Termination	Termination Clause/Mutual agreement Breach of condition Sufficiently serious breach of intermediate term For repudiation and delay Election and restrictions on right to terminate
Remedies for breach	Damages ● Expectation/reliance/loss of chance/discount Limitations ● Causation/remoteness/mitigation/exclusions for non-pecuniary loss/shevil principle/ express exclusions Rule against penalties ● Liquidated damages ● Paciocco 6 step test Specific performance ● requirements/discretionary factors Injunctions Restitution Actions for debt
Frustration	Test for frustration Illustrations Limitations ● No allocation of risk ● Not foreseeable ● Not be fault of person seeking it Consequences
Vitiating factors - Common law	Duress Undue influence Unconscionable dealing
Vitiating factors - Statute	**Misleading or deceptive conduct** ● Section 18 ACL Remedies under statute

TERMINATION

1. Method of termination
2. Restrictions
3. Remedies

METHOD OF TERMINATION

1. **Termination clause**
2. **Mutual agreement**
3. **Breach**
4. **Repudiation**
5. **Delay**

START: *X may attempt to terminate the contract with Y due to …. As they want…*
[Identify the client, what do they want?]

1. Is there a **contractual term** for termination?
   - If yes - aggrieved party has RTT

2. **Mutual agreement** (*McDermott v Black*)
   - **Contract is executory** - each party must provide consideration in agreeing to release each other from obligations by mutual agreement
   - **Contract is partly executed** - "Accord and satisfaction" - acceptance by P of something in place of his cause of action
     - Accord (moving from D) - agreement to discharge obligations - not to sue for fraudulent misrepresentation
     - Satisfaction (moving from P) - Consideration that makes agreement operative - extension of time to pay
   - **Subsequent agreement** - inferred intention to terminate initial contract
   - **Abandonment** - after a period of inactivity/other conduct - indication of abandonment (*DTR Nominees v Mona Homes*)

3. **Termination for Breach**

TIP:******Draw a timeline to separate the breaches - talk about each breach individually******

   3.1 Identify the **relevant terms** of the contract - be specific, state the clause

   3.2 Identify the **breach**
X will claim that Y breached their contractual obligation of…...when they…..
This breach gives rise to damages but may not give RTT, this depends on the classification of the term that is breached.

3.3 Classify the Breach

3.3.1 Condition - slightest breach of a condition will give RTT (*Arcos v Ronaasen*)

      i.   Statutory Classification

Goods Act 1958 (Vic) - for the sale of good
- s 17(a): the seller has a right to sell the goods
- s 18: the goods correspond with the description (*Arcos*)
- s 19: the goods are reasonably fit for purpose
- s 20: the bulk of the goods correspond with the sample

      ii.   Express classification
- *s 16(2) Goods Act 1958* (VIC) - A stipulation may be a condition though called a **warranty** in a contract for the sale of goods
  - Look at **intention** of the parties
- Classification of a term depends in each case on the construction of the contract. Terminology used is **not conclusive**, but explicitly labelling as a condition is **strongly persuasive** (*L Schuler AG v Wickman*)
- If term leads to unreasonable result - unlikely to be intended as a condition

      iii.   Intention of the parties - Essentiality test

X will assert that they would not have entered into the contract unless he had been assured of a strict compliance of the term by Y. (Jordan CJ in *Tramways v Luna Park* affirmed in *Associated Newspaper v Bancks*)

3.3.2 Serious breach of an Intermediate term

TEST from *HK Fir Shipping* (strict test):
- Can the term be breached in a **variety of ways**? If yes - likely intermediate term.
- Does the breach deprived innocent party **substantially the whole benefit** of the intended contract? (*Lord Diplock in Hong Kong Fir Shipping Co Ltd v Kawasaki* - UK authority affirmed in *Ankar; Koompahtoo*)
  - Breach must be substantial - 7 month delay out of 24 months was not enough (*Hong Kong Fir Shipping*)

Koompahtoo (for greater flexibility, practical utility)
- Does the breach go to the root of the K?
- Look at gravity and consequences of the breach
  - Breach may deprive party of a substantial part of the benefit of the contract and would not be sufficiently dealt with by damages (*Koompahtoo*)

3.3.3 Warranty

No breach will give rise to RTT (*Progressive Mailing House v Tabali*), only damages.

(it is preferable to classify a term as an intermediate term (if it can be breached in more than one way with varying degrees of seriousness).

3.4 Consequences of termination
- Both parties relieved from further performance
- Rights already accrued are not affected