**Contract Law - Examiner’s comments**

**Question 1**

Question 1 concerned the incorporation and construction of exclusion clauses. It required students to understand and apply the law concerning how unsigned documents can be incorporated into contracts either through reasonable notice (brochure or signs) and by course of dealing.

Most students appreciated the issues to be addressed and answered in varying levels of competence. Better answers considered the cases and whether the facts provided were sufficiently similar to reach the same conclusion.

The question also required a consideration of the proper construction of the exclusion clause, should it have been incorporated and whether its effect was impacted by a misrepresentation. Better answers considered the acknowledgement in that context and also the attempted limitation of liability and concepts such as the four corners rule.

Many students failed to answer the question as to how the gallery might better protect its rights in the future. Ideas might have included requiring a signature, better signs and better drafting of the exclusion clause.

**Question 2**

This question concerned vitiating factors, including undue influence (and the difference between assumed and actual), and unconscionability (particularly in the intimate relationship context). In relation to Patrick there was also the issue of misrepresentation and estoppel.

Most students handled the question reasonably well and demonstrated an understanding of the different concepts and their application.

**Question 3**

Question 3 required an application of the principles of expectation damages in the context of building works. Some students struggled to articulate those principles and some spent time on irrelevant considerations such as part performance.

It was expected that students could reason through the requirements for expectation measure (after breach and causation) and then explain how the expectation measure in building context is based on rectification or compensating so the work can be carried out (rather than the diminution in value of the property). However, there is always a requirement that such compensation is ‘reasonable’ in the circumstances. The different scenarios asked candidates to grapple with whether such compensation would always be ‘reasonable’. Issues of remoteness and mitigation were also raised.