Question 1

The first question was a civil problem and was broken into five larger questions.

Part (a) required an analysis the rule against hearsay and any potential exceptions; the assessment of the opinion rule and the expert evidence exception in s 79; and the assessment of client legal privilege and waiver. Most answers dealt with one or two of these three elements (most students discussed opinion), but only a few discussed them all in any depth (including a discussion about waiver and accidental disclosure).

Part (b) involved issues of hearsay and tendency. Most students addressed these two issues, but the better answers properly assessed the relevance of the various statements to the alleged propensity. Few answers properly discussed the difference between witness statements and affidavits and the fact that the latter were arguably not subject to hearsay arguments.

Part (c) required a discussion of credibility and the relevance of evidence for this purpose. Most students addressed this, but not the relevant test. Nor did some students actually focus on what the questions was asking: whether this evidence could be led in chief.

Part (d) involved assessment of lay opinion, judicial notice and of whether the contract was hearsay. Few students addressed this last issue, but most addressed the first two. However the issue of judicial notice was often not dealt with in any depth.

Part (e) involved discussing whether Kevin was making an admission on behalf of his employer, and whether this was in fact hearsay in the first place. It also involved discussion of the rule in Jones v Dunkel, and the appropriateness of these questions. Most students correctly identified and assessed the last element, but only some analysed all three.

Question 2

There were a greater number of parts to this question, and each therefore was slightly simpler.

Part (a) required a discussion of competence and the test in s 13. Some students correctly analysed the sub-parts which were deficient, but some students merely referred to the test or said that the direction was appropriate.

Part (b) involved discussion of the relevance test in Evans, and the use of identification evidence. Whilst most students discussed the latter, many did not analyse in sufficient depth why the crown’s response was insufficient, nor did they cite the appropriate authority: Tahere. Also many students disregarded the issue of whether s 53 was appropriate in this case.

Part (c) involved an assessment of a prior inconsistent statement. The better answers assessed its admissibility (hearsay e.t.c.) and the procedural issues (s 38 etc). However, some answers discussed one but not the other.

Part (d) involved a discussion of the coincidence rule and character evidence. Many students identified these issues, but the difference between the coincidence rule and the tendency rule appears
to have confused some students. Moreover, few students assessed the significance of the witness’s job and how this related to *The Queen v Dennis Bauer*.

Part (e) required an assessment of the opinion rule. Most students answered this satisfactorily.

Part (f) related to judicial directions regarding innocence and the standard of proof. Most students answered this satisfactorily.

Overall there were continuing issues with students correctly identifying the relevant issues, but failing to properly assess them: i.e. applying the principles to the facts and applying or distinguishing the relevant authorities. Furthermore, some students did not appear to recall the relevant cases.