Contracts Examiner’s Comments September 2018

Question 1

This question was generally answered well. It concerned breach and rights to terminate. Students who did not do well failed to distinguish between the rights that arise following a breach of condition, a sufficiently serious breach of an intermediate term or a repudiation. Further students needed to consider the promise to use ‘best endeavours’ and the ‘guarantee’ of acceptable quality. Students also needed to understand the requirements of an innocent party being ready willing and able to perform and the operation of anticipatory breach.

Question 2

The question concerned damages. Students were expected to understand expectation loss and the rule of remoteness of damage and mitigation. Further students needed to understand the limits of contractual damages compensating for disappointment and stress. On the whole this question was answered well.

Question 3

Students were expected to explain and apply the law concerning the incorporation of exclusion clauses, including by reference, by notice and course of dealing. They were then expected to apply the law concerning misrepresentation of exclusion clause and the effect of such misrepresentations. The question required the construction of the clause including principles of deviation and the ‘four corners rule’. Finally there was an issue concerning privity in relation to the application of the exclusion clause and the cases that have considered third parties receiving the benefit of such clauses, such as the Eurymedon. Some students struggled to give a logical answer to this question and ought to practice structuring their answers.