Question 1

This question appeared to trouble the examinees most. It involved issues of substantial performance, breach and termination. The better answers focused the key clauses, whether they had been breached or not and whether there was substantial performance. They also took the time to analyse which clauses were likely to be essential or intermediate and which were not, rather than just assuming that they were essential. The best approaches quickly assessed each clause and focused on those that were in issue.

Question 2

Question 2 involved the incorporation and interpretation of exclusions clause. This question was typical of some of the problems looked at in revision, and, although it was relatively straightforward, there were several issues to discuss. The better answers first discussed incorporation: by notice or course of dealing. Then the problem required an analysis of whether the exclusion clauses applied to the facts and whether the conduct of the manager effectively undermined the clause.

The question also required an analysis of the whether the rule regarding *Himalaya* clauses applied. Some students appeared confused by this and tried to formulate various causes of action against the sub-contractor. This was the part of the question that was less well answered.

Overall, most students picked out and developed several of the key issues. But the better answers addressed all of the interpretation issues in the problem.

Question 3

On the whole this question was answered the best of the three. The first sub-part dealt with the issue of formation, and in particular, the interplay of the postal acceptance rule and the issue of tenders. Good answers needed to explain why the usual rule regarding tenders applied or not, and then whether the postal acceptance rule applied or not.

The second part of this question related involved issues of common mistake, misrepresentation and economic duress. The better answers provide a thorough analysis of *McCrae* and whether this was a similar case. Some students also looked at this in relation to the incorporation of terms. The third part was an issue of frustration and the better answers discussed what would result if there was a frustrating act.

Overall, whilst most students identified the key issues effectively. However, despite the issue of analysis being emphasised in the revision lectures, occasionally there were still some difficulties in the actual application of the principles, rather than simply their recapitulation.