

# PRACTICE EXAM 17: ALABAMA BUSINESS & LAW SIMULATION

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

**Instructions for this exam: Each item presents a triggering event AND its immediate first-order consequence, then asks the test-taker to identify the SECOND-order consequence that follows downstream under Alabama law.**

1. When an unlicensed Alabama contractor performs a \$75,000 commercial project and the owner refuses to pay upon completion, the immediate first-order consequence is that the contractor lacks an enforceable contract claim against the owner. What is the second-order consequence?

- A. The Alabama Department of Revenue retroactively voids all building permits issued to the contractor for the prior year under state tax law
- B. Federal preemption automatically transfers the dispute to federal district court for arbitration under federal contracting law
- C. The owner becomes liable for treble damages to the Alabama Licensing Board for inducing unlicensed contracting under state licensing law
- D. The contractor cannot maintain a lawsuit to recover payment for the work, regardless of work quality, and any quantum meruit recovery is also barred under Alabama courts' enforcement of the licensing statute

2. When a QP departs from a licensed Alabama contractor and the 60-day designation window begins running, the immediate first-order consequence is that the licensee has 60 days to designate a qualified replacement. What is the second-order consequence if the 60-day window expires without a properly designated replacement?

- A. The license becomes subject to suspension, after which the licensee cannot continue contracting operations until reinstatement is achieved through Board action

B. The licensee is automatically converted to an at-will contractor with unlimited bid capacity under federal law as applied to states

C. The Alabama Department of Revenue assumes jurisdiction over the contractor's bidding authority for federal projects under state tax law

D. Federal preemption applies and the licensee may continue under federal contracting law as a substitute credential under federal procurement rules

3. When a contractor passes the NASCLA Accredited Commercial Building Contractor examination and applies for Alabama licensure, the immediate first-order consequence is that the trade examination requirement is satisfied. What is the second-order consequence for the Alabama Business and Law examination?

A. The Business and Law examination requirement is automatically waived under NASCLA reciprocity rules with Alabama under state licensing law

B. The Alabama Department of Revenue waives all examination requirements for NASCLA-credentialed contractors under state tax law

C. The Business and Law examination is converted into a continuing education credit requirement only under Alabama licensing rules

D. The Business and Law examination still must be passed separately because NASCLA never satisfies any state's Business and Law examination, and Alabama is no exception under the NASCLA structure

4. When the Alabama Licensing Board issues a written notice of charges to a contractor, the immediate first-order consequence is that the contractor must be afforded a hearing under due process. What is the second-order consequence at the conclusion of the hearing?

A. The Board issues a final order automatically without further deliberation in every case under state licensing law

B. The matter is automatically referred to circuit court for de novo review under state administrative law as applied to licensing

C. The Board issues a written order containing findings of fact and conclusions, which may impose sanctions (civil penalty, suspension, revocation, probation, or dismissal) and is subject to judicial review under the Alabama Administrative Procedure Act

D. The matter is automatically dismissed if the contractor pays the licensing fee in full prior to the hearing under state licensing law

5. When the Alabama Licensing Board imposes a civil penalty for a violation, the immediate first-order consequence is that the contractor incurs financial liability up to \$10,000 per violation. What is the second-order consequence if the contractor fails to pay the assessed penalty?

A. The contractor automatically loses all bonding capacity with all sureties under federal procurement law as applied to penalty enforcement

B. The Alabama Department of Revenue assumes jurisdiction over the contractor's federal tax compliance under state tax law as applied to penalties

C. The contractor's federal tax identification number is automatically suspended under federal procedure as applied to penalty enforcement

D. The unpaid penalty may be enforced through collection action and may trigger additional Board sanctions including license suspension or revocation under Alabama law

6. When a contractor's license is revoked by the Board, the immediate first-order consequence is that the license is permanently terminated. What is the second-order consequence for the contractor's ability to perform licensed work?

A. The contractor must reapply for licensure as a new applicant, meeting all current requirements (application, financials, examinations, fee) before any contracting work requiring a license may resume

B. The contractor may continue operating under federal preemption until federal court intervention under federal contracting law

C. The contractor may continue operations under the NASCLA credential as a substitute for the Alabama license under NASCLA reciprocity rules

D. The contractor's tax filings shift to the federal government automatically under federal corporate law as applied to revoked licenses

7. When an Alabama contractor's bid limit is set at \$500,000 based on financial review, the immediate first-order consequence is that the contractor cannot submit single-project bids exceeding \$500,000. What is the second-order consequence if the contractor wishes to bid on a \$750,000 project?

A. The contractor may proceed with the bid because the Board's bid limit is advisory only under state law as applied to bid limits

B. The contractor must obtain federal contracting authorization to exceed the state-set bid limit under federal procurement law

C. The contractor must first apply to the Board for an increased bid limit, supported by updated financial statements demonstrating sufficient working capital and net worth, before submitting the bid

D. The bid limit converts to an unlimited cap automatically when the contractor's working capital reaches federal procurement thresholds under federal contracting law

8. When the Alabama Licensing Board accepts a license application with supporting financial statements, the immediate first-order consequence is that the application is queued for review. What is the second-order consequence that determines the contractor's authorized bid limit?

A. The bid limit is set at a fixed federal threshold under federal procurement law uniformly applied to all states as a federal matter

B. The bid limit is set at the federal SBA small business contracting maximum under federal law as applied to construction industries

C. The bid limit is calculated by the Board based on the contractor's working capital and net worth shown in the financial statements, scaled to financial capacity to bid and complete the work

D. The bid limit is set arbitrarily by the Alabama Department of Revenue under state tax law as applied to contractor licensing matters

9. When an Alabama employer pays \$1,500 in wages during the first quarter of the year, the immediate first-order consequence is that the employer becomes subject to FUTA. What is the second-order consequence for the employer's annual reporting obligation?

A. The employer must file Form 941 quarterly only with no annual return required for FUTA reporting purposes under federal procedure

B. The employer must file Form 940 annually by January 31 of the following year, reporting total FUTA liability calculated at the effective rate on the first \$7,000 of each employee's annual wages

C. The employer must file only state SUTA returns with no federal FUTA reporting required under federal law as applied to small employers

D. The employer must file Form W-3 only with the SSA without a separate FUTA reconciliation under federal law as applied to employers

10. When an Alabama contractor fails to deposit federal income tax withholding and the employee share of FICA by the applicable EFTPS deadline, the immediate first-order consequence is that the employer becomes delinquent on trust fund taxes. What is the second-order consequence?

- A. The Alabama Department of Revenue assumes federal collection jurisdiction over the unpaid taxes under state tax law as applied to federal trust fund matters
- B. The IRS automatically refunds the unpaid taxes to the affected employees personally under federal procedure as applied to delinquent withholding
- C. The federal payroll tax liability is extinguished if the employer files Form 941 on time for the next quarter under federal law as applied to subsequent compliance
- D. The IRS may assess the Trust Fund Recovery Penalty under IRC §6672 personally against responsible persons who willfully failed to remit, in addition to collecting interest and penalties from the entity

11. When an Alabama employer classifies a worker as an independent contractor and pays \$2,500 during the calendar year, the immediate first-order consequence is that no withholding occurs at the time of payment. What is the second-order consequence for year-end reporting?

- A. The employer must furnish Form 1099-NEC to the contractor and file the form with the IRS by January 31 of the following year, reporting the nonemployee compensation
- B. The employer must furnish Form W-2 to the contractor and withhold federal income tax under federal employment tax law as applied to independent contractor income
- C. No reporting is required because the amount is below the \$5,000 federal threshold for independent contractor reporting under federal procedure
- D. Form 941 must be filed quarterly to report contractor payments along with regular wages under federal procedure as applied to nonemployee compensation

12. When an Alabama employee earns wages exceeding \$200,000 in a single calendar year from a single employer, the immediate first-order consequence is that the Additional Medicare surtax applies. What is the second-order consequence for the employer's withholding obligation?

- A. The employer must double the standard Medicare withholding rate on all wages from the first dollar earned in the year under federal law as applied to high-wage earners
- B. The employer must withhold the additional 0.9% Medicare surtax on wages above \$200,000 (employee-only obligation; the employer share is not increased) starting in the pay period the threshold is crossed
- C. The employer must remit the additional surtax to the Alabama Department of Revenue under state tax law as applied to high-wage earners

D. The employer must file Form 940 quarterly to report the additional surtax separately under federal procedure as applied to high-wage earners

13. When an Alabama new employee starts work on Monday, the immediate first-order consequence is that the I-9 verification window begins. What is the second-order consequence for E-Verify compliance under Alabama law?

A. E-Verify submission is waived entirely under Alabama law because the Beason-Hammon Act has been federally preempted under federal immigration law

B. E-Verify submission is required only if the employer is a federal contractor under federal procurement rules as applied to Alabama state employers

C. E-Verify submission is optional under Alabama law and may be skipped if the I-9 is properly completed within 3 business days as applied to state employment

D. E-Verify submission generally must be initiated by the third business day following the start date under the Beason-Hammon Act, supplementing the I-9 rather than replacing it

14. When an Alabama employer pays SUTA contributions on an employee's wages, the immediate first-order consequence is that the employer accrues experience in the Alabama unemployment insurance system. What is the second-order consequence for the employer's future SUTA rate?

A. The SUTA rate is fixed at a federal-mandated 5.4% for all Alabama employers regardless of experience under federal employment tax law

B. The employer's future SUTA rate is recalculated under the experience rating system based on the employer's prior claim activity (lower claims activity leads to lower rates)

C. The SUTA rate is converted to a federal rate under federal preemption rules applied to states under federal employment tax law

D. The SUTA rate is set by the Alabama Department of Revenue based on the federal corporate tax rate of 21% under state tax law as applied to contractors

15. When a contractor materially breaches a construction contract and the owner sends a written notice demanding cure, the immediate first-order consequence is that the contractor receives an opportunity to remedy the breach within the cure period. What is the second-order consequence if the contractor fails to cure?

- A. The owner must continue performance under the contract and pursue damages only through arbitration under federal law as applied to state contracts
- B. The contract is automatically extended for an additional cure period of the same duration under standard contract practice as applied to breach
- C. The owner may terminate the contract for cause, engage a replacement contractor, and recover excess completion costs from the original contractor as damages
- D. The owner must offer the contractor a second cure period of double duration before any contractual action under state law as applied to material breach

16. When an owner terminates a construction contract for convenience under a standard contract clause, the immediate first-order consequence is that the contractor must stop work and demobilize. What is the second-order consequence for the contractor's compensation?

- A. The contractor is entitled to payment for all work performed through termination plus an agreed percentage of unperformed profit and reasonable termination costs (demobilization, restocking, settlement of subs)
- B. The contractor receives no compensation because termination for convenience is unilateral and final under federal contract law as applied to state contracts
- C. The contractor must return all prior progress payments because termination triggers a refund obligation under state contract law as applied to termination
- D. The contractor's surety must complete the project at the surety's expense under the performance bond regardless of termination cause under bonding rules

17. When a liquidated damages clause in a construction contract sets damages at \$1,500 per day of delay and the project is delivered 14 days late, the immediate first-order consequence is that the LD calculation totals \$21,000. What is the second-order consequence for the owner's payment to the contractor?

- A. The owner must continue progress payments without deduction because LD clauses are unenforceable under state law as applied to construction contracts
- B. The owner must obtain Alabama Licensing Board approval before deducting any LD amount under state licensing law as applied to LD enforcement
- C. The owner must pursue the LD amount through arbitration before any deduction is permitted under state contract law as applied to LD claims

D. The owner may deduct the assessed LD amount (\$21,000) from amounts otherwise due to the contractor (typically from final payment or retainage), provided the LD clause is enforceable as a reasonable estimate of anticipated damages

18. When the owner issues a Construction Change Directive (CCD) to the contractor, the immediate first-order consequence is that the contractor must proceed with the directed work despite the absence of price agreement. What is the second-order consequence for cost reconciliation?

A. The contractor is barred from any cost recovery for the directed work under federal contract law as applied to CCDs on state projects

B. The cost and time impact are reconciled later through audit of actual costs or formal change order, with the contractor entitled to recover reasonable costs and a fair allowance for overhead and profit

C. The cost reconciliation is automatic at the contract sum value with no adjustment under state contract law as applied to CCDs

D. The cost reconciliation requires Alabama Licensing Board approval before any payment under state licensing law as applied to CCDs

19. When the parties enter into a construction contract for work expected to take 18 months to complete, the immediate first-order consequence is that the Alabama Statute of Frauds applies. What is the second-order consequence for enforceability?

A. The contract is fully enforceable regardless of writing because Alabama exempts construction contracts from the Statute of Frauds under state contract law

B. The contract is automatically void unless the contractor's bid total is below \$50,000 under state law as applied to construction contracts

C. The contract is unenforceable unless reduced to writing and signed by the party to be charged, because the Statute of Frauds applies to agreements that cannot be performed within one year

D. The contract is enforceable only if approved by the Alabama Licensing Board before execution under state licensing law as applied to long-term contracts

20. When a prime contractor includes an enforceable pay-if-paid clause in a subcontract and the owner subsequently becomes insolvent, the immediate first-order consequence is that the condition precedent (owner payment) is not satisfied. What is the second-order consequence for the subcontractor's payment claim against the prime?

- A. The subcontractor may have no contractual claim against the prime, because the pay-if-paid clause has shifted the credit risk of owner default to the subcontractor — the prime is not obligated to pay the sub for amounts the prime has not received from the owner
- B. The subcontractor may demand immediate payment from the prime within 30 days because pay-if-paid clauses are unenforceable in Alabama under state law as applied to construction subcontracts
- C. The subcontractor is automatically subrogated to the prime's claim against the owner under federal law as applied to pay-if-paid clauses
- D. The subcontractor must file suit in federal court to enforce the subcontract under federal contract law as applied to state subcontracts

21. When an Alabama public construction project is advertised at \$200,000, the immediate first-order consequence is that competitive bidding is required under Title 39. What is the second-order consequence for the bonding required of the awarded bidder?

- A. No bonding is required because the project is below the federal Little Miller Act threshold under federal contracting law as applied to state projects
- B. Only a bid bond at 5% of the bid amount is required with no performance or payment bond under state law as applied to public works
- C. A combined performance-and-payment bond at 50% of contract value is sufficient under state public works law as applied to bonding requirements
- D. The awarded bidder must furnish a performance bond at 100% of contract value and a payment bond at 100% of contract value, in addition to the bid bond submitted with the bid

22. When a contractor submits a bid that is publicly opened and is the lowest responsible bid, the immediate first-order consequence is that the contractor is the apparent low bidder. What is the second-order consequence if the contractor then discovers a \$25,000 mathematical error in the bid?

- A. The contractor must execute the contract at the bid amount regardless of the error under state public works law as applied to bid mistakes
- B. The contractor may withdraw the bid without notice and forfeit only the bid bond under state law as applied to bid mistakes
- C. The contractor may seek withdrawal of the bid by promptly notifying the awarding authority in writing with documentation of the error, under the Alabama bid mistake doctrine for material clerical or mathematical errors

D. The contractor must demand contract execution at the corrected (higher) bid price under state law as applied to bid mistakes

23. When a contractor's \$400,000 bid on an Alabama public construction project is accepted and the awarding authority issues notice of award, the immediate first-order consequence is that the contractor must furnish performance and payment bonds before contract execution. What is the second-order consequence if the contractor fails to furnish the required bonds?

A. The contractor may proceed with the work under the bid bond as substitute security for the missing performance and payment bonds under state law as applied to bonding

B. The Alabama Department of Revenue collects the bid bond amount as a tax payment under state tax law as applied to public bids

C. The contractor forfeits the bid bond (typically 5% of bid = \$20,000), and the awarding authority may proceed to award the contract to the next lowest responsible bidder

D. The contractor automatically becomes liable for the full contract value as a substitute for the missing bonds under state contract law as applied to bidder default

24. When a contractor builds up a \$1,000,000 bid using direct cost of \$700,000 plus job overhead, general overhead, and profit, the immediate first-order consequence is that the markups have been applied to the direct cost base. What is the second-order consequence if the contractor wins the bid and incurs \$750,000 in actual direct cost?

A. The contractor bears the \$50,000 cost overrun on a lump sum contract because the lump sum pricing structure assigns cost overrun risk to the contractor in exchange for the fixed contract price

B. The contractor recovers the \$50,000 overrun through an automatic change order under state contract law as applied to lump sum projects

C. The owner reimburses the contractor for actual direct cost plus the bid markup percentages under federal contracting law as applied to lump sum contracts

D. The Alabama Licensing Board reimburses cost overruns up to 5% of contract value under state licensing law as applied to public construction

25. When an Alabama state agency seeks to procure office equipment valued at \$20,000, the immediate first-order consequence is that the Alabama Competitive Bid Law (Title 41-16) applies because the

purchase exceeds the \$15,000 threshold. What is the second-order consequence for the procurement process?

- A. The procurement is exempted from competitive bidding because office equipment is excluded under Title 41-16 by statute
- B. The procurement must be made through a sole source contract with a state-approved vendor under state procurement law as applied to office equipment
- C. The agency must follow competitive bidding procedures — advertising, receipt of sealed bids, public opening, and award to the lowest responsible and responsive bidder — to ensure transparency and best value
- D. The procurement automatically converts to a Title 39 public works procedure under state law as applied to state procurement above \$15,000

26. When a contractor adopts the percentage-of-completion method and incurs \$400,000 in costs on a contract with \$1,000,000 total estimated costs and a \$1,250,000 contract price, the immediate first-order consequence is that the project is 40% complete. What is the second-order consequence for revenue recognized to date?

- A. Revenue recognized equals zero because revenue is deferred until project completion under the method as applied to construction contracts
- B. Revenue recognized equals \$400,000 (equal to costs incurred to date) under construction accounting as applied to percentage-of-completion
- C. Revenue recognized equals \$1,000,000 (the full total estimated costs) under accrual accounting as applied to long-term contracts
- D. Revenue recognized equals \$500,000 ( $40\% \times \$1,250,000$  contract price), reflecting the proportional revenue earned through the percentage of work performed

27. When a contractor's billings to date on a project total \$600,000 but revenue earned under percentage-of-completion totals only \$500,000, the immediate first-order consequence is that the contractor has overbilled by \$100,000. What is the second-order consequence for balance sheet reporting?

- A. The \$100,000 overbilling is reported on the balance sheet as a current liability titled "billings in excess of costs and estimated earnings on uncompleted contracts," reflecting an obligation to deliver future work for which payment has already been received

B. The \$100,000 overbilling is recognized as additional revenue on the income statement under accrual accounting principles as applied to construction contracts

C. The \$100,000 overbilling is reported as a long-term asset titled "earned but unbilled revenue" under construction accounting as applied to percentage-of-completion

D. The \$100,000 overbilling is recorded as a permanent equity contribution from the owner under construction accounting principles as applied to long-term contracts

28. When a contractor's CPA prepares year-end financial statements showing current assets of \$1,000,000 and current liabilities of \$600,000, the immediate first-order consequence is that working capital equals \$400,000. What is the second-order consequence for surety underwriting?

A. The surety reviews the \$400,000 working capital position as one of the primary measures of short-term financial strength and may calibrate single-project and aggregate bonding capacity based on working capital and net worth together

B. The surety automatically extends unlimited bonding capacity because positive working capital is sufficient evidence of financial strength under bonding industry standards

C. The surety denies all bonding because working capital is not used in surety underwriting under federal contracting law as applied to bonding

D. The surety requires the contractor to deposit working capital with the Alabama Licensing Board as collateral under state licensing law as applied to bonded contracts

29. When a subcontractor signs a conditional progress payment waiver and the prime's payment check is then dishonored, the immediate first-order consequence is that payment is not received as specified in the waiver. What is the second-order consequence for the subcontractor's lien rights?

A. The waiver becomes fully effective regardless of payment dishonor under state lien law as applied to conditional waivers

B. The subcontractor automatically loses all lien rights upon signing the waiver under federal property law as applied to construction liens

C. The subcontractor's lien rights remain preserved because the conditional waiver's effectiveness was contingent on actual receipt of the payment specified, and that condition has not been met

D. The subcontractor must file the lien within 7 calendar days of the dishonor under federal procedure as applied to construction subs

30. When a contractor's balance sheet shows total assets of \$3,000,000 and total liabilities of \$2,000,000, the immediate first-order consequence is that net worth equals \$1,000,000. What is the second-order consequence for the contractor's ability to absorb business risk?

- A. The contractor has unlimited capacity to absorb losses under federal contracting law as applied to net worth measures regardless of value
- B. The contractor has \$1,000,000 of equity available to absorb adverse events — a cushion that affects bid limits set by the Licensing Board and bonding capacity offered by sureties; the higher the net worth, the greater the risk-absorption capacity
- C. The contractor has zero capacity to absorb losses because net worth is offset by depreciation under construction accounting principles as applied to assets
- D. The contractor automatically qualifies for the maximum federal bonding capacity of \$5,000,000 under federal procurement law as applied to construction bonding

31. When a non-exempt Alabama employee earns \$20 per hour and works 50 hours in a workweek, the immediate first-order consequence is that 10 hours of overtime are owed at the premium rate. What is the second-order consequence for gross weekly pay?

- A. Gross weekly pay equals \$1,000 (50 hours × \$20) because Alabama exempts construction labor from FLSA overtime under state labor law as applied to construction
- B. Gross weekly pay equals \$1,500 (50 hours × \$30 at premium rate for all hours) under federal employment law as applied universally to non-exempt workers
- C. Gross weekly pay equals \$800 (40 hours × \$20) because Alabama caps weekly pay at 40 hours under state labor law as applied to construction workers
- D. Gross weekly pay equals \$1,100 — comprising 40 hours × \$20 regular rate (\$800) plus 10 hours × \$30 overtime premium rate (\$300) — under the FLSA non-exempt structure

32. When an Alabama contractor's workforce grows from 4 employees to 5 employees, the immediate first-order consequence is that the workers' compensation coverage threshold is crossed. What is the second-order consequence for the contractor's compliance obligation?

- A. The contractor remains exempt from workers' compensation coverage because Alabama exempts contractors below 10 employees under state insurance law as applied to construction

B. The contractor must register only with the federal Department of Labor for federal workers' compensation coverage under federal law as applied to construction

C. The contractor must obtain workers' compensation insurance coverage that complies with Alabama law, providing the statutory benefits (medical, TTD, PPD, etc.) for any work-related injury to covered employees

D. The contractor must purchase Builders' risk insurance to satisfy the workers' compensation coverage requirement under state insurance law as applied to construction

33. When an Alabama contractor's workforce reaches 20 employees, the immediate first-order consequence is that the ADEA's coverage threshold is crossed. What is the second-order consequence for the contractor's employment practices?

A. The contractor becomes subject to the ADEA's prohibition on age-based discrimination against workers 40 and older, in addition to the Title VII obligations already applicable from the 15-employee threshold

B. The contractor is automatically exempted from FMLA coverage at the 20-employee threshold under federal employment law as applied to construction employers

C. The contractor must reduce its workforce below 20 to avoid ADEA jurisdiction under federal employment law as applied to construction employers

D. The contractor's payroll obligations decrease because federal anti-discrimination law caps payroll taxes at 20 employees under federal tax law as applied to construction

34. When an Alabama employer hires a new employee with a start date of October 1, the immediate first-order consequence is that the I-9 Section 2 deadline runs 3 business days from start. What is the second-order consequence for federal compliance if Section 2 is not completed by the deadline?

A. The employee is automatically terminated under federal immigration law as applied to delayed verification of employment authorization

B. The employer must deport the employee at the employer's expense under federal immigration law as applied to delayed I-9 verification

C. The employer becomes exposed to civil penalties under federal immigration law for failing to timely complete employment eligibility verification, regardless of whether the employee is in fact work-authorized

D. The employer's Alabama license is automatically suspended under state licensing law for federal immigration violations as applied to construction

35. When an Alabama contractor's workforce reaches 50 employees within a 75-mile radius, the immediate first-order consequence is that the FMLA coverage threshold is crossed. What is the second-order consequence for the contractor's employee leave obligations?

A. The contractor is automatically exempted from Title VII and ADEA at the 50-employee FMLA threshold under federal employment law as applied to construction

B. The contractor must provide up to 12 weeks of unpaid leave per 12-month period to eligible employees for qualifying family and medical reasons (employee's own serious health condition, birth/adoption of a child, care for a family member with a serious health condition, qualifying military exigency, military caregiver leave)

C. The contractor must pay 12 weeks of paid leave under federal employment law to all employees regardless of eligibility status

D. The contractor must reduce its workforce below 50 to avoid FMLA jurisdiction under federal employment law as applied to construction

36. When an Alabama contractor's employee is injured on the job site while performing covered work, the immediate first-order consequence is that workers' compensation coverage responds. What is the second-order consequence for the employee's tort remedies against the employer?

A. The employee may sue the employer in tort for full damages including pain and suffering under Alabama common law as applied to workplace injuries

B. The employee may sue the employer in tort but only for medical expenses under Alabama law as applied to workplace injuries

C. The employee's tort remedies against the employer are barred by the workers' compensation exclusive remedy rule — the employee's recovery is limited to the statutory workers' comp benefits, in exchange for the no-fault structure of workers' comp

D. The employee may sue the employer in federal court under federal law preempting state workers' compensation rules as applied to construction

37. When a fire damages \$200,000 of materials installed on an Alabama construction project under a builders' risk policy, the immediate first-order consequence is that the builders' risk policy responds. What is the second-order consequence for the contractor's CGL policy?

- A. The CGL policy does not respond to the loss because builders' risk covers physical damage to the project itself (including installed materials), while CGL is reserved for third-party liability — the policies cover non-overlapping exposures
- B. The CGL policy responds in addition to the builders' risk policy under federal procurement law as applied to construction insurance overlap
- C. The CGL policy responds primarily and the builders' risk policy is exhausted last under standard policy stacking rules as applied to construction
- D. The CGL policy is canceled automatically when the builders' risk policy responds to a covered loss under standard policy provisions

38. When the parties to a construction contract execute a mutual waiver of subrogation supported by their property insurance policies, the immediate first-order consequence is that the parties have agreed to waive each other's claims against each other for covered losses. What is the second-order consequence for the insurance carriers?

- A. The carriers may still pursue the waived party at any time despite the waiver under federal subrogation law as applied to construction
- B. The carriers may not pursue subrogation against the waived party for the insured losses within the scope of the waiver, because the policy endorsement supporting the waiver has bound the carrier to honor the contractual waiver between the parties
- C. The carriers must refund all premiums paid by the parties under state insurance law as applied to waiver agreements in construction
- D. The carriers must cancel coverage under federal procurement law as applied to subrogation waivers in construction insurance

39. When an Alabama contractor identifies a project risk with high probability and high severity, the immediate first-order consequence is that the risk is prioritized as a top concern in the risk register. What is the second-order consequence for the contractor's typical risk management response?

- A. The contractor pursues risk transfer through insurance or contractual indemnification — and may also pursue risk reduction to lower probability or severity — because high-probability, high-severity risks are too consequential to retain and too damaging to absorb directly
- B. The contractor pursues risk retention because high-severity risks are uninsurable under standard insurance practice as applied to construction

C. The contractor pursues risk avoidance only by refusing to bid the project at any price under standard risk management practice as applied to construction

D. The contractor takes no action because federal procurement law does not require risk responses on private projects under federal contracting rules

40. When a work-related fatality occurs on an Alabama construction site at 10:00 AM Monday and the employer is notified at 11:00 AM the same day, the immediate first-order consequence is that the 8-hour OSHA reporting clock starts at 11:00 AM. What is the second-order consequence for the employer's reporting deadline?

A. The employer must report by 11:00 PM Monday (12 hours from learning) under OSHA recordkeeping rules as applied to fatalities on construction sites

B. The employer must report by 11:00 AM Tuesday (24 hours from learning) under OSHA recordkeeping rules as applied to construction fatalities

C. The employer has no immediate reporting obligation if the fatality is referred to the medical examiner under state law as applied to construction

D. The employer must report by 7:00 PM Monday (within 8 hours of learning of the death) under 29 CFR 1904.39, allowing OSHA to investigate promptly while evidence is preserved

41. When an in-patient hospitalization, amputation, or loss of an eye occurs at an Alabama construction site at 3:00 PM Friday and the employer is notified at 5:00 PM Friday, the immediate first-order consequence is that the 24-hour OSHA reporting clock starts at 5:00 PM Friday. What is the second-order consequence for the employer's reporting deadline?

A. The employer must report by 5:00 AM Saturday (within 12 hours of learning) under OSHA recordkeeping rules as applied to construction injuries

B. The employer must report only at the next quarterly OSHA recordkeeping cycle under federal procedure as applied to construction injuries

C. The employer has no immediate reporting obligation because the event is not a fatality under OSHA rules as applied to construction

D. The employer must report by 5:00 PM Saturday (within 24 hours of learning) under 29 CFR 1904.39, ensuring OSHA has timely notice of serious workplace events

42. When a recordable work-related injury occurs at an Alabama construction site, the immediate first-order consequence is that the OSHA recordkeeping obligation is triggered. What is the second-order consequence for documentation under OSHA standards?

- A. The injury must be reported only on a state-level form filed with the Alabama Department of Labor under state law as applied to construction injuries
- B. The injury must be entered on the OSHA 300 Log within 7 calendar days of learning of the incident, and a corresponding Form 301 Incident Report must be completed with witness statements and root cause information, with both records retained for 5 years following the year covered
- C. The injury must be documented only verbally to the workers' compensation carrier under state insurance law as applied to construction injuries
- D. The injury must be reported quarterly on Form 940 under federal payroll tax law as applied to safety recordkeeping in construction

43. When an Alabama construction project disturbs 2 acres of land, the immediate first-order consequence is that the NPDES Construction General Permit applies. What is the second-order consequence for the contractor's compliance obligations?

- A. The contractor must obtain a separate federal building permit from the EPA under federal environmental law as applied to construction projects
- B. The contractor must develop a Stormwater Pollution Prevention Plan (SWPPP) identifying pollution sources and best management practices, file a Notice of Intent (NOI) with ADEM to obtain permit coverage, conduct weekly site inspections, and ensure site stabilization before filing the Notice of Termination at project end
- C. The contractor must obtain federal court approval before construction begins under federal water law as applied to NPDES projects in Alabama
- D. The contractor must pay an annual NPDES fee to the Alabama Department of Revenue under state tax law as applied to construction permits in Alabama

44. When a non-critical activity on a CPM schedule has 5 days of total float, the immediate first-order consequence is that the activity may be delayed by up to 5 days without delaying project completion. What is the second-order consequence if the activity is delayed by 7 days?

- A. The project schedule is unaffected because float is unlimited beyond the stated total float under CPM scheduling rules as applied to construction
- B. The project schedule is automatically extended by 7 days to accommodate the delay under standard scheduling practice as applied to construction
- C. The activity is moved to a different non-critical path under CPM scheduling rules as applied to construction projects
- D. The project completion date is delayed by 2 days (the 5-day float is fully consumed, and the additional 2 days of delay propagate through to the critical path and the project finish)

45. When an Alabama public construction project reaches substantial completion on June 30 and the architect issues the Certificate of Substantial Completion, the immediate first-order consequence is that the project is sufficiently complete for owner occupancy with punch list outstanding. What is the second-order consequence for the contractual milestones?

- A. Multiple consequences flow simultaneously from substantial completion: liquidated damages stop accruing because the owner can use the project for its intended purpose, the warranty period begins, and the bulk of retainage is released subject to punch list completion
- B. The contract is automatically terminated for convenience on the date of substantial completion under standard contract law as applied to construction
- C. The performance bond is canceled automatically because completion has been substantially achieved under bonding practice as applied to construction
- D. The contractor's Alabama license is automatically suspended pending punch list completion under state licensing law as applied to construction

46. When an Alabama public construction project withholds 10% retainage on progress payments and reaches substantial completion, the immediate first-order consequence is that the retainage release process begins. What is the second-order consequence for the contractor's cash flow?

- A. The entire retainage is forfeited to the owner upon substantial completion under state construction law as applied to retainage forfeiture
- B. The bulk of the retainage is released to the contractor at substantial completion, while the remainder is held to secure completion of punch list items, providing significant cash flow to the contractor while preserving incentive to complete remaining work

C. The retainage is released only after final completion and final acceptance, with no intermediate release at substantial completion under state law as applied to retainage

D. The retainage is converted to a performance bond at substantial completion under state contract law as applied to public works bonding

47. When an original contractor with a direct contract with the owner last furnishes labor or materials on March 1, the immediate first-order consequence is that the lien filing window of 6 months begins to run. What is the second-order consequence for lien enforcement if the contractor files the verified lien statement on August 15?

A. The contractor must file the lawsuit to enforce within 30 days of lien filing under state lien law as applied to construction liens

B. The contractor has 6 months from the lien filing date to file the lawsuit to enforce the lien (deadline: February 15 of the following year), and failure to file the enforcement action within that window forfeits the lien

C. The contractor has 12 months from the lien filing date to file the lawsuit to enforce the lien under state lien law as applied to construction liens

D. The contractor must file the lawsuit in federal court within 90 days under federal property law as applied to state lien actions

48. When a materialman without a direct contract with the owner gives proper pre-furnishing written notice and supplies materials to the project, the immediate first-order consequence is that the materialman has preserved full lien rights. What is the second-order consequence for the materialman's filing deadline?

A. The materialman must file the verified lien statement within 30 days after the last item is furnished under state lien law as applied to materialmen

B. The materialman has no filing deadline because the pre-furnishing notice fully preserves the lien indefinitely under state law as applied to materialmen

C. The materialman must file the verified lien statement within 4 months of the last item furnished, and the lawsuit to enforce the lien within 6 months of lien filing, to maintain the perfected lien interest in the property

D. The materialman must file in federal court within 90 days under federal property law as applied to state lien actions in construction

49. When an Alabama contractor forms a multi-member LLC and makes no entity classification election with the IRS, the immediate first-order consequence is that the LLC defaults to partnership tax treatment for federal purposes. What is the second-order consequence for federal income tax reporting?

- A. The LLC files Form 1120 (C corporation return) and pays the 21% federal corporate tax under federal tax law as applied to LLCs
- B. The LLC files Form 1065 (partnership return) with the IRS, issues Schedule K-1 to each member showing their distributive share of income/loss/credits, and members report their respective shares on their personal Form 1040 returns
- C. The LLC files Form 1120-S (S corporation return) automatically under federal default rules for LLCs as applied to entity classification
- D. The LLC files no federal return because partnerships are not separately taxable entities under federal tax law as applied to LLCs

50. When the shareholders of an Alabama C corporation file IRS Form 2553 within the statutory window with unanimous consent, the immediate first-order consequence is that the S corporation election becomes effective. What is the second-order consequence for federal income tax treatment?

- A. Corporate income, deductions, gains, losses, and credits flow through to shareholders on their personal Form 1040 returns via Schedule K-1, eliminating the double taxation that would otherwise apply to C corporation distributions at the 21% corporate rate plus shareholder-level dividend tax
- B. The corporation continues to pay tax at the 21% federal C corporation rate, with no change in tax treatment after the election under federal tax law as applied to S corporations
- C. The corporation becomes a partnership for federal tax purposes and members elect K-1 distribution under federal tax law as applied to S corporations
- D. The corporation pays no federal tax of any kind under federal tax law as applied to S corporations after election

## PRACTICE EXAM 17: ANSWER KEY AND EXPLANATIONS

1. D — The unlicensed contractor's lawsuit to recover payment is barred even on quantum meruit grounds, because Alabama courts enforce the licensing statute by denying both contract and quasi-contract claims to unlicensed parties for work requiring an Alabama license. The bar is the principal deterrent against unlicensed contracting and applies regardless of the quality of work performed.
2. A — License suspension follows when the 60-day designation window expires without a properly designated replacement QP, and the licensee cannot resume contracting operations until reinstatement is achieved through Board action. The 60-day window is jurisdictional; failure to comply triggers the loss of operating authority.
3. D — The Business and Law examination still must be passed separately, because NASCLA satisfies only the trade portion in 17 participating jurisdictions and never substitutes for any state's Business and Law requirement. This is universal across all NASCLA-participating jurisdictions including Alabama and is the key limitation of the NASCLA route.
4. C — The Board issues a written order with findings of fact and conclusions, may impose sanctions ranging from civil penalty through revocation or dismissal, and the order is subject to judicial review under the Alabama Administrative Procedure Act. The written order is the formal disposition document required to support any sanction.
5. D — Failure to pay an assessed Board penalty exposes the contractor to collection action by the Board and may trigger additional sanctions, including license suspension or revocation. The Board's penalty authority and disciplinary sanction authority are independent and may be exercised cumulatively for the same underlying conduct.
6. A — Revocation requires the contractor to reapply for licensure as a new applicant, meeting all current requirements (application, financials, examinations, fee) before any work requiring an Alabama license may resume. Unlike suspension, revocation does not auto-reinstate after a period; the contractor must start the licensure process over.
7. C — The contractor must apply to the Board for an increased bid limit, supported by updated financial statements demonstrating sufficient working capital and net worth, before submitting a bid above the existing cap. The bid limit is a hard cap tied to financial position; only Board approval based on updated financials authorizes a higher single-project bid.
8. C — The bid limit is calculated by the Board based on the contractor's working capital and net worth shown in the financial statements, scaled to the contractor's financial capacity to bid and complete the work. The bid limit is thus financial-position-driven, not arbitrary, ensuring single-project exposure stays within the contractor's demonstrated capacity.
9. B — The employer must file Form 940 annually by January 31 of the following year, reporting total FUTA liability calculated at the 0.6% effective rate on the first \$7,000 of each employee's annual wages. The annual cycle distinguishes Form 940 from the quarterly Form 941 used for income tax withholding and FICA.
10. D — The IRS may assess the Trust Fund Recovery Penalty under IRC §6672 personally against responsible persons who willfully failed to remit trust fund taxes, in addition to collecting interest and penalties from the entity. The TFRP reaches officers, owners, and other responsible persons personally, making this one of the most aggressive enforcement tools in federal employment tax administration.
11. A — The employer must furnish Form 1099-NEC to the contractor and file the form with the IRS by January 31 of the following year, reporting the nonemployee compensation. The \$600 threshold

is far below the \$2,500 payment, so the form is required, and the January 31 deadline is firm for both furnishing and filing.

12. B — The employer must withhold the additional 0.9% Medicare surtax on wages above \$200,000, with the employer share not increased (employee-only obligation), starting in the pay period the threshold is crossed. The surtax is funded entirely by the employee through expanded withholding once the \$200,000 cumulative wage threshold is met.
13. D — E-Verify submission generally must be initiated by the third business day following the start date under the Beason-Hammon Act, supplementing the I-9 rather than replacing it. The state law goes beyond the federal default by mandating E-Verify for every Alabama employer regardless of federal contracting status.
14. B — The employer's future SUTA rate is recalculated under the experience rating system based on prior claim activity, with lower claims activity leading to lower rates. The experience rating tailors each employer's rate to its actual unemployment history, creating direct incentive to manage layoffs and unemployment claims.
15. C — Failure to cure within the contractual cure period entitles the owner to terminate the contract for cause, engage a replacement contractor, and recover excess completion costs from the original contractor as damages. The notice-and-cure structure protects the contractor's right to remedy before termination, but the owner's termination right ripens upon failure to cure.
16. A — The contractor is entitled to payment for all work performed through termination plus an agreed percentage of unperformed profit and reasonable termination costs, including demobilization, restocking fees, and settlement of sub claims. This compensation package is the consideration the contractor receives in exchange for accepting the owner's at-will exit right.
17. D — The owner may deduct the assessed LD amount ( $\$21,000 = 14 \text{ days} \times \$1,500/\text{day}$ ) from amounts otherwise due to the contractor (typically from final payment or retainage), provided the LD clause is enforceable as a reasonable estimate of anticipated damages at contract formation. The deduction occurs without litigation when the LD clause is properly drafted and enforceable.
18. B — The cost and time impact are reconciled later through audit of actual costs or a formal change order, with the contractor entitled to recover reasonable costs and a fair allowance for overhead and profit. The deferred reconciliation balances continued progress against eventual fair compensation, which is the central purpose of the CCD mechanism.
19. C — The contract is unenforceable unless reduced to writing and signed by the party to be charged, because the Alabama Statute of Frauds applies to any agreement that cannot be performed within one year. The 18-month performance period plainly exceeds one year, triggering the writing requirement.
20. A — The subcontractor may have no contractual claim against the prime, because the pay-if-paid clause has shifted the credit risk of owner default to the subcontractor — the prime is not obligated to pay the sub for amounts the prime has not received from the owner. This is precisely the risk-shifting effect that justifies why subs should resist or carefully negotiate these clauses.
21. D — The awarded bidder must furnish a performance bond at 100% of contract value and a payment bond at 100% of contract value, in addition to the bid bond submitted with the bid. Both bonds are required on Alabama public construction above the threshold under the Little Miller Act framework, with the performance bond covering completion and the payment bond covering sub and supplier claims.
22. C — The contractor may seek withdrawal of the bid by promptly notifying the awarding authority in writing with documentation of the error, under the Alabama bid mistake doctrine for material

- clerical or mathematical errors. Prompt written disclosure with documentation is the gating requirement; without it, the contractor remains bound to the bid as submitted.
23. C — The contractor forfeits the bid bond (typically 5% of bid = \$20,000), and the awarding authority may proceed to award the contract to the next lowest responsible bidder. This is the precise risk the bid bond was designed to address — protecting the awarding authority against an awarded bidder who fails to execute the contract.
  24. A — The contractor bears the \$50,000 cost overrun on a lump sum contract, because the lump sum pricing structure assigns cost overrun risk to the contractor in exchange for the fixed contract price. The contractor's profit is the residual after actual costs are subtracted from the contract price, so overruns reduce profit directly.
  25. C — The agency must follow competitive bidding procedures — advertising, receipt of sealed bids, public opening, and award to the lowest responsible and responsive bidder — to ensure transparency and best value for the state's procurement dollar. The competitive process protects both the public fisc and the integrity of state procurement.
  26. D — Revenue recognized equals \$500,000, reflecting 40% complete  $\times$  \$1,250,000 contract price under the percentage-of-completion cost-to-cost method. The proportional approach ties revenue recognition to work actually performed, not to costs alone or to billings, and is the standard for long-term contracts under GAAP.
  27. A — The \$100,000 overbilling is reported on the balance sheet as a current liability titled "billings in excess of costs and estimated earnings on uncompleted contracts," reflecting an obligation to deliver future work for which payment has already been received. This conservative treatment prevents overstating earned revenue and is core to construction-industry accounting.
  28. A — The surety reviews the \$400,000 working capital position as one of the primary measures of short-term financial strength, and may calibrate single-project and aggregate bonding capacity based on working capital and net worth together. Working capital is foundational to surety underwriting because it measures the contractor's ability to fund operations and complete bonded projects through cash flow stress.
  29. C — The subcontractor's lien rights remain preserved, because the conditional waiver's effectiveness was contingent on actual receipt of the payment specified — a condition that has not been met. This is the specific protection the conditional waiver structure provides against waiving rights without being paid.
  30. B — The contractor has \$1,000,000 of equity available to absorb adverse events — a cushion that affects bid limits set by the Licensing Board and bonding capacity offered by sureties. The higher the net worth, the greater the risk-absorption capacity, which is why net worth is foundational to both regulatory and surety financial review.
  31. D — Gross weekly pay equals \$1,100 — comprising 40 hours  $\times$  \$20 regular rate (\$800) plus 10 hours  $\times$  \$30 overtime premium rate (\$300) — under the FLSA non-exempt overtime structure. The 1.5 $\times$  premium applies only to hours over 40 in the workweek, not to all hours worked.
  32. C — The contractor must obtain workers' compensation insurance coverage that complies with Alabama law, providing the statutory benefits (medical, TTD, PPD, etc.) for any work-related injury to covered employees. The 5-employee threshold is jurisdictional; once crossed, the coverage obligation attaches.
  33. A — The contractor becomes subject to the ADEA's prohibition on age-based discrimination against workers 40 and older, in addition to the Title VII obligations already applicable from the 15-employee threshold. Federal anti-discrimination compliance expands cumulatively as the workforce crosses each successive statutory threshold.

34. C — The employer becomes exposed to civil penalties under federal immigration law for failing to timely complete employment eligibility verification, regardless of whether the employee is in fact work-authorized. The compliance violation is the failure to verify on time, independent of the employee's actual work authorization status.
35. B — The contractor must provide up to 12 weeks of unpaid leave per 12-month period to eligible employees for qualifying family and medical reasons, including the employee's own serious health condition, birth or adoption of a child, care for a family member with a serious health condition, qualifying military exigency, and military caregiver leave. The 12-week entitlement is the principal FMLA obligation triggered at the 50-employee/75-mile-radius threshold.
36. C — The employee's tort remedies against the employer are barred by the workers' compensation exclusive remedy rule — the employee's recovery is limited to the statutory workers' comp benefits, in exchange for the no-fault structure of the workers' comp system. This grand bargain underlies the entire workers' comp framework and is its defining feature.
37. A — The CGL policy does not respond to the loss, because builders' risk covers physical damage to the project itself (including installed materials) while CGL is reserved for third-party liability. The two policies cover non-overlapping exposures, ensuring the contractor needs both to be properly insured during construction.
38. B — The carriers may not pursue subrogation against the waived party for the insured losses within the scope of the waiver, because the policy endorsement supporting the waiver has bound the carrier to honor the contractual waiver between the parties. The endorsement is the mechanism by which the contractual waiver actually binds the insurance carrier.
39. A — The contractor pursues risk transfer through insurance or contractual indemnification, and may also pursue risk reduction to lower probability or severity, because high-probability/high-severity risks are too consequential to retain and too damaging to absorb directly. Risk responses scale to the risk profile — transfer combined with reduction is the standard response for top-priority risks.
40. D — The employer must report by 7:00 PM Monday (within 8 hours of learning of the death) under 29 CFR 1904.39, allowing OSHA to investigate promptly while evidence is preserved. The 8-hour clock runs from the time of employer knowledge, not from the time of death.
41. D — The employer must report by 5:00 PM Saturday (within 24 hours of learning of the qualifying event) under 29 CFR 1904.39, ensuring OSHA has timely notice of serious workplace events. The 24-hour clock runs from the time of employer knowledge, paralleling the structure of the 8-hour fatality reporting rule but with the longer window appropriate to non-fatal events.
42. B — The injury must be entered on the OSHA 300 Log within 7 calendar days of learning of the incident, and a Form 301 Incident Report must be completed with witness statements and root cause information, with both records retained for 5 years following the year covered. The 7-day entry deadline and 5-year retention period are core OSHA recordkeeping requirements.
43. B — The contractor must develop a SWPPP identifying pollution sources and BMPs, file a Notice of Intent (NOI) with ADEM to obtain permit coverage, conduct weekly site inspections, and ensure site stabilization before filing the Notice of Termination at project end. These compliance elements form the standard NPDES Construction General Permit framework.
44. D — The project completion date is delayed by 2 days, because the 5-day float is fully consumed and the additional 2 days of delay propagate through to the critical path and the project finish. Float absorbs delay only up to the amount available; delays beyond available float cascade onto the critical path.

45. A — Multiple consequences flow simultaneously from substantial completion: liquidated damages stop accruing because the owner can use the project for its intended purpose, the warranty period begins, and the bulk of retainage is released subject to punch list completion. Substantial completion is the single contractual milestone that triggers all three of these legal consequences at once.
46. B — The bulk of the retainage is released to the contractor at substantial completion, while the remainder is held to secure completion of punch list items, providing significant cash flow to the contractor while preserving incentive to complete remaining work. The two-stage release balances contractor liquidity against owner security at project closeout.
47. B — The contractor has 6 months from the lien filing date to file the lawsuit to enforce the lien — meaning a February 15 deadline of the following year — and failure to file the enforcement action within that window forfeits the lien. Both the 6-month filing deadline and the 6-month enforcement deadline are jurisdictional and unforgiving.
48. C — The materialman must file the verified lien statement within 4 months of the last item furnished, and the lawsuit to enforce the lien within 6 months of lien filing, to maintain the perfected lien interest in the property. Pre-furnishing notice alone preserves lien rights, but the materialman must still meet the filing and enforcement deadlines to perfect and enforce the lien.
49. B — The LLC files Form 1065 (partnership return) with the IRS, issues Schedule K-1 to each member showing their distributive share of income/loss/credits, and members report their respective shares on their personal Form 1040 returns. This pass-through structure avoids the double taxation inherent in C corporation status.
50. A — Corporate income, deductions, gains, losses, and credits flow through to shareholders on their personal Form 1040 returns via Schedule K-1, eliminating the double taxation that would otherwise apply to C corporation distributions at the 21% corporate rate plus shareholder-level dividend tax. The S election is the principal tax-planning mechanism by which closely held corporations achieve pass-through tax treatment.