

PRACTICE EXAM 15: ALABAMA BUSINESS & LAW SIMULATION

Time allowed: 120 minutes | Questions: 50 | Passing score: 70% (35 correct)

Instructions for this exam: Each item presents an outcome under Alabama law or construction practice and asks why that outcome occurs. Select the option that identifies the correct legal, factual, or policy rationale for the outcome.

1. Why is a contract performed by an unlicensed contractor for \$75,000 commercial work in Alabama unenforceable by the contractor against the owner?

A. Because the Alabama Department of Revenue automatically nullifies all construction contracts above the \$50,000 threshold by administrative order

B. Because the Alabama Licensing Board issues an automatic stay on all contractor payments above the \$50,000 threshold

C. Because federal contracting law preempts all unlicensed state contracts at or above the \$50,000 threshold under federal procurement law

D. Because Alabama courts enforce the licensing statute by denying the unlicensed party the right to sue for payment on work requiring an Alabama license, treating the contract as unenforceable in the contractor's favor

2. Why must the Alabama Licensing Board provide a hearing before imposing license revocation?

A. Because federal preemption requires hearings under Alabama labor law for any disciplinary action

B. Because the Alabama Administrative Procedure Act and constitutional due process require notice and an opportunity to be heard before depriving the contractor of the licensed status

C. Because the Board's bylaws require a unanimous vote of all members to revoke without hearing under state law

D. Because the contractor must pay the licensing fee in full before the revocation takes effect under state regulations

3. Why does the NASCLA Accredited Commercial Building Contractor examination fail to satisfy the Alabama Business and Law examination requirement?

A. Because NASCLA tests classification-specific commercial building technical knowledge, while Business and Law tests general business management and Alabama-specific legal compliance — the two examinations cover non-overlapping content

B. Because NASCLA is administered only in three states and Alabama is not among them under licensing rules across the states

C. Because the NASCLA examination is not recognized by the Alabama Department of Revenue under state tax rules

D. Because NASCLA is invalid for any state licensure under federal contracting law as applied to state credentials

4. Why does the qualifying party (QP) for an Alabama licensee have to be a natural person and not a corporate entity?

A. Because corporate entities cannot pay licensing fees under Alabama law without authorization from the Secretary of State

B. Because the Board only recognizes resident citizen taxpayers as licensable under federal corporate registration rules

C. Because the QP designation is intended to identify the specific individual personally responsible for the technical oversight and competency of the licensed work, which a corporate entity cannot personally provide

D. Because federal corporate law prohibits entities from holding state contractor licenses under federal procurement law

5. Why does the Alabama Licensing Board impose a 60-day window for designating a replacement QP after the original QP departs?

- A. Because federal procurement law preempts all longer windows under federal contracting regulations
- B. Because state insurance regulators require a 60-day window under unemployment insurance rules applied to construction
- C. Because the 60-day window balances continuity of technical oversight (the core function of the QP designation) against the licensee's reasonable need to identify, qualify, and onboard a suitable replacement individual
- D. Because workers' compensation premiums require monthly QP verification under state insurance law applied to construction

6. Why does Alabama require a QP to have at least 3 years of construction experience?

- A. Because 3 years matches the IRS payroll tax cycle requirement under federal employment tax law
- B. Because the 3-year experience minimum ensures the responsible individual has practical exposure to the trade sufficient to provide meaningful technical oversight
- C. Because 3 years matches the federal new-hire reporting period under federal labor law uniformly
- D. Because the Board has set the experience requirement equal to the lien statement filing deadline under state lien law

7. Why does Alabama set the minimum age for a contractor license at 19 years rather than 18 or 21?

- A. Because federal contracting law requires age 19 minimum for state licensure across federal projects
- B. Because the Alabama Legislature has set age 19 as the federal Social Security qualifying age for the construction industry
- C. Because age 19 is the Alabama age of majority — the threshold at which an individual is legally treated as an adult capable of entering binding contracts and assuming the legal obligations of licensure
- D. Because age 19 matches the Alabama SUTA wage base under unemployment insurance rules applied to construction

8. Why does the Board cap civil penalties at \$10,000 per violation rather than allowing unlimited discretion?

- A. Because the Alabama Legislature has set the statutory ceiling at \$10,000 per violation — defining the outer limit of Board penalty authority and preventing punitive amounts that would exceed the legislature's authorization
- B. Because federal law preempts state penalties above \$10,000 under federal contractor regulation rules
- C. Because workers' compensation rules cap construction penalties at \$10,000 under state insurance law
- D. Because the Alabama Department of Revenue requires \$10,000 caps for all professional licensing penalties under state tax law

9. Why is the Trust Fund Recovery Penalty under IRC §6672 enforced against responsible persons personally rather than only against the entity?

- A. Because the IRS does not have authority to collect from corporate entities under federal tax law as applied to closely held businesses
- B. Because federal employment law makes all corporate officers automatically liable for unpaid taxes regardless of involvement in tax decisions
- C. Because the withheld income tax and the employee share of FICA are held by the employer in trust for the government — willful failure to remit is treated as an abuse of the trust justifying personal liability against those responsible for collection
- D. Because state law preempts federal collection of corporate taxes from corporate entities under federalism principles as applied to small business

10. Why is the federal Medicare tax not subject to a wage base limit while the Social Security tax is?

- A. Because federal corporate law treats Medicare as a state-administered program subject to state wage limits across all states
- B. Because Medicare and Social Security share identical wage limits under federal employment tax law as updated annually
- C. Because Medicare is administered by the Alabama Department of Revenue under state tax rules as applied to construction industries
- D. Because the Social Security wage base reflects the policy choice to tie benefits to a capped contribution range, while Medicare is funded across all wages without a contribution cap to support the program's broader entitlement structure

11. Why does the FUTA effective rate of 0.6% apply only after the standard state credit, rather than the full 6.0% statutory rate?

A. Because employers receive a credit of up to 5.4% against the 6.0% statutory FUTA rate for timely-paid state unemployment taxes, leaving the 0.6% net rate as the federal share when the state contribution is properly maintained

B. Because federal law caps FUTA at 0.6% absolutely with no credit mechanism under federal employment tax rules

C. Because Alabama exempts construction employers from the 5.4% federal portion under state law as applied to construction

D. Because the Internal Revenue Code requires state SUTA to be deducted from FUTA before assessment under federal procedure

12. Why must Form I-9 be completed within 3 business days of an employee's start date rather than at the next federal compliance check?

A. Because federal payroll rules require 3-day employee onboarding for federal tax purposes under federal employment tax law

B. Because Alabama workers' compensation requires I-9 within 3 days under state insurance rules applied to construction

C. Because federal immigration law requires verification of identity and work authorization promptly at the start of employment to prevent unauthorized workers from being employed, and the 3-business-day window enforces that timely verification objective

D. Because the Alabama Beason-Hammon Act preempts the federal I-9 timing under state immigration enforcement law

13. Why does the Alabama SUTA wage base of \$8,000 differ from the federal FUTA wage base of \$7,000?

A. Because each state legislature sets its own SUTA wage base independent of the federal FUTA base, and Alabama has set its base at \$8,000 to fund the state unemployment insurance trust fund at the level the state deems appropriate

B. Because federal preemption requires Alabama to match the FUTA wage base exactly under federal employment tax law as applied to state taxes

C. Because the Alabama Department of Revenue sets SUTA bases by federal payroll tax allocation under federal procedure rules

D. Because the FUTA wage base of \$7,000 is indexed annually while the SUTA wage base is fixed under federal procedure rules

14. Why is the Form 941 quarterly filing schedule retained rather than consolidated into a single annual filing?

A. Because federal law preempts annual filings on construction projects entirely under federal employment tax procedure

B. Because Form 941 is required by state law for Alabama contractors only as a state-level supplemental reporting requirement

C. Because the IRS has no authority to require annual filings under federal tax law as applied to construction employers

D. Because quarterly filing on Form 941 allows the IRS to monitor wage and withholding compliance on a near-real-time basis throughout the year, enabling earlier detection of non-compliance than annual reconciliation would permit

15. Why is a true pay-if-paid clause enforceable in Alabama only when it uses explicit risk-shifting language?

A. Because Alabama statute prescribes the exact language that must appear in pay-if-paid clauses to be enforceable under state law

B. Because federal procurement law preempts state interpretation of pay-if-paid clauses for construction subcontracts on federal projects

C. Because pay-if-paid clauses must be registered with the Alabama Licensing Board to be enforceable on public construction contracts above \$50,000

D. Because shifting the credit risk of owner default from the prime to the subcontractor is a significant departure from the default rule that the prime bears the credit risk to its own subs, and courts require clear and unambiguous language to enforce that departure

16. Why is termination for convenience permitted under standard construction contracts even without contractor breach?

- A. Because the parties have contractually agreed in advance that the owner may end the contract at will, in exchange for the owner's promise to compensate the contractor for work performed plus a defined percentage of unperformed profit — making termination for convenience a bargained-for contractual right rather than a remedy for breach
- B. Because Alabama statute imposes a mandatory right of termination for convenience on all construction contracts under state contract law
- C. Because federal procurement law requires all state construction contracts to include termination for convenience clauses on private projects
- D. Because the Alabama Licensing Board mandates termination for convenience as a regulatory matter under state licensing rules

17. Why is a liquidated damages clause enforceable when actual damages are difficult to estimate at the time of contract formation?

- A. Because Alabama statute requires liquidated damages clauses in all construction contracts above \$50,000 under state law
- B. Because federal law preempts state-law unenforceability of penalty clauses on construction contracts under federal contracting law
- C. Because the parties have agreed in advance to a reasonable estimate of damages that would be difficult to prove later — enforcing the agreed measure honors the parties' bargained-for allocation of delay risk while avoiding costly post-hoc damage litigation
- D. Because the contractor and owner are required by state law to set liquidated damages at \$1,000 per day on all projects under state construction rules

18. Why does a Construction Change Directive (CCD) permit the contractor to be directed to proceed before pricing is agreed?

- A. Because Alabama statute requires the CCD mechanism on all construction contracts under state contract law as applied to construction
- B. Because federal law preempts state contract law on change directives under federal contracting law as applied to construction
- C. Because the Board has authority to issue change directives at any time during construction under state licensing law as applied to contractors

D. Because requiring full price agreement before any work proceeds would allow disputes to halt construction indefinitely — the CCD permits the work to continue under the owner's direction while pricing is reconciled later through audit or formal change order

19. Why does the Alabama Statute of Frauds require contracts for real property sale to be in writing and signed?

A. Because federal law preempts oral real estate contracts under federal property law as applied to state contracts

B. Because real property transactions involve high stakes and long-term consequences, and the statute prevents fraudulent claims and provides reliable evidence of the parties' intent by requiring written, signed memorialization

C. Because the Alabama Department of Revenue requires written real property contracts to assess property tax under state tax law as applied to real property

D. Because the Alabama Probate Court requires written contracts to be filed before any sale under state real property law

20. Why does a material breach by the contractor entitle the owner to terminate the contract for cause only after notice and a cure period?

A. Because federal procurement law requires notice and cure on all construction contracts under federal contracting rules as applied to state contracts

B. Because contract law favors preserving the contract relationship where possible — providing the breaching party a fair opportunity to remedy the breach before the more drastic remedy of termination, balancing the owner's right to performance with the contractor's interest in completing the work

C. Because the Alabama Licensing Board requires written notice and a 30-day cure period on all construction contracts under licensing rules as applied to contractors

D. Because federal procurement law preempts state common-law termination doctrines under federal contracting law as applied to private contracts

21. Why does the Alabama Public Works Law (Title 39) require advertised competitive bidding for public construction projects at or above \$50,000?

- A. Because competitive bidding promotes transparency, prevents favoritism in public procurement, and obtains the best value for taxpayer dollars — and the legislature has set the \$50,000 threshold as the dollar value above which the public interest in competitive process outweighs the administrative burden
- B. Because federal law preempts state public works procurement entirely above \$50,000 under federal procurement law as applied to state projects
- C. Because workers' compensation rules require bidding above \$50,000 on public projects under state insurance law as applied to public construction
- D. Because the Alabama Department of Revenue collects tax revenue based on competitive bid totals over \$50,000 under state tax law as applied to public works

22. Why does Alabama set the Competitive Bid Law (Title 41-16) threshold at \$15,000 — lower than the Public Works Law threshold of \$50,000?

- A. Because federal law sets the Title 41-16 threshold at \$15,000 under federal procurement rules as applied to state purchases
- B. Because the Alabama Department of Revenue requires the \$15,000 threshold for tax purposes under state tax law as applied to procurement
- C. Because the Title 41-16 threshold has been raised over time and now equals the federal threshold for general procurement under federal contracting law
- D. Because the two statutes govern different procurement categories: general procurement of goods, equipment, and services under Title 41-16 involves higher recurring volume and a lower per-purchase threshold is appropriate, while construction projects under Title 39 involve larger discrete contracts justifying the higher \$50,000 threshold

23. Why does the Alabama bid mistake doctrine require prompt written notice with documentation as a condition of withdrawal?

- A. Because federal procurement law requires written notice on all bid withdrawals under federal contracting law as applied to state bids
- B. Because prompt written notice with documentation protects the integrity of the public bidding process — preventing bidders from using "mistake" as a pretext to escape unfavorable bids after evaluating competitor pricing, while still allowing genuine clerical and mathematical errors to be remedied before binding acceptance

C. Because the Alabama Department of Revenue requires written documentation for tax purposes under state tax law as applied to bid mistakes

D. Because workers' compensation rules require written notice of bid mistakes for insurance purposes under state insurance law

24. Why is the bid bond typically set at 5% of the bid amount, while the performance bond is typically 100% of contract value?

A. Because the bid bond covers the relatively limited damages of having to re-bid or accept the second-lowest bid if the awarded bidder defaults on contract execution — typically estimated at 5% — while the performance bond must cover the full cost of completing the contract if the contractor defaults during construction, requiring the full contract value

B. Because federal law sets bid bond and performance bond ratios for all states under federal procurement law as applied to public bids

C. Because Alabama statute requires both bonds at 100% under state law as applied to public bids universally

D. Because the Alabama Licensing Board sets bonding ratios as a regulatory matter under state licensing law

25. Why does the standard markup chain apply general overhead before profit rather than after?

A. Because federal procurement law requires this specific order on all construction bids under federal contracting law as applied to bidding

B. Because the Alabama Department of Revenue requires this order for tax purposes under state tax law as applied to construction bidding

C. Because the order of markups is arbitrary and produces the same final price regardless of sequence under construction accounting

D. Because general overhead is treated as a cost of doing business that must be recovered before profit is calculated — applying overhead first ensures the contractor recovers the cost of running the business, and applying profit last produces the desired return on the total cost base

26. Why does GAAP favor the percentage-of-completion method for long-term construction contracts over the completed-contract method?

- A. Because federal tax law preempts the completed-contract method under all circumstances for long-term contracts as a federal tax matter
- B. Because percentage-of-completion better matches revenue to the period in which work is performed — providing a more accurate picture of the contractor's financial performance during the contract life, which is more decision-useful for investors, lenders, and sureties than deferring all revenue to project end
- C. Because the Alabama Department of Revenue requires percentage-of-completion for tax purposes under state tax law as applied to long-term contracts
- D. Because the IRS has banned the completed-contract method for all contractors under federal tax procedure rules

27. Why is an overbilling recognized as a current liability rather than as revenue earned?

- A. Because the contractor has billed for work that has not yet been earned through performance — the excess of billings over earned revenue represents an obligation to deliver future work for which payment has already been received, which is properly classified as a liability under accrual accounting
- B. Because federal tax law requires overbillings to be classified as current liabilities for tax purposes under federal tax procedure
- C. Because the Alabama Department of Revenue classifies overbillings as state-level liabilities under state tax law as applied to contractors
- D. Because overbillings are recognized only on the income statement under construction accounting as applied to long-term contracts

28. Why does a contractor's working capital (current assets minus current liabilities) matter to sureties when underwriting bond capacity?

- A. Because federal law requires bonding to be set by working capital under federal procurement rules as applied to bonded contracts
- B. Because the Alabama Licensing Board requires working capital to be reported for tax purposes under state licensing law as applied to bonding
- C. Because working capital measures the contractor's short-term financial strength and liquidity — the ability to fund ongoing operations, absorb short-term financial stress, and complete bonded projects even when payments are delayed — which directly affects the surety's exposure on the bond

D. Because working capital is identical to net worth under all accounting frameworks under federal accounting rules as applied to construction

29. Why does a conditional lien waiver fail to take effect when the underlying payment check is dishonored?

A. Because the conditional waiver is expressly contingent on actual receipt of the payment specified — the condition is not satisfied when the check bounces, the waiver does not take effect, and the signing party's lien rights remain preserved as the parties intended

B. Because federal law preempts state conditional waiver enforcement entirely under federal property law as applied to construction

C. Because the Alabama Licensing Board requires payment to be received in cash for waivers to take effect under state licensing law as applied to subcontractors

D. Because conditional waivers are void as against public policy regardless of payment receipt under state lien law as applied to construction

30. Why is net worth (total assets minus total liabilities) a key measure of construction business strength reviewed by sureties and the Licensing Board?

A. Because federal tax law requires net worth calculation for federal procurement under federal contracting law as applied to bonding

B. Because the Alabama Department of Revenue requires net worth reporting for tax purposes under state tax law as applied to contractors

C. Because net worth is equivalent to working capital under construction accounting as applied to bonded contracts and licensing

D. Because net worth represents the equity available to absorb business risk — the cushion of ownership value above all liabilities — and a contractor with stronger net worth has greater capacity to weather adverse events and complete bonded projects without surety loss

31. Why does the Fair Labor Standards Act require overtime at 1.5 times the regular rate rather than 1.0 times?

- A. Because federal law requires 1.5x overtime for all construction labor specifically under federal contracting law
- B. Because the Alabama Department of Labor requires 1.5x as a state-law matter under state labor law as applied to construction
- C. Because workers' compensation rules require overtime at 1.5x for premium calculation under state insurance law as applied to construction
- D. Because the overtime premium is designed to disincentivize excessive overtime work — protecting workers from overwork — and to provide a financial premium when employers do require extended hours, balancing employer flexibility with worker protection

32. Why does Alabama set the workers' compensation threshold at 5 employees rather than 1 or 50?

- A. Because the Alabama Legislature has set the threshold to balance worker protection (mandating coverage for employers with sufficient workforce to support the regulatory burden) against the administrative burden on the smallest employers — 5 employees is the legislatively determined point of balance under Alabama law
- B. Because federal law requires the 5-employee threshold uniformly across all states under federal employment law as applied to workers' compensation
- C. Because the Alabama Department of Revenue collects unemployment tax at 5 employees only under state tax law as applied to workers' compensation
- D. Because federal preemption requires the 5-employee threshold for all states under federal employment law as applied to state workers' compensation

33. Why do Title VII (15 employees) and the ADEA (20 employees) have different thresholds despite being federal anti-discrimination statutes?

- A. Because the Alabama Department of Labor sets different state-law thresholds for each federal statute under state labor law as applied to construction
- B. Because the Alabama Licensing Board has determined these thresholds for the construction industry under state licensing law as applied to anti-discrimination
- C. Because Congress in enacting each statute weighed the importance of the protected category against the administrative burden on smaller employers, and set the threshold for each statute independently based on the policy judgment specific to that statute's protected category

D. Because federal preemption requires uniform thresholds for all anti-discrimination statutes under federal employment law uniformly

34. Why does the Beason-Hammon Act mandate E-Verify for every Alabama employer, going beyond the federal default?

A. Because federal law requires every state to mandate E-Verify universally under federal immigration law as applied to states

B. Because the Alabama Legislature determined that universal employer use of E-Verify is necessary to prevent the employment of unauthorized workers in Alabama — extending federal verification beyond the federal default to address state-specific immigration enforcement objectives

C. Because the Alabama Department of Revenue collects unemployment tax through E-Verify under state tax rules as applied to employment verification

D. Because federal preemption requires the universal E-Verify mandate as a matter of federal law under federal immigration law

35. Why does FMLA require both a 50-employee workforce and a 75-mile radius for employer coverage?

A. Because federal law arbitrarily sets these thresholds without underlying rationale under federal employment law as applied to leave statutes

B. Because Congress determined the combined threshold protects employees at sufficiently large work locations where the employer can reasonably accommodate leave without undue burden on operations — the 75-mile radius captures workers in functional proximity to one another while excluding scattered small operations

C. Because the Alabama Department of Labor sets the FMLA thresholds for the construction industry under state law as applied to leave statutes

D. Because federal preemption requires the 75-mile radius for all employee leave statutes uniformly under federal employment law as applied to leave

36. Why is workers' compensation the "exclusive remedy" against the employer for work-related injuries?

A. Because federal law preempts all tort claims against employers for work-related injuries under federal employment law as applied to construction

B. Because the Alabama Licensing Board exempts employers from tort claims under licensing law as applied to construction injuries

C. Because federal procurement law requires exclusive remedy provisions on all construction projects under federal contracting law as applied to state projects

D. Because the workers' compensation system is a legislative bargain — employees give up the right to sue the employer in tort for work-related injuries in exchange for prompt, no-fault statutory benefits payable regardless of fault, while employers gain certainty and limitation of liability

37. Why does the standard CGL policy contain a "your work" exclusion barring coverage for damage to the contractor's own completed work?

A. Because CGL is designed to cover third-party liability arising from the contractor's operations — not to function as a warranty of workmanship or to insure against the contractor's own defective performance, which would shift business risk to the carrier and undermine the contractor's incentive to perform properly

B. Because federal procurement law prohibits CGL coverage for the contractor's own work under federal contracting rules as applied to insurance

C. Because Alabama statute requires CGL to exclude the contractor's own work on public projects under state law as applied to construction insurance

D. Because workers' compensation rules require CGL exclusions for the contractor's own work under state insurance law as applied to construction

38. Why does builders' risk insurance cover physical damage to the project under construction, including installed materials?

A. Because federal procurement law requires builders' risk on all construction projects under federal contracting law as applied to project insurance

B. Because Alabama statute requires the contractor to insure the project for the owner's benefit under state construction law as applied to project insurance

C. Because the project under construction is uniquely vulnerable to perils such as fire, theft, vandalism, and weather during the construction period — builders' risk provides the property insurance that fills the gap between the start of construction and the completed property insurance the owner will carry once the project is complete and occupied

D. Because workers' compensation rules require builders' risk for installed materials under state insurance law as applied to construction insurance

39. Why does a waiver of subrogation between contracting parties require an underlying insurance policy that permits the waiver?

A. Because federal law requires written approval from the insurance commissioner for all subrogation waivers under state law as applied to construction insurance waivers

B. Because the Alabama Licensing Board sets requirements for subrogation waivers on construction projects under licensing rules as applied to insurance practice

C. Because the insurer's right of subrogation is part of the insurance contract between the insurer and its insured, and the insured cannot waive a right that belongs in part to the insurer without the insurer's consent — typically given through a policy endorsement permitting the waiver

D. Because workers' compensation rules require carrier consent for all subrogation waivers under state insurance law as applied to insurance practice

40. Why does OSHA require employers to report fatalities within 8 hours, but in-patient hospitalizations and amputations within 24 hours?

A. Because the severity and irreversibility of a fatality justify the most rapid investigation by OSHA to preserve evidence and prevent recurrence, while the 24-hour window for serious but non-fatal events strikes a balance between regulatory urgency and reasonable reporting time for the employer

B. Because federal preemption requires identical reporting windows across all jurisdictions under federal occupational safety law as applied to all events

C. Because workers' compensation rules require 8-hour fatality reporting under state insurance law as applied to construction injuries

D. Because the Alabama Department of Labor requires 8-hour fatality reporting independent of OSHA under state labor law as applied to construction

41. Why must OSHA Form 300A be posted in the workplace from February 1 through April 30 each year?

A. Because federal tax law requires Form 300A posting during this window under federal payroll rules as applied to safety records

- B. Because the 3-month posting window ensures employees have visibility into the employer's prior-year safety performance — promoting transparency, awareness of workplace hazards, and accountability for workplace safety throughout the workforce
- C. Because the Alabama Licensing Board requires posting from February 1 through April 30 under licensing rules as applied to safety records
- D. Because workers' compensation rules require Form 300A posting under state insurance law as applied to construction safety records

42. Why does the NPDES Construction General Permit require a Stormwater Pollution Prevention Plan (SWPPP) to be developed before the Notice of Intent (NOI) is filed?

- A. Because federal preemption requires SWPPP development before any state permit filing under federal water law as applied to construction permits
- B. Because the SWPPP is the substantive site-specific document identifying pollution sources and best management practices — and ADEM's permit coverage is premised on the existence of a complete SWPPP, so the document must exist before coverage is sought through the NOI
- C. Because the Alabama Department of Revenue requires SWPPP development for tax assessment purposes under state tax law as applied to permit assessments
- D. Because workers' compensation rules require SWPPP filings under state insurance law as applied to construction site environmental controls

43. Why does the General Duty Clause (OSHA Section 5(a)(1)) function as a "catch-all" requirement in addition to specific OSHA standards?

- A. Because federal preemption requires general duty clauses in all state safety statutes under federal occupational safety law as applied uniformly
- B. Because the Alabama Department of Labor requires a general duty clause for state-law purposes under state labor law as applied to construction safety
- C. Because specific OSHA standards cannot anticipate every workplace hazard, and the General Duty Clause requires employers to address recognized hazards not covered by a specific standard but likely to cause death or serious physical harm — ensuring no recognized hazard goes unaddressed
- D. Because workers' compensation rules require general duty clause compliance under state insurance law as applied to construction site practices

44. Why does substantial completion (rather than final completion) mark the start of the warranty period under standard construction contracts?

A. Because federal procurement law requires warranties to start at substantial completion under federal contracting law as applied to construction warranties

B. Because at substantial completion the owner takes beneficial occupancy of the project and begins using it for its intended purpose — the warranty period appropriately runs from the date the owner has the benefit of the work, rather than from the later date when minor punch list items are finalized

C. Because the Alabama Licensing Board requires warranties to start at substantial completion under licensing rules as applied to construction warranties

D. Because workers' compensation rules tie warranty periods to substantial completion under state insurance law as applied to construction practice

45. Why does the critical path on a CPM schedule have zero total float on its activities?

A. Because federal scheduling standards require zero float on critical path activities under federal contracting law as applied to project schedules

B. Because the critical path is by definition the longest path through the project network — any delay to any activity on this path delays the entire project — meaning critical path activities have no scheduling room to be delayed without delaying the project

C. Because the Alabama Licensing Board requires zero float on critical path activities under licensing rules as applied to scheduling practices

D. Because workers' compensation rules require zero float schedule activities under state insurance law as applied to construction project scheduling

46. Why is retainage typically released in two stages — a bulk release at substantial completion and remainder after punch list completion — rather than all at once?

A. Because federal procurement law requires this specific release pattern on all construction contracts under federal contracting law as applied to retainage

B. Because the Alabama Department of Revenue requires this pattern for tax purposes under state tax law as applied to retainage releases

C. Because workers' compensation rules require this pattern under state insurance law as applied to construction retainage releases

D. Because the two-stage release balances the contractor's reasonable interest in receiving most of the retained funds when the project is largely complete and useful to the owner, against the owner's continuing need for security to ensure punch list and minor completion items are actually finished

47. Why must a materialman without a direct contract with the owner give written notice to the owner BEFORE furnishing materials to preserve full lien rights?

A. Because the materialman has no direct privity with the owner — pre-furnishing notice gives the owner the opportunity to protect itself by withholding payment to the prime contractor sufficient to cover material claims, balancing the materialman's lien rights against the owner's ability to manage payment to the chain

B. Because federal lien law requires written notice on all material claims under federal property law as applied to state lien actions

C. Because the Alabama Department of Revenue requires written notice for tax assessment purposes under state tax law as applied to lien actions

D. Because workers' compensation rules require written materialman notice under state insurance law as applied to construction projects

48. Why does Alabama mechanic's lien law require the lawsuit to enforce the lien to be filed within 6 months of the lien filing?

A. Because federal lien enforcement law requires 6-month filing windows on all property liens uniformly under federal property law as applied to state lien actions

B. Because the Alabama Department of Revenue requires 6-month enforcement under state tax rules as applied to lien actions on real property

C. Because workers' compensation rules tie enforcement deadlines to the 6-month period under state insurance law as applied to construction lien actions

D. Because the lien is a powerful security interest against the property — the lawsuit deadline ensures that lien claims are pursued promptly to a judicial resolution, providing certainty for the property owner and any subsequent purchasers about the status of the lien on the property

49. Why is a multi-member LLC taxed by default as a partnership rather than as a C corporation for federal tax purposes?

- A. Because federal preemption requires partnership taxation for all LLCs under federal corporate law as applied to entity classification
- B. Because the Alabama Secretary of State requires partnership taxation for LLCs at formation under state business law as applied to entity classification
- C. Because the LLC's character — multiple owners sharing in profits and losses without a separate tax-paying entity — most closely resembles a partnership under the IRS check-the-box regulations, which assign a default classification absent affirmative election to be taxed as a corporation
- D. Because workers' compensation rules require partnership taxation for LLCs under state insurance law as applied to construction entity classifications

50. Why does an S corporation election require unanimous shareholder consent and filing of Form 2553 within the statutory window?

- A. Because federal preemption requires unanimous consent for all corporate tax elections uniformly under federal tax law as applied to all elections
- B. Because the Alabama Secretary of State requires unanimous consent at formation under state business law as applied to corporate elections
- C. Because the S election fundamentally changes the federal tax treatment for every shareholder by passing income and losses through to personal returns — unanimous consent ensures every shareholder accepts the tax consequence, and the statutory filing window provides a clear deadline for making the election effective for the desired tax year
- D. Because workers' compensation rules require unanimous shareholder consent for S elections under state insurance law as applied to construction industry corporations

PRACTICE EXAM 15: ANSWER KEY AND EXPLANATIONS

1. D — Alabama courts enforce the licensing statute by denying the unlicensed party the right to sue for payment on work requiring an Alabama license. This bar applies regardless of work quality and is the primary mechanism through which the licensing regime is enforced; the unenforceability rule provides the practical penalty for unlicensed contracting in Alabama.
2. B — The Alabama Administrative Procedure Act and constitutional due process require notice and an opportunity to be heard before depriving a contractor of the licensed status. The license is a protected interest; the hearing requirement ensures the Board's disciplinary power is exercised with procedural fairness rather than arbitrarily.

3. A — NASCLA tests classification-specific commercial building technical knowledge while Business and Law tests general business management and Alabama-specific legal compliance. The two exams cover non-overlapping content, so passing NASCLA cannot substitute for Business and Law; this is why the Alabama-bound contractor must pass both even when entering through the NASCLA route.
4. C — The QP designation is intended to identify the specific individual personally responsible for the technical oversight and competency of the licensed work, and a corporate entity cannot personally provide that oversight. The natural-person requirement preserves real accountability for the technical competence behind every license issued in Alabama.
5. C — The 60-day window balances continuity of technical oversight (the core function of the QP designation) against the licensee's reasonable need to identify, qualify, and onboard a suitable replacement. The window is long enough to find a qualified replacement and short enough to prevent prolonged operation without proper oversight.
6. B — The 3-year experience minimum ensures the responsible individual has practical exposure to the trade sufficient to provide meaningful technical oversight. Less experience would not provide adequate field-tested competence; more would unduly restrict entry to the field beyond the policy goal.
7. C — Age 19 is the Alabama age of majority — the threshold at which an individual is legally treated as an adult capable of entering binding contracts and assuming the legal obligations of licensure. Tying licensure minimum age to the age of majority ensures the licensee can independently sign contracts, hire workers, and bear the legal consequences of operating as a contractor.
8. A — The Alabama Legislature has set the statutory ceiling at \$10,000 per violation, defining the outer limit of Board penalty authority. The legislative cap prevents punitive amounts that would exceed the legislature's authorization and provides predictability for contractors facing disciplinary action.
9. C — The withheld income tax and the employee share of FICA are held by the employer in trust for the government, and willful failure to remit is treated as an abuse of the trust justifying personal liability against responsible persons. The TFRP mechanism reflects that trust fund taxes were never the employer's money to spend — they belonged to the government from withholding forward.
10. D — The Social Security wage base reflects the policy choice to tie Social Security benefits to a capped contribution range, while Medicare is funded across all wages without a contribution cap to support the program's broader entitlement structure. The asymmetric design tracks the different benefit structures of each program — Social Security retirement benefits scale with capped earnings while Medicare entitlement is universal regardless of earnings level.
11. A — Employers receive a credit of up to 5.4% against the 6.0% statutory FUTA rate for timely-paid state unemployment taxes, leaving the 0.6% net effective rate. The credit structure incentivizes employers to maintain state SUTA compliance, supporting state unemployment trust funds while keeping the net federal burden modest.
12. C — Federal immigration law requires verification of identity and work authorization promptly at the start of employment to prevent unauthorized workers from being employed, and the 3-business-day window enforces that timely verification objective. The compressed window denies employers and workers the opportunity to delay verification past the start of work.
13. A — Each state legislature sets its own SUTA wage base independent of the federal FUTA base, and Alabama has set its base at \$8,000 to fund the state unemployment insurance trust fund at the

level the state deems appropriate. SUTA wage bases vary significantly state to state precisely because each state controls the funding of its own unemployment program.

14. D — Quarterly filing on Form 941 allows the IRS to monitor wage and withholding compliance on a near-real-time basis throughout the year, enabling earlier detection of non-compliance than annual reconciliation would permit. The quarterly cadence reflects the trust-fund nature of withheld taxes and the government's interest in prompt remittance and oversight.
15. D — Shifting the credit risk of owner default from the prime to the subcontractor is a significant departure from the default rule that the prime bears the credit risk to its own subs, and courts require clear and unambiguous language to enforce that departure. The clear-statement rule ensures that subcontractors are not surprised by inadvertent risk shifts in standard subcontract language.
16. A — The parties have contractually agreed in advance that the owner may end the contract at will, in exchange for the owner's promise to compensate the contractor for work performed plus a defined percentage of unperformed profit. Termination for convenience is thus a bargained-for contractual right rather than a remedy for breach, and the contractor receives consideration in exchange for accepting the owner's at-will exit right.
17. C — The parties have agreed in advance to a reasonable estimate of damages that would be difficult to prove later, and enforcing the agreed measure honors the parties' bargained-for allocation of delay risk. Enforcement avoids costly post-hoc damage litigation and provides predictable consequences for delay, but only when the agreed amount reasonably approximates the difficulty-to-estimate damages.
18. D — Requiring full price agreement before any work proceeds would allow disputes to halt construction indefinitely; the CCD permits the work to continue under the owner's direction while pricing is reconciled later through audit or formal change order. This balances the owner's authority to direct changes with fair compensation determined after the work is performed.
19. B — Real property transactions involve high stakes and long-term consequences, and the statute prevents fraudulent claims and provides reliable evidence of the parties' intent by requiring written, signed memorialization. The Statute of Frauds protects against perjured testimony or faulty memory by requiring a written instrument as the binding record of significant real-property transactions.
20. B — Contract law favors preserving the contract relationship where possible, providing the breaching party a fair opportunity to remedy the breach before the more drastic remedy of termination. The notice-and-cure structure balances the owner's right to performance with the contractor's interest in completing the work and limiting the disruption of replacement contracting.
21. A — Competitive bidding promotes transparency, prevents favoritism in public procurement, and obtains the best value for taxpayer dollars, and the legislature has set the \$50,000 threshold as the point above which the public interest in competitive process outweighs the administrative burden. Below the threshold, the burden of advertised bidding would outweigh the value of competition for smaller public projects.
22. D — The two statutes govern different procurement categories: general procurement of goods, equipment, and services under Title 41-16 involves higher recurring volume and a lower per-purchase threshold is appropriate, while construction projects under Title 39 involve larger discrete contracts justifying the higher \$50,000 threshold. The differential thresholds reflect the different transaction profiles of routine procurement versus discrete construction projects.
23. B — Prompt written notice with documentation protects the integrity of the public bidding process — preventing bidders from using "mistake" as a pretext to escape unfavorable bids after evaluating competitor pricing, while still allowing genuine clerical and mathematical errors to be remedied

before binding acceptance. The documentation requirement separates genuine clerical mistakes from strategic withdrawals.

24. A — The bid bond covers the relatively limited damages of having to re-bid or accept the second-lowest bid if the awarded bidder defaults on contract execution, while the performance bond must cover the full cost of completing the contract if the contractor defaults during construction. The bonding amounts are scaled to the exposure each bond actually covers.
25. D — General overhead is treated as a cost of doing business that must be recovered before profit is calculated; applying overhead first ensures the contractor recovers the cost of running the business, and applying profit last produces the desired return on the total cost base (direct + job overhead + general overhead). The sequential markup chain produces a consistent return on the full cost stack rather than only on direct cost.
26. B — Percentage-of-completion better matches revenue to the period in which work is performed, providing a more accurate picture of the contractor's financial performance during the contract life. The result is more decision-useful for investors, lenders, and sureties than deferring all revenue to project end under the completed-contract method.
27. A — The contractor has billed for work that has not yet been earned through performance, and the excess of billings over earned revenue represents an obligation to deliver future work for which payment has already been received. Under accrual accounting this future-performance obligation is properly classified as a liability rather than recognized prematurely as revenue.
28. C — Working capital measures the contractor's short-term financial strength and liquidity — the ability to fund ongoing operations, absorb short-term financial stress, and complete bonded projects even when payments are delayed. This directly affects the surety's exposure on the bond because a contractor with weak working capital is more likely to default during cash-flow stress, triggering the surety's obligation to complete or pay.
29. A — The conditional waiver is expressly contingent on actual receipt of the payment specified; the condition is not satisfied when the check bounces, the waiver does not take effect, and the signing party's lien rights remain preserved as the parties intended. This is the precise protection conditional waivers are designed to provide against waiving rights without being paid.
30. D — Net worth represents the equity available to absorb business risk — the cushion of ownership value above all liabilities — and a contractor with stronger net worth has greater capacity to weather adverse events and complete bonded projects without surety loss. Net worth is therefore one of the foundational financial measures in surety underwriting and Board financial review.
31. D — The overtime premium is designed to disincentivize excessive overtime work, protecting workers from overwork, and to provide a financial premium when employers do require extended hours. This balances employer flexibility against worker protection; the 1.5x multiplier captures both objectives in a single rule.
32. A — The Alabama Legislature has set the 5-employee threshold to balance worker protection (mandating coverage for employers with sufficient workforce to support the regulatory burden) against the administrative burden on the smallest employers. The threshold is the legislatively determined point of balance, with smaller employers exempt and larger employers required to participate.
33. C — Congress in enacting each statute weighed the importance of the protected category against the administrative burden on smaller employers, and set the threshold for each statute independently based on the policy judgment specific to that statute's protected category. The 15- and 20-employee thresholds reflect Congress's separate judgments about Title VII and the ADEA, not any uniform anti-discrimination threshold.

34. B — The Alabama Legislature determined that universal employer use of E-Verify is necessary to prevent the employment of unauthorized workers in Alabama, extending federal verification beyond the federal default to address state-specific immigration enforcement objectives. Federal law sets a floor; Alabama has chosen to go beyond that floor for state-level enforcement.
35. B — Congress determined the combined threshold protects employees at sufficiently large work locations where the employer can reasonably accommodate leave without undue burden on operations. The 75-mile radius captures workers in functional proximity to one another while excluding scattered small operations, defining a reasonable scope of employer responsibility for unpaid leave.
36. D — The workers' compensation system is a legislative bargain: employees give up the right to sue the employer in tort for work-related injuries in exchange for prompt, no-fault statutory benefits payable regardless of fault, while employers gain certainty and limitation of liability. This grand bargain underlies the entire workers' comp framework and is why workers' comp is the exclusive remedy.
37. A — CGL is designed to cover third-party liability arising from the contractor's operations, not to function as a warranty of workmanship or to insure against the contractor's own defective performance. Covering the contractor's own work would shift business risk to the carrier and undermine the contractor's incentive to perform properly, which is why standard CGL policies exclude the contractor's own completed work.
38. C — The project under construction is uniquely vulnerable to perils such as fire, theft, vandalism, and weather during the construction period. Builders' risk provides the property insurance that fills the gap between the start of construction and the completed property insurance the owner will carry once the project is complete and occupied, addressing the temporary heightened exposure during the build phase.
39. C — The insurer's right of subrogation is part of the insurance contract between the insurer and its insured, and the insured cannot waive a right that belongs in part to the insurer without the insurer's consent — typically given through a policy endorsement permitting the waiver. The endorsement ensures the carrier has agreed to forgo the recovery right against the named third party.
40. A — The severity and irreversibility of a fatality justify the most rapid investigation by OSHA to preserve evidence and prevent recurrence, while the 24-hour window for serious but non-fatal events strikes a balance between regulatory urgency and reasonable reporting time for the employer. The graduated windows reflect the differing investigation priorities for the two categories of event.
41. B — The 3-month posting window ensures employees have visibility into the employer's prior-year safety performance, promoting transparency, awareness of workplace hazards, and accountability for workplace safety throughout the workforce. The February-through-April timing places the posting at the start of each new year so employees can review prior-year performance before the new year's work proceeds.
42. B — The SWPPP is the substantive site-specific document identifying pollution sources and best management practices, and ADEM's permit coverage is premised on the existence of a complete SWPPP. The document must therefore exist before coverage is sought through the NOI, because the NOI is in effect the application for coverage that the SWPPP supports.
43. C — Specific OSHA standards cannot anticipate every workplace hazard, and the General Duty Clause requires employers to address recognized hazards that are not covered by a specific standard but that are likely to cause death or serious physical harm. The catch-all function ensures no recognized hazard goes unaddressed by federal occupational safety enforcement.

44. B — At substantial completion the owner takes beneficial occupancy of the project and begins using it for its intended purpose; the warranty period appropriately runs from the date the owner has the benefit of the work, rather than from the later date when minor punch list items are finalized. The warranty start at substantial completion aligns the warranty period with the owner's actual use of the project.
45. B — The critical path is by definition the longest path through the project network; any delay to any activity on this path delays the entire project, meaning critical path activities have no scheduling room to be delayed without delaying the project. "Zero total float" is the mathematical expression of this defining property of critical path activities.
46. D — The two-stage release balances the contractor's reasonable interest in receiving most of the retained funds when the project is largely complete and useful to the owner, against the owner's continuing need for security to ensure punch list and minor completion items are actually finished. The staged release preserves a meaningful incentive for the contractor to finish punch list items promptly.
47. A — The materialman has no direct privity with the owner, so pre-furnishing notice gives the owner the opportunity to protect itself by withholding payment to the prime contractor sufficient to cover material claims. The notice requirement balances the materialman's lien rights against the owner's ability to manage payment to the contracting chain, recognizing that owners would otherwise face surprise liens from parties they never contracted with.
48. D — The lien is a powerful security interest against the property, and the lawsuit deadline ensures that lien claims are pursued promptly to a judicial resolution. This provides certainty for the property owner and any subsequent purchasers about the status of the lien on the property, preventing perpetual encumbrances arising from stale claims.
49. C — The LLC's character — multiple owners sharing in profits and losses without a separate tax-paying entity — most closely resembles a partnership under the IRS check-the-box regulations. The regulations assign a default classification absent affirmative election to be taxed as a corporation, and the partnership classification matches the LLC's economic substance for multi-member entities.
50. C — The S election fundamentally changes the federal tax treatment for every shareholder by passing income and losses through to personal returns. Unanimous consent ensures every shareholder accepts the tax consequence (including the obligation to report flow-through income on personal returns), and the statutory filing window provides a clear deadline for making the election effective for the desired tax year.