

TOPIC OVERVIEW

1	TERMINATION <ul style="list-style-type: none">• BREACH OF CONDITION• SUFFICIENTLY SERIOUS BREACH OF INTERMEDIATE TERM• REPUDIATION• DELAY• CONSEQUENCES OF AFFIRMATION OR TERMINATION• RESTRICTIONS
2	REMEDIES <ul style="list-style-type: none">• DAMAGES• LIQUIDATED DAMAGES AND PENALTIES• SPECIFIC PERFORMANCE• INJUNCTIONS• ACTIONS FOR DEBT
3	FRUSTRATION
4	DURESS UNDUE INFLUENCE UNCONSCIONABLE DEALING
5	IMPROPRIETY FOR VITIATING FACTORS REMEDIES FOR VITIATING FACTORS
6	MISLEADING OR DECEPTIVE CONDUCT STATUTORY UNCONSCIONABILITY
7	REMEDIES FOR MISLEADING OR DECEPTIVE CONDUCT REMEDIES FOR STATUTORY UNCONSCIONABILITY

TOPIC 1 – TERMINATION

TERMINATION UNDER THE ORIGINAL CONTRACT

Shevill v Builders Licencing Board

- FACTS
 - If the rent was late by 14 days the LL can terminate the lease
 - LL terminated
- HELD
 - No need to consider the rights under breach because there was an express term in the contract

TERMINATION FOR BREACH OF A CONDITION

Arcos v Ronaasen

- RELEVANCE
 - Minor breach gives rise to terminate
 - Under legislation
 - Shows the harshness/trivial breach is fine/lack of loss doesn't matter
- FACTS
 - Contract for sale of wood
 - Contract specified length of pieces of wood
 - The length was fractionally different when delivered - this made no difference to the use of the wood
 - The buyer terminated because the price of wood plummeted so they could get cheaper wood elsewhere so argued breach of condition
- HELD
 - HOL
 - It was a condition because it was under the Sale of Goods ACT
 - Didn't precisely match the description
 - The trivialness of the breach didn't matter
 - The fact that they suffered no loss from this was irrelevant

L Schuler AG v Wickman Machine Tool Sales Ltd

- RELEVANCE
 - They called it a condition but the court said no
- FACTS
 - Long term contract between manufacturer and sole distributor
 - Condition of the contract that the distributor send reps to visit 1400 times over the term of the contract
 - W didn't make all the visits so S sued for breach of condition
- ISSUE
 - Right to determine depending on whether this was actually a condition
- HELD
- TEST
 - If the term was a condition = an essential term going to the root of the contract which the parties intended that any breach would give right to terminate - this would be a breach
 - If the term was a condition only in the layman's sense and not the technical sense - this WOULD NOT be a breach

- Held - not a condition, no right to terminate, looked to intention
- Not clear what the parties meant when they used that term
 - But it would lead to a very unreasonable result if they upheld that condition
 - The fact that a breach was likely given the magnitude of the amount of visits
- Didn't take wording at face value

Tramways Advertising Pty Lrd v Luna Park

- FACTS
 - Luna Park entered into a contract with T to advertise LP on the side of trams
 - Long term contract
 - Clause - 'we guarantee that these boards will be on the tracks at least 8 hours per day throughout the season'
 - Breaches in the 3rd season - LP said the boards weren't out for the required amount of time and they wanted to terminate
 - T kept displaying the boards and argued that they didn't have a right to terminate so LP had to pay for the billboards after this
- ISSUES
 - Was there a breach? How do we interpret the boards being on the tracks 8 hours per day
 - Was that term a condition?
- HELD
 - For the first issue - T argued an average of 8 hours a day was sufficient. LP said no, 8 hours per day
 - Held that it should just be an average, so no breach
- APPEAL
 - LP was successful in the High Court - it had to be 8 hours per day
 - Test per Jordan CJ in NSWSC and endorsed in HC
 - Whether or not it is a condition depends upon the intention of the parties
 - The test of essentiality is whether it appears from the general nature of the contract, or from some particular term that the promise is of such importance to the promisee that he **would not have entered in to the contract unless he had been assured of a strict performance of the promise**, and this ought to have been apparent to the promisor
 - HC held that it was a condition
 - It was essential because of
 - The language 'we guarantee'
 - No payment until all 53 boards were displayed - so very important
 - Preliminary correspondence demonstrated importance of continuity of display
 - Remedy
 - Only awarded 1 shilling because no loss shown
 - But they weren't obliged to pay for the advertising after the termination