Examiner's comments Contract law 2018

Question 1

This question concerned issues around breach and frustration of a contract. On the whole the question was answered reasonably well with students spotting the issues and engaging by applying relevant caselaw.

Students were required to consider frustration and the leading case of *Codelfa* and whether, as a matter of construction, the contract had been discharged or not. Further the second issue was whether tunnel being too narrow amounted to a breach that entitled termination, depending on the classification of the term involved. Another issue was whether the delay in completing the second section amounted to a breach entitling termination, when the provision was a time clause. The issue of whether clause 5 was a penalty or not was not covered particularly well by students. While it is a difficult topic students need to understand *Dunlop* and the impact of *Paciocco*. Finally there was an issue of anticipatory repudiation caused by delay.

Question 2

This question was answered generally satisfactorily. The question concerned identifying the contract involved and whether the ACL applied and the incorporation of an exclusion clause. Whether or not students decided the term was incorporated they ought to have construed the clause to decide whether it applied to the facts and whether it operated to protect the third party.

Question 3

A number of students struggled with this question. The quote identified the different measures of damages in contract law – reliance loss, restitution loss and expectation loss. The key cases on each area ought to have been identified and explained, including McRae, Amann, Luna Park.