must the contractor take?

A. Both the Business and Law exam and the plumbing trade exam because adding a new trade requires retaking both exams

B. Neither exam because holding one OCILB license entitles the contractor to add additional trade classifications without testing

C. Only the plumbing trade exam because the Business and Law exam result is valid for three years and thirtytwo months is within that window

D. Only a supplemental plumbing module that is added to the existing Business and Law exam

5. Under ORC Chapter 4740, a building department inspector discovers that a commercial electrical project was completed by a contractor whose OCILB electrical license expired two months before the work began. The work has already been inspected and passed the electrical roughin and final inspections. Despite the passing inspections, what action can the building department take?

- A. The building department may take enforcement action because performing commercial electrical work without a valid OCILB license is a violation of Ohio law regardless of whether the work passed inspection
- B. No action can be taken because the work passed all required inspections which validates the installation
- C. The building department can issue only a written warning because the work quality was acceptable
- D. The building department must credit the work and issue the certificate of occupancy because reinspection is prohibited

6. A contractor is preparing a bid for a commercial renovation project in a historic building. The estimator uses productivity rates from a previous new construction project of similar scope. The renovation involves working around existing finishes, protecting historic elements, limited staging areas, and restricted work hours. What is the primary risk of using new construction productivity rates for this renovation bid?

- A. No risk because productivity rates are consistent across all project types within the same trade
- B. Minimal risk because renovation projects are typically less laborintensive than new construction
- C. The risk is limited to a five percent accuracy variance which is within standard estimating tolerances
- D. The bid will likely understate labor costs because renovation in an occupied historic building requires significantly more labor hours per unit of work than new construction

7. A general contractor on a public school project opens subcontractor bids for the fire protection scope. Four bids are received ranging from \$195,000 to \$242,000. The GC uses the lowest bid of \$195,000 in the overall proposal and wins the project at \$3,200,000. After the award, the \$195,000 fire protection bidder discovers a \$35,000 estimating error and wants to withdraw the bid. What options does the GC have?

- A. The GC can force the subcontractor to honor the original \$195,000 bid because it was incorporated into the winning proposal
- B. The GC should negotiate with the subcontractor — if the error is verifiable and documented the GC may need to allow withdrawal and use the next lowest bid or negotiate a fair resolution
- C. The GC must automatically award to the secondlowest fire protection bidder at \$210,000 without negotiation

D. The GC must rebid the entire project because a subcontractor withdrawal invalidates the prime contract

8. A contractor on a commercial project enters into a costpluspercentage contract. The contract provides that the contractor's fee is twelve percent of total project costs. The original estimated project cost is \$800,000. During construction, change orders and unforeseen conditions increase total costs to \$1,100,000. What is the contractor's fee and what inherent conflict does this contract type create?

A. The fee is \$96,000 based on the original estimated cost because the fee percentage is locked to the original estimate

B. The fee is a flat \$96,000 regardless of actual costs because costplus contracts cap the fee at the original estimate

C. The fee is \$132,000 based on twelve percent of actual costs and the inherent conflict is that the contractor financially benefits from increased costs which creates a disincentive to control spending

D. The fee is \$132,000 based on twelve percent of actual costs but no conflict exists because the owner approves all costs

9. A commercial construction contract includes a mutual waiver of consequential damages. During the project, the contractor's delay causes the owner to miss a grand opening event that results in \$200,000 in lost promotional investments. Additionally, the owner incurs \$30,000 in extended construction management fees directly related to the delay. Which damages can the owner recover?

A. The \$30,000 in extended construction management fees because these are direct damages caused by the delay while the \$200,000 in lost promotional investments are consequential damages barred by the mutual waiver

B. The full \$230,000 because all delayrelated costs are classified as direct damages

C. Neither amount because the mutual waiver bars recovery of all damages arising from delay

D. Only the \$200,000 in promotional losses because extended management fees are the owner's own overhead

10. A contractor on a commercial project submits progress payment application number eight on November 1. The contract requires payment within thirty days. On December 5 — thirtyfour days later — the contractor has not received payment. The contract provides that the contractor may suspend

work after providing seven days' written notice if payment is not received within thirty days. The contractor immediately stops work on December 5 without providing written notice. Is the contractor's work stoppage proper?

- A. Yes because payment is overdue by four days which constitutes a material breach justifying immediate work stoppage
- B. No because the contractor must provide seven days' written notice before suspending work even though the payment is overdue
- C. Yes because the thirtyday payment period has expired and no further notice is required
- D. No because contractors may never suspend work for nonpayment on commercial projects

11. A project owner and general contractor dispute whether certain window replacement work is within the original contract scope or constitutes extra work. The contract requires the architect to make initial determinations on scope disputes. The architect reviews the contract documents and determines that the window replacement is within the original scope. The contractor disagrees. What is the contractor's next step?

- A. File an immediate lawsuit against both the owner and architect challenging the scope determination
- B. Refuse to perform the work until the dispute is resolved through formal arbitration
- C. Continue performing the work while pursuing the dispute through the contract's dispute resolution process preserving the right to additional compensation
- D. Accept the architect's determination as final and binding with no further recourse available

12. A contractor's CPM schedule for a commercial project shows that Activity Q has an early start of Day 55, early finish of Day 68, late start of Day 55, and late finish of Day 68. Activity R has an early start of Day 68, early finish of Day 80, late start of Day 73, and late finish of Day 85. What is the relationship between these two activities?

- A. Both activities are on the critical path with zero float
- B. Activity Q is noncritical with five days of float and Activity R is on the critical path
- C. Both activities are noncritical with equal amounts of float
- D. Activity Q is on the critical path with zero float and Activity R is noncritical with five days of float

13. A contractor on a commercial project maintains a comprehensive project file including daily reports, meeting minutes, RFI log, submittal log, change order log, photographs, and correspondence. The project is completed without significant disputes. The contractor's office manager asks how long the records should be retained. The project involved work on a government building with a ten-year statute of repose for construction defect claims. What is the minimum retention period?

- A. At least ten years to cover the full statute of repose period for construction defect claims plus a reasonable buffer
- B. Three years from project completion which is the standard document retention period
- C. One year from the date of final payment because all claims must be filed within one year
- D. Five years from project completion which matches the standard business record retention requirement

14. A contractor's CGL policy has a peroccurrence limit of \$1,000,000 and a general aggregate of \$2,000,000. The policy also has a products-completed operations aggregate of \$2,000,000 that is separate from the general aggregate. During the policy year, the contractor has \$1,500,000 in claims from ongoing operations and \$1,800,000 in claims from completed operations. What is the total policy payout?

- A. \$2,000,000 because the general aggregate caps all claims at \$2,000,000
- B. \$3,300,000 because the general aggregate covers ongoing claims up to \$2,000,000 and the separate products-completed operations aggregate covers completed operations claims up to \$2,000,000
- C. \$3,000,000 because each aggregate pays up to \$1,500,000
- D. \$2,800,000 because the peroccurrence limit reduces the ongoing operations payout to \$1,000,000

15. An Ohio contractor has an EMR of 1.35 and a base premium of \$56,000. The contractor bids on a project where the GC requires an EMR at or below 1.0. The contractor is disqualified. The contractor then bids on a second project with no EMR requirement and wins. During that project, a serious injury occurs resulting in a \$175,000 claim. What is the likely multiyear impact of this claim combined with the existing high EMR?

- A. No impact because the high EMR means the premium cannot increase further
- B. The premium will decrease because the new claim replaces older claims in the experience period

C. The premium will remain unchanged because claims on projects without EMR requirements do not affect the EMR

D. The EMR will likely increase further above 1.35 driving premiums even higher and potentially disqualifying the contractor from additional projects with EMR thresholds

16. Under OSHA's construction standards, a contractor provides scaffolding on a commercial project. The scaffold platforms are eight feet above the lower level. Workers on the platform do not have guardrails, personal fall arrest systems, or any other fall protection. The contractor argues that scaffolds under ten feet do not require fall protection. Is the contractor correct?

A. Yes because OSHA's scaffold fall protection threshold is ten feet for all types of scaffolds

B. Yes because scaffolds under ten feet are classified as lowlevel platforms exempt from fall protection

C. No because OSHA requires fall protection on scaffolds when the platform is more than ten feet above the lower level for most scaffold types but many scaffold types and jurisdictions enforce protection at lower heights

D. The contractor's specific claim about ten feet must be verified against the applicable scaffold type because different scaffold categories have different fall protection trigger heights under OSHA's scaffolding standard

17. An OSHA compliance officer inspects a commercial project and observes a worker cutting pressure-treated lumber with a circular saw. The worker is wearing safety glasses but no respiratory protection. Sawdust containing the pressure treatment chemicals is visually dispersed in the worker's breathing zone. The employer has not conducted an exposure assessment for the chemicals in pressure-treated wood. What violation exists?

A. The employer failed to assess chemical exposure from cutting pressure-treated wood and failed to provide appropriate respiratory protection based on that assessment

B. No violation because safety glasses are the only required PPE for woodcutting operations

C. A housekeeping violation for allowing sawdust to accumulate in the work area

D. No violation because pressure-treated wood is classified as a nuisance dust not a chemical hazard

18. A contractor's employee sustains a deep laceration on the hand from a utility knife. The company physician cleans the wound, applies skin closure strips (butterfly bandages), wraps it with a sterile gauze bandage, and sends the employee back to work with no restrictions. Two days later, the wound becomes infected and the employee returns to the physician who prescribes oral antibiotics. Under OSHA recordkeeping, at what point does this injury become recordable?

- A. At the time of the initial treatment because the laceration required medical attention from a physician
- B. When the physician prescribes oral antibiotics because prescription medication constitutes medical treatment beyond first aid
- C. The injury is never recordable because butterfly bandages are classified as first aid regardless of subsequent treatment
- D. Only when the employee misses a full workday due to the infection

19. An Ohio employer with twentytwo employees terminates a worker who had recently filed a workers' compensation claim after a jobsite injury. The termination occurs three weeks after the claim filing. The employer states the termination is due to poor job performance documented over six months. The employee claims retaliation. What factor most strongly supports the employer's defense?

- A. The employer's general antiretaliation policy posted in the employee handbook
- B. The employer's verbal statement that the termination was performancebased
- C. The threeweek gap between the claim filing and termination which proves the events are unrelated
- D. Six months of documented progressive discipline for performance issues predating the workers' compensation claim establishing a legitimate nonretaliatory basis for the termination

20. A contractor on a commercial project discovers during the roughin phase that the electrical panel locations shown on the architectural floor plan conflict with the structural beam locations shown on the structural drawings. The panels cannot be installed where shown because the beams occupy the same space. The contractor submits an RFI. While waiting for the response, the project schedule continues to advance and other trades need to coordinate with the panel locations. What should the contractor do while the RFI is pending?

- A. Install the panels at the architect's originally specified locations and relocate them if the RFI response requires it

- B. Proceed with all other work and leave the panel locations open until the RFI response is received
- C. Coordinate with the project manager to communicate the RFI status to affected trades, identify the schedule impact of the pending response, and document any delays caused by the unresolved conflict
- D. Submit the RFI and stop all related work until the response is received regardless of schedule impact

21. A contractor's surety company reviews the contractor's financial statements and notes that the contractor's gross profit margin has declined from twentytwo percent to sixteen percent over three years while revenue has remained flat. What concern does this margin compression raise?

- A. No concern because a sixteen percent margin is above the minimum threshold for bonded contractors
- B. The declining margin indicates the contractor may be reducing prices to win work which erodes profitability and increases the risk that projects will not generate sufficient profit to cover overhead and sustain operations
- C. The margin decline is positive because it indicates the contractor is passing cost savings to customers
- D. The margin compression affects only the contractor's tax liability and has no bearing on bonding capacity

22. An Ohio contractor earns \$3,400,000 in annual gross receipts from commercial plumbing work. The contractor also earns \$280,000 from a rental property. For Ohio Commercial Activity Tax purposes, how are these revenue sources treated?

- A. Both sources are combined for \$3,680,000 in total taxable gross receipts because the CAT applies to all business revenue from all sources
- B. Only the \$3,400,000 in plumbing receipts is subject to CAT because rental income is exempt
- C. Only the \$280,000 in rental income is subject to CAT because construction receipts are exempt
- D. The two sources are filed separately under different CAT registration numbers

23. An Ohio contractor purchases \$44,000 in electrical supplies from an Ohio wholesaler. The contractor pays full Ohio sales tax. The supplies are installed on a commercial project for an Ohio state university. The university provides a valid tax exemption certificate. The contractor discovers the

exemption certificate after the purchase has been completed and sales tax has been paid. Can the contractor recover the sales tax?

- A. No because sales tax paid at the point of purchase is permanently nonrefundable for all construction materials
- B. No because exemption certificates must be presented before the purchase is completed and cannot be applied retroactively
- C. Yes because the contractor may present the exemption certificate to the wholesaler for a credit or file a refund claim with the Ohio Department of Taxation
- D. Yes but only if the refund amount exceeds \$10,000 which is the minimum threshold for construction tax refunds

24. A subcontractor on a private commercial project first furnishes labor on June 1 and serves a Notice of Furnishing on June 18 — seventeen days after first furnishing. The subcontractor completes work on November 15 and is owed \$175,000. On January 10 — fiftysix days after last furnishing — the subcontractor files a mechanic's lien affidavit. On February 5 — twentysix days after filing — the subcontractor serves the filed affidavit on the property owner. Are all procedural steps timely?

- A. No because the Notice of Furnishing was served too early at seventeen days
- B. No because the lien affidavit was filed more than fortyfive days after last furnishing
- C. No because the service on the owner must be completed within fourteen days of filing not twentysix days
- D. Yes because all three steps were completed within their respective statutory deadlines — Notice within twentyone days, affidavit within sixty days, and service within thirty days

25. A general contractor on a private commercial project has paid a mechanical subcontractor \$250,000 for completed work. The GC collected conditional lien waivers for each progress payment. The subcontractor failed to pay a material supplier \$32,000 for pipe fittings. The supplier served a timely Notice of Furnishing and files a mechanic's lien against the property. The property owner contacts the GC demanding resolution. What is the owner's exposure?

- A. Zero because the GC's conditional waivers from the subcontractor protect the owner from all downstream claims

- B. The owner faces potential exposure to the \$32,000 supplier lien because mechanic's liens attach to the property regardless of whether the owner paid the GC and the GC paid the subcontractor
- C. The owner's exposure is limited to \$16,000 representing fifty percent of the supplier's claim
- D. The owner faces no exposure because suppliers cannot file mechanic's liens on private commercial projects

26. A contractor files a mechanic's lien on a commercial property for \$48,000 on May 1. The contractor serves the filed affidavit on the property owner on May 20. Three years later, the contractor and owner agree to a \$35,000 settlement. The owner pays \$35,000. What must the contractor do to clear the property title?

- A. File a satisfaction or release of lien with the county recorder documenting that the lien has been fully satisfied through settlement
- B. Send a letter to the property owner confirming the settlement which automatically releases the lien
- C. Take no action because settlement payments automatically discharge mechanic's liens in Ohio
- D. File a new lien for the \$13,000 difference between the original lien and the settlement amount

27. Under the Miller Act, a secondtier supplier on a \$6,000,000 federal project delivers \$55,000 in plumbing fixtures to a firsttier subcontractor. The last delivery is on September 15. The supplier provides written notice to the prime contractor on December 10 — eightysix days after last delivery. The supplier files a payment bond lawsuit on August 1 of the following year — approximately ten and a half months after last delivery. Are the notice and lawsuit timely?

- A. The notice is untimely because secondtier suppliers must provide notice within sixty days of last delivery
- B. The notice is timely but the lawsuit is untimely because it was filed more than six months after last delivery
- C. Both are untimely because the combined time exceeds the twelvemonth maximum from last delivery
- D. Both are timely because the notice was within ninety days of last delivery and the lawsuit was within one year of last delivery

28. A contractor's income statement shows revenue of \$2,350,000, cost of revenue of \$1,833,000, and general overhead of \$376,000. What are the gross profit, gross profit margin, net operating income, and breakeven revenue?

- A. Gross profit \$376,000, margin 16%, net income \$141,000, breakeven \$2,350,000
- B. Gross profit \$517,000, margin 22%, net income \$517,000, breakeven \$1,709,091
- C. Gross profit \$517,000, margin 22%, net income \$141,000, breakeven \$1,709,091
- D. Gross profit \$517,000, margin 16%, net income \$141,000, breakeven \$2,350,000

29. A contractor's balance sheet shows current assets of \$380,000, current liabilities of \$295,000, noncurrent assets of \$270,000, and longterm liabilities of \$165,000. The contractor's bonding company uses fifteen times working capital as the bonding capacity guideline. What is the bonding capacity?

- A. \$1,275,000 calculated as fifteen times the working capital of \$85,000
- B. \$5,700,000 calculated as fifteen times the current assets
- C. \$1,575,000 calculated as fifteen times the difference between total assets and longterm liabilities
- D. \$2,850,000 calculated as fifteen times the net worth

30. Under OSHA's excavation standard, a competent person evaluates the soil at a commercial excavation site. The soil has been previously disturbed, shows evidence of water seepage, and can be easily dented with the thumb but penetrated only with great effort. Based on these characteristics, what is the most likely soil classification?

- A. Type A because the soil can be dented with the thumb indicating adequate cohesive strength
- B. Type B because the soil has been previously disturbed and shows water seepage which disqualifies it from Type A even though it has some cohesive strength
- C. Type C because any soil showing water seepage is automatically classified as the least stable type
- D. Stable rock because the soil resists penetration which indicates structural stability

31. A contractor's employee is working in a permitrequired confined space on a commercial project. The entry permit specifies atmospheric monitoring every fifteen minutes. The attendant is stationed at the entry point with rescue equipment available. After thirty minutes, the atmospheric monitor detects an oxygen level of 19.0% — below the normal 20.9% but above the 19.5% action level. What should the attendant do?

- A. Order immediate evacuation because the declining oxygen trend indicates a hazardous atmosphere is developing and the space should be evacuated, ventilated, and reassessed before reentry
- B. Continue monitoring because 19.0% is within the safe range and no action is required until oxygen drops below 16%
- C. Reduce the monitoring interval to every five minutes but allow work to continue
- D. Contact the fire department because any oxygen deviation triggers a mandatory emergency response

32. An Ohio employer has thirtyeight employees. A fiftytwoyearold worker with satisfactory performance reviews is terminated as part of a "workforce reduction." No other positions are eliminated. The worker is replaced by a thirtyyearold employee at a lower salary. The terminated worker files a complaint with the Ohio Civil Rights Commission alleging age discrimination. Which laws apply to this employer?

- A. Only the Ohio Civil Rights Act because the employer has fewer than the ADEA threshold of fifty employees
- B. Only the ADEA because federal law preempts state law on age discrimination claims
- C. Neither law because age discrimination claims require a minimum of fifty employees under both federal and state law
- D. Both the ADEA (covering employers with twenty or more employees) and the Ohio Civil Rights Act (covering employers with four or more employees)

33. A nonexempt electrician earns \$38.00 per hour and works fortyseven hours in a workweek. The employer pays the electrician \$38.00 for all fortyseven hours totaling \$1,786.00. What additional amount does the employer owe?

- A. \$266.00 representing seven hours at the full overtime rate of \$57.00 minus the \$38.00 already paid for those hours
- B. \$133.00 representing the overtime premium of \$19.00 per hour for the seven hours exceeding forty

- C. \$399.00 representing seven hours at the full overtime rate of \$57.00 per hour
- D. Zero because the employer paid the agreed-upon hourly rate for all hours worked

34. An Ohio contractor operating as a sole proprietorship earns \$210,000 in net self-employment income. The contractor contributes the maximum allowable amount to a SEP-IRA. Approximately how much can the contractor contribute?

- A. \$6,500 representing the standard IRA contribution limit for individuals under age fifty
- B. \$66,000 representing the maximum defined contribution plan limit regardless of income
- C. Approximately \$39,000 to \$42,000 representing roughly twenty-five percent of net self-employment income after the deduction for one-half of self-employment tax
- D. \$210,000 representing one hundred percent of net self-employment income

35. An Ohio contractor purchases \$28,000 in plumbing fixtures from a Kentucky supplier. The supplier charges Kentucky sales tax. The contractor installs the fixtures on a private commercial project in Ohio. Does the contractor owe Ohio use tax on this purchase?

- A. The contractor owes Ohio use tax but receives a credit for the Kentucky sales tax paid reducing the Ohio liability to the difference between the Ohio and Kentucky tax rates
- B. No because paying sales tax in Kentucky fully satisfies all tax obligations across all states
- C. Yes on the full \$28,000 because out-of-state sales tax does not offset Ohio use tax under any circumstances
- D. No because plumbing fixtures installed on commercial projects are categorically exempt from Ohio use tax

36. A contractor's project has a CPM schedule with the following four paths: Path 1 = 95 days, Path 2 = 108 days, Path 3 = 88 days, Path 4 = 102 days. At the Day 54 update, a ten-day delay occurs on Path 3. What is the impact on the project completion date?

- A. No impact because Path 3 has twenty days of float and the ten-day delay does not consume all of it
- B. The project is extended by two days because Path 3's float of twenty days absorbs most of the delay

- C. The project is extended by ten days because any delay extends the overall project
- D. No impact because Path 3 is not the critical path and the ten-day delay is fully absorbed by Path 3's float of twenty days ( $108 - 88 = 20$  days)

37. A contractor on a commercial project receives a change order adding \$65,000 in work. The contract allows a ten percent markup on selfperformed change order work. The contractor selfperforms the entire change. The subcontract with the electrical subcontractor contains a flowdown clause requiring the sub to perform any change-related electrical work at cost plus five percent. The change includes \$15,000 of electrical work that the GC directs to the electrical sub. What markups apply?

- A. The GC marks up the entire \$65,000 at ten percent because all the work flows through the GC's change order
- B. The GC marks up the \$50,000 of selfperformed work at ten percent (\$5,000) and the \$15,000 of subcontracted work at five percent (\$750) per the contractual markup rates
- C. The GC applies ten percent to the \$50,000 selfperformed work and ten percent to the \$15,000 subcontracted work because the flowdown clause does not affect the GC's markup
- D. No markup is allowed because changes directed to subcontractors through flowdown provisions are passthrough costs

38. A contractor on a commercial project reaches substantial completion and the architect issues the Certificate of Substantial Completion. The certificate lists the date as October 15. The contract provides for a one-year warranty from the date of substantial completion. Eleven months later, in September, the building experiences a failure of the HVAC economizer damper that was installed by the contractor's mechanical subcontractor. The owner notifies the contractor. What is the contractor's warranty obligation?

- A. The contractor is responsible for coordinating the warranty repair because the contractor's warranty with the owner covers all work including subcontractor work and the defect was reported within the one-year warranty period
- B. The contractor has no warranty obligation because the subcontractor is directly responsible for warranty repairs on their own work
- C. The contractor's warranty covers only the contractor's selfperformed work and the owner must pursue the subcontractor independently
- D. The warranty expired after six months for mechanical systems which have a shorter warranty than other building components

39. An OSHA inspector cites a contractor for a repeat violation of the fall protection standard. The citation states that the contractor received a citation for the same type of violation on a different project eighteen months ago. The repeat classification increases the maximum penalty significantly. The contractor argues that the violation on the previous project was corrected immediately and a repeat classification is unfair. Is the repeat classification proper?

- A. Yes because the previous citation for the same violation was issued within the three-year lookback period and a subsequent violation of the same standard is classified as repeat regardless of whether the original violation was corrected
- B. No because the repeat classification applies only when the violation occurs on the exact same project
- C. The repeat classification is proper only if the current violation involves the same OSHA inspector
- D. No because correcting the original violation within the required timeframe eliminates the repeat classification

40. An Ohio employer terminates an at-will employee. The employee's final paycheck includes regular wages for the last pay period. The employee had a \$2,000 advance from the company for a tool purchase that was supposed to be repaid through payroll deductions over four pay periods. Only \$500 had been deducted before termination. The employer deducts the remaining \$1,500 from the final paycheck without the employee's written authorization for the deduction from the final check. Is this deduction proper under Ohio law?

- A. Yes because the employee agreed to repay the advance and the employer has the right to recover company funds
- B. Yes because tool purchase advances are classified as business expenses that can be deducted from any paycheck
- C. No because Ohio law generally prohibits employers from deducting amounts from final paychecks that reduce the pay below minimum wage unless certain conditions including written authorization are met
- D. The deduction is proper if the employee's written authorization for the advance included language authorizing deduction from any paycheck including the final paycheck

41. A contractor's employee operates a skid steer loader on a commercial project. The employee has not received formal training on this specific model of equipment. The employer argues that the employee has ten years of general construction equipment experience. During operation, the skid steer tips over and the employee is injured. Under OSHA, what training requirement applies?

- A. OSHA requires training only for operators with fewer than five years of equipment experience
- B. The employer's general equipment orientation satisfies all OSHA training requirements
- C. OSHA requires training only for operators under age twentyone as a youth employment restriction
- D. OSHA requires employers to ensure operators are competent and trained on the specific equipment they will use regardless of prior general experience

42. A contractor's CGL policy contains an exclusion for "expected or intended injury." The contractor's crew is demolishing a wall on a commercial renovation project. The superintendent knows that the adjacent office is occupied but proceeds with demolition without notifying the occupants or providing dust barriers. Debris and dust damage the occupied office and an occupant suffers respiratory irritation. The insurance company invokes the "expected or intended" exclusion to deny the claim. Is the denial likely valid?

- A. Yes because the superintendent knew the office was occupied and proceeded without precautions making the damage foreseeable
- B. No because construction dust damage is never excluded from CGL coverage regardless of the circumstances
- C. The denial may be challenged because the exclusion typically requires that the specific injury or damage was expected or intended not merely that the insured's actions were negligent or careless
- D. Yes because all renovationrelated damage claims are excluded under the CGL's "your work" exclusion

43. An Ohio employer has fifteen employees. An employee requests leave under the FMLA to care for a newborn child. The employee has worked for the company for two years and worked 1,800 hours in the past twelve months. The employer denies the request. Is the denial proper?

- A. Yes because the FMLA requires employers to have fifty or more employees within a seventyfivemile radius and this employer has only fifteen
- B. No because the employee meets all individual eligibility requirements and newborn care is a qualifying reason
- C. Yes because FMLA leave for newborn care is limited to the birth mother only
- D. No because all Ohio employers must provide twelve weeks of family leave regardless of size

44. A contractor on a DavisBacon covered project employs a worker classified as a laborer. The prevailing wage determination for laborers specifies \$27.50 per hour base rate plus \$14.00 in fringe benefits. The contractor pays the worker \$30.00 per hour in cash wages and provides no fringe benefits. Is the contractor in compliance?

- A. Yes because the cash wage of \$30.00 exceeds the required base rate of \$27.50
- B. Yes because the total \$30.00 in cash exceeds the base rate and the extra \$2.50 partially offsets the fringe requirement
- C. No because the contractor must pay the full base rate plus full fringe separately and cannot blend the two
- D. No because the total required compensation is \$41.50 per hour ( $\$27.50 + \$14.00$ ) and the contractor is paying only \$30.00 leaving an \$11.50 per hour deficiency

45. A contractor's quarterly cash flow projection shows: beginning cash \$55,000, expected receipts \$420,000, expected disbursements \$465,000. The contractor has a \$150,000 line of credit with \$90,000 available. What is the projected cash position at end of quarter without drawing on the line of credit?

- A. \$55,000 because the beginning balance carries forward regardless of activity
- B. \$10,000 positive calculated as  $\$55,000 + \$420,000 - \$465,000$
- C. Negative \$45,000 because disbursements exceed receipts by \$45,000
- D. \$90,000 because the line of credit automatically covers any shortfall

46. An Ohio contractor's job cost report at month seven of a tenmonth project shows: original budget \$520,000, approved changes \$35,000, revised budget \$555,000, costs to date \$420,000, estimated to complete \$165,000, projected total \$585,000. What is the projected variance and what action should the project manager take?

- A. The project is projected to exceed the revised budget by \$30,000 and the project manager should investigate the cause and implement corrective actions on the remaining work
- B. The project is under budget by \$135,000 because costs to date are below the revised budget
- C. The variance cannot be determined until the project is complete and final costs are known
- D. The project is on budget because the \$30,000 variance is within the standard five percent tolerance

47. A contractor reaches final completion on a commercial project. The owner requests a general release of all claims as a condition of releasing \$88,000 in retainage. The contractor has no pending disputes or change orders. Should the contractor sign the general release?

- A. Never sign a general release because it permanently waives all future claims including latent defect claims
- B. Sign the release only if the owner provides a reciprocal release of all claims against the contractor
- C. Sign the release because there are no pending disputes and the release allows the contractor to receive the retainage and close out the project
- D. Refuse to sign until the oneyear warranty period has expired to preserve all potential claims

48. A contractor's financial statements show the following: total assets \$1,200,000, current assets \$520,000, current liabilities \$380,000, longterm liabilities \$340,000, owner's equity \$480,000. What is the current ratio, working capital, and debttoequity ratio?

- A. Current ratio 1.37, working capital \$140,000, debttoequity 2.50
- B. Current ratio 0.73, working capital negative \$140,000, debttoequity 1.50
- C. Current ratio 1.37, working capital \$520,000, debttoequity 0.71
- D. Current ratio 1.37, working capital \$140,000, debttoequity 1.50

49. Under OSHA's Hazard Communication Standard, an employer must maintain a written hazard communication program. A contractor on a commercial project has a general safety manual but no separate written HazCom program. The manual references "chemical safety" in one paragraph but does not include a chemical inventory, SDS management procedures, labeling requirements, or a training plan for hazardous chemicals. Is the contractor in compliance?

- A. Yes because the general safety manual reference to chemical safety satisfies the HazCom program requirement
- B. No because the HazCom standard requires a written program that specifically addresses chemical inventory, SDS access and management, container labeling, and employee training procedures
- C. Yes because contractors with fewer than fifty employees are exempt from the written program requirement
- D. No but only if the contractor has more than ten hazardous chemicals on the jobsite

50. A contractor on a commercial project submits the final payment application after completing all punch list items and providing all closeout documents. The architect issues the final certificate. The contract requires final payment within thirty days. Forty days later, the contractor has not received payment. The contractor sends a written demand. The owner responds that a warranty issue has been discovered and final payment will be withheld until the warranty repair is completed. Can the owner withhold the entire \$72,000 in retainage for a warranty issue?

- A. The owner generally cannot withhold the entire retainage for a warranty repair that arises after the architect issued the final certificate — the owner may withhold a reasonable amount related to the warranty issue but not the full retainage
- B. Yes because warranty issues automatically suspend all payment obligations until resolved
- C. Yes because the owner has unlimited discretion over final payment timing on commercial projects
- D. No because the architect's final certificate permanently releases the retainage regardless of subsequent warranty issues

## Practice Exam 17: Answer Key and Explanations

**1. D** — In a limited partnership, the general partner has unlimited personal liability for all partnership debts and obligations. The limited partners' exposure is restricted to their capital contributions — they cannot lose more than they invested. When the partnership's \$180,000 in assets is insufficient to cover the \$300,000 judgment, the general partner is personally liable for the remaining \$120,000.

**2. A** — As a sole proprietor, FICA on the full \$195,000:  $\$195,000 \times 15.3\% = \$29,835$ . Under the S-corp, FICA applies only to the \$105,000 salary:  $\$105,000 \times 15.3\% = \$16,065$ . The \$90,000 in distributions avoids FICA. Savings:  $\$29,835 - \$16,065 = \$13,770$ . This represents the 15.3% avoided on the \$90,000 distribution amount ( $\$90,000 \times 15.3\% = \$13,770$ ).

**3. B** — Gross profit:  $\$1,500,000 - \$1,200,000 = \$300,000$ . Gross profit margin:  $\$300,000 \div \$1,500,000 = 20\%$ , not twenty-five percent as claimed. The business plan contains an internal inconsistency — the narrative claims a twenty-five percent margin but the financial data supports only twenty percent. A bank reviewer performing this basic verification would immediately flag this discrepancy.

**4. C** — The Business and Law exam was passed thirty-two months ago, which is within the three-year carryover window. The contractor does not need to retake it. Only the plumbing trade-specific exam is required. The three-year validity of the Business and Law exam applies when adding additional trade classifications to an existing OCILB license.

**5. A** — Performing commercial electrical work without a valid OCILB license violates ORC Chapter 4740 regardless of whether the work passed inspection. A passing inspection confirms the work meets

code requirements but does not validate the contractor's license status. The building department can take enforcement action for the licensing violation independently of the inspection results.

**6. D** — Renovation in an occupied historic building involves numerous productivity-reducing factors that new construction does not: working around existing finishes, protecting historic elements, limited staging and access, restricted work hours, and coordination with building occupants. Using new construction productivity rates will significantly understate the actual labor hours required, producing a low bid that results in financial losses.

**7. B** — The GC should verify the error before making a decision. If the \$35,000 estimating error is documented and verifiable (the subcontractor can show the specific line item that was omitted or miscalculated), the GC may need to negotiate a fair resolution — either allowing withdrawal or agreeing to an adjusted price. Forcing a subcontractor to perform at a known-loss price risks poor quality, delays, and potential abandonment.

**8. C** — The fee is  $12\% \times \$1,100,000 = \$132,000$ . The cost-plus-percentage contract creates an inherent conflict of interest: the contractor earns a higher fee when project costs increase. Every additional dollar spent generates twelve cents of additional fee for the contractor, creating a financial disincentive to control costs. This is why many public agencies prohibit cost-plus-percentage contracts.

**9. A** — Extended construction management fees (\$30,000) are direct damages — additional costs directly caused by the delay period that the owner must pay to manage the extended construction timeline. Lost promotional investments (\$200,000) are consequential damages — indirect financial losses resulting from the missed grand opening. The mutual waiver bars the consequential damages but not the direct damages.

**10. B** — The contract requires seven days' written notice before the contractor may suspend work for non-payment. Even though the payment is four days overdue, the contractor must follow the contractual notice procedure — provide written notice and allow the seven-day cure period to expire before suspending work. Stopping work without proper notice could constitute a breach by the contractor.

**11. C** — Under standard AIA contract provisions, the architect's initial determination is not the final word — it is subject to the contract's dispute resolution process. The contractor should continue performing the disputed work (to avoid a breach for refusal) while simultaneously pursuing the claim through the dispute resolution procedures. This preserves the contractor's rights without disrupting the project.

**12. D** — Activity Q: late start – early start = Day 55 – Day 55 = 0 float (critical path). Activity R: late start – early start = Day 73 – Day 68 = 5 days float (non-critical). Activity Q is on the critical path with zero flexibility, while Activity R has five days of scheduling flexibility before it affects the project completion date.

**13. A** — The project involved work on a government building with a ten-year statute of repose for construction defect claims. Records should be retained for at least the full ten-year period plus a reasonable buffer to ensure documentation is available if a claim arises near the end of the statutory period. Disposing of records prematurely could leave the contractor without evidence to defend against a late-filed claim.

**14. B** — The general aggregate (\$2,000,000) covers ongoing operations claims, and the products-completed operations aggregate (\$2,000,000) covers completed operations claims separately. Ongoing operations claims total \$1,500,000 (within the \$2,000,000 general aggregate). Completed operations claims total \$1,800,000 (within the \$2,000,000 products-completed operations aggregate). Total payout:  $\$1,500,000 + \$1,800,000 = \$3,300,000$ .

**15. D** — The \$175,000 claim will further increase an already-high EMR of 1.35, potentially pushing it to 1.50 or higher over the next several years. This increases annual premiums substantially and will disqualify the contractor from even more projects with EMR thresholds. The compounding effect of a high EMR plus a new large claim can create a devastating cycle of rising costs and shrinking project opportunities.

**16. C** — OSHA's scaffolding standard generally requires fall protection when scaffold platforms are more than ten feet above the lower level. However, specific scaffold types have different requirements, and the eight-foot height may trigger protection requirements depending on the scaffold category. The contractor's blanket claim about "under ten feet" oversimplifies the standard and may not apply to all scaffold types.

**17. A** — Cutting pressure-treated wood generates sawdust containing chemical preservatives (such as copper, chromium, or arsenic compounds depending on the treatment type). The employer failed to assess the chemical exposure and failed to provide respiratory protection based on that assessment. OSHA requires employers to identify chemical hazards and protect workers from exposure through engineering controls and PPE.

**18. B** — The initial treatment — wound cleaning, butterfly bandages, and gauze bandaging — is classified as first aid under OSHA's definitions, making the injury non-recordable at that point. When the physician prescribes oral antibiotics two days later, the treatment crosses from first aid to medical treatment beyond first aid, making the case recordable at that point. The recording trigger is the prescription medication.

**19. D** — Six months of documented progressive discipline predating the workers' compensation claim establishes that the performance issues existed long before the claim was filed. This documentation demonstrates a legitimate, non-retaliatory business reason for the termination. Without pre-existing documentation, the three-week proximity between the claim and termination would create a strong inference of retaliation.

**20. C** — While the RFI is pending, the project manager should proactively manage the schedule impact by communicating the unresolved conflict to all affected trades, identifying which activities depend on the panel locations, and documenting any delays caused by the pending response. This demonstrates active schedule management and preserves the contractor's right to claim additional time if the delayed response affects the critical path.

**21. B** — A declining gross profit margin from twenty-two to sixteen percent while revenue stays flat indicates the contractor is earning less on each dollar of revenue. This could result from competitive pricing pressure, rising material costs, labor inefficiency, or inadequate estimating. The surety is concerned because continued margin compression threatens the contractor's ability to cover overhead, service debt, and sustain operations.

**22. A** — The Ohio CAT applies to all taxable gross receipts from all business activities conducted by the taxpayer. Both the \$3,400,000 in plumbing receipts and the \$280,000 in rental income are

combined for a total of \$3,680,000 in taxable gross receipts. The CAT is not industry-specific — it is a broad-based business tax on all commercial activity.

**23. C** — Ohio generally allows retroactive application of exemption certificates in certain circumstances. The contractor may present the university's exemption certificate to the wholesaler for a credit or file a refund claim with the Ohio Department of Taxation for the sales tax paid on materials used on the exempt project. The specific procedures and time limitations should be verified with a tax professional.

**24. D** — Notice of Furnishing: served Day 17 (within twenty-one days ✓). Lien affidavit: filed fifty-six days after last furnishing (within sixty days ✓). Service on owner: twenty-six days after filing (within thirty days ✓). All three procedural steps were completed within their respective statutory deadlines, preserving the subcontractor's full lien rights for the \$175,000 claim.

**25. B** — The supplier's lien rights exist independently of the GC's payments to the subcontractor. Mechanic's liens attach to the property itself, and the supplier properly preserved lien rights by serving a timely Notice of Furnishing and filing the lien. The owner faces potential exposure to the \$32,000 lien regardless of whether the owner paid the GC and the GC paid the subcontractor.

**26. A** — After the settlement is paid and accepted, the contractor must file a satisfaction or release of lien with the county recorder to remove the lien from the property title. The settlement resolves the underlying dispute and the lien has served its purpose. Failing to release a satisfied lien creates an unnecessary cloud on the title and could expose the contractor to claims.

**27. D** — The notice was provided on Day 86 after last delivery (within the ninety-day Miller Act notice requirement ✓). The lawsuit was filed approximately ten and a half months after last delivery (within the one-year Miller Act filing deadline ✓). The ninety-day waiting period before filing has also been satisfied. Both the notice and lawsuit are timely.

**28. C** — Gross profit:  $\$2,350,000 - \$1,833,000 = \$517,000$ . Gross profit margin:  $\$517,000 \div \$2,350,000 = 22\%$ . Net operating income:  $\$517,000 - \$376,000 = \$141,000$ . Break-even revenue:  $\$376,000 \div 0.22 = \$1,709,091$ . The contractor is well above the \$1,709,091 break-even point with current revenue of \$2,350,000.

**29. A** — Working capital = current assets – current liabilities =  $\$380,000 - \$295,000 = \$85,000$ . Bonding capacity at fifteen times working capital:  $15 \times \$85,000 = \$1,275,000$ . This represents the surety's guideline for the maximum aggregate bonded work the contractor can support based on available short-term financial resources.

**30. B** — Type B soil characteristics include previously disturbed soil and evidence of water seepage — both of which disqualify the soil from Type A classification. The soil has cohesive properties (can be dented with thumb but penetrated only with great effort) which is consistent with Type B. Type C would apply to soil with weaker cohesion — granular soils, submerged soil, or soil from which water is freely seeping.

**31. A** — Although 19.0% oxygen is above the 19.5% OSHA action level, the declining trend from 20.9% to 19.0% in thirty minutes indicates the atmosphere is deteriorating. A competent attendant should recognize this trend as a warning sign and order evacuation before conditions reach the dangerous threshold. The space should be ventilated and reassessed before workers re-enter.

**32. D** — The ADEA covers employers with twenty or more employees, and this employer has thirty-eight (meets threshold ✓). The Ohio Civil Rights Act covers employers with four or more employees (meets threshold ✓). Both laws prohibit age discrimination against workers forty and older. The terminated fifty-two-year-old worker can pursue claims under both federal and state law.

**33. B** — The employer paid \$38.00 for all forty-seven hours, including the seven overtime hours. The straight-time portion for the overtime hours was already paid ( $\$38.00 \times 7 = \$266.00$ ). The employer owes only the overtime premium — the additional half-time:  $\$19.00 \times 7 = \$133.00$ . Total correct pay:  $\$1,786.00 + \$133.00 = \$1,919.00$ .

**34. C** — The maximum SEP-IRA contribution for a sole proprietor is approximately twenty-five percent of net self-employment income after the deduction for one-half of self-employment tax. On \$210,000, after the self-employment tax adjustment, the contribution would be approximately \$39,000 to \$42,000. The exact amount requires applying the self-employed contribution formula which adjusts for the self-employment tax deduction.

**35. A** — Ohio use tax is owed on out-of-state purchases where Ohio sales tax was not collected, but Ohio provides a credit for sales tax paid to other states. The contractor owes Ohio use tax on the \$28,000 but receives a credit for the Kentucky sales tax already paid, reducing the Ohio liability to the difference between the Ohio rate and the Kentucky rate (or zero if Kentucky's rate equals or exceeds Ohio's).

**36. D** — Path 3 has a duration of 88 days while the critical path (Path 2) has a duration of 108 days. Path 3's total float is  $108 - 88 = 20$  days. The ten-day delay on Path 3 consumes only ten of the twenty days of float, leaving ten days of float remaining. Path 3 remains non-critical and the project completion date is unchanged at 108 days.

**37. B** — The contract specifies different markup rates for self-performed and subcontracted change order work. The \$50,000 self-performed portion receives ten percent (\$5,000) and the \$15,000 subcontracted portion receives five percent (\$750). Total markup: \$5,750. Total change order:  $\$65,000 + \$5,750 = \$70,750$ . The differentiated rates must be applied to their respective work categories.

**38. A** — The contractor's warranty with the owner covers all work on the project, including work performed by subcontractors. The owner's warranty claim is against the contractor, not directly against the subcontractor. The contractor must coordinate the warranty repair — typically by directing the mechanical subcontractor to correct the defect — and is responsible to the owner for ensuring the repair is completed within the warranty period.

**39. A** — A repeat violation occurs when the employer received a previous citation for the same or substantially similar violation within the past three to five years (depending on OSHA policy). The previous citation was eighteen months ago — within the lookback period. Correcting the original violation does not prevent repeat classification if the same type of violation occurs again. The repeat classification is proper and carries significantly higher penalties.

**40. D** — The propriety of the deduction depends on whether the employee's original written authorization for the advance specifically authorized deduction from the final paycheck. If the original agreement included language permitting deduction from any paycheck including the final one, and the deduction does not reduce pay below minimum wage, it may be permissible. Without such specific authorization, the deduction from the final check may violate Ohio wage payment laws.

**41. D** — OSHA requires employers to ensure that equipment operators are competent and trained on the specific equipment they will use, including the specific model's controls, safety features, and operating characteristics. Ten years of general construction experience does not substitute for training on the specific skid steer model. The employer must provide documented training before the employee operates the equipment.

**42. C** — The "expected or intended injury" exclusion typically requires that the insured specifically expected or intended the particular injury or damage that occurred — not merely that the insured acted negligently or carelessly. Proceeding with demolition without precautions may be negligent, but the superintendent likely did not specifically intend to damage the office or injure the occupant. The insurer's denial may be challenged on this distinction.

**43. A** — The FMLA requires employers to have fifty or more employees within a seventy-five-mile radius to be covered. This employer has only fifteen employees, well below the threshold. The FMLA does not apply regardless of whether the employee meets all individual eligibility requirements. The employer is not legally required to provide FMLA leave.

**44. D** — The prevailing wage requires total compensation of \$41.50 per hour (\$27.50 base + \$14.00 fringe). The contractor pays \$30.00 in cash and provides no fringe benefits. While the \$30.00 exceeds the \$27.50 base rate by \$2.50, that excess partially offsets the fringe requirement, but the total compensation of \$30.00 falls \$11.50 short of the required \$41.50. The contractor is non-compliant.

**45. B** — Beginning cash (\$55,000) plus receipts (\$420,000) minus disbursements (\$465,000) = \$10,000 positive ending cash. The contractor maintains a positive cash position without drawing on the line of credit, but the \$10,000 balance is extremely thin. The \$90,000 available on the line of credit provides backup, but the contractor should plan carefully to avoid any unexpected expenses that could push the balance negative.

**46. A** — Projected total cost: \$420,000 + \$165,000 = \$585,000. Revised budget: \$555,000. Projected variance: \$585,000 – \$555,000 = \$30,000 over budget. The project manager should investigate which cost categories are driving the overrun and implement corrective actions on the remaining \$165,000 of estimated work before the overrun increases further.

**47. C** — With no pending disputes, change orders, or unresolved claims, signing a general release to receive the \$88,000 retainage is a reasonable business decision. The release closes out the project financially and allows the contractor to move forward. The contractor should review the release language carefully to ensure it does not inadvertently waive warranty obligations or other ongoing commitments.

**48. D** — Current ratio:  $\$520,000 \div \$380,000 = 1.37$ . Working capital:  $\$520,000 - \$380,000 = \$140,000$ . Total liabilities:  $\$380,000 + \$340,000 = \$720,000$ . Debt-to-equity:  $\$720,000 \div \$480,000 = 1.50$ . The current ratio of 1.37 indicates adequate liquidity, \$140,000 working capital provides a cushion, and a debt-to-equity of 1.50 indicates moderate leverage within acceptable bonding thresholds.

**49. B** — The Hazard Communication Standard requires a written program that specifically addresses chemical inventory management, SDS access and maintenance procedures, container labeling requirements, and a training plan for employees who work with or near hazardous chemicals. A single paragraph in a general safety manual referencing "chemical safety" does not meet these specific requirements.

**50. A** — Once the architect has issued the final certificate confirming all work is complete and all closeout requirements are satisfied, the owner generally cannot withhold the entire retainage for a warranty issue that arises afterward. The owner may withhold a reasonable amount related to the specific warranty repair, but withholding the full \$72,000 for a single warranty item is likely disproportionate and constitutes a breach of the payment terms.