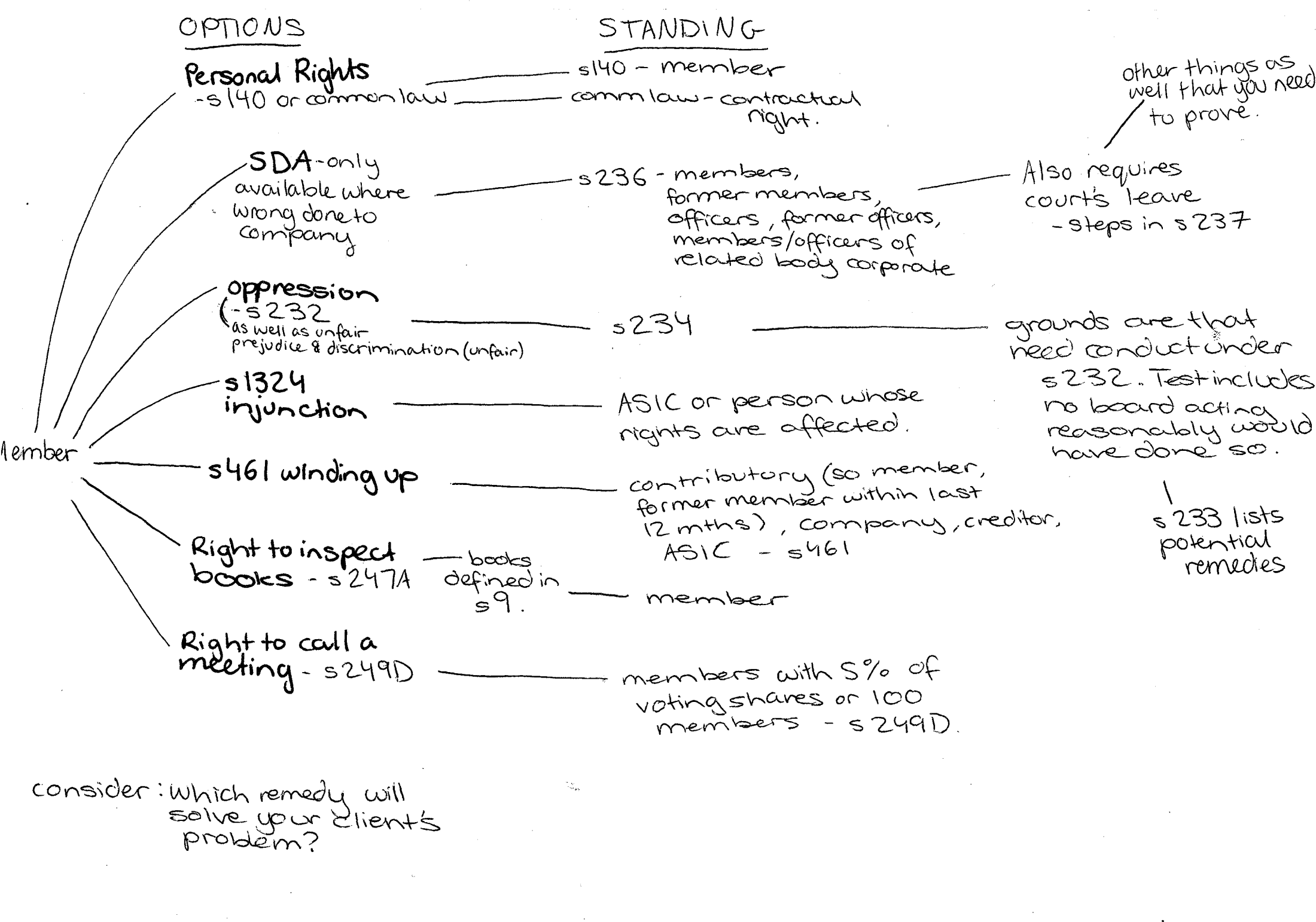
OPTIONS
STANDING
Personal Rights
-s140 or common law
s140 - member
comm law - contractual right.
other things as well that you need to prove.
SDA - only available where wrong done to company
s236 - members, former members, officers, former officers, members/officers of related body corporate
Also requires court's leave - steps in s237
oppression (-s232 as well as unfair prejudice & discrimination (unfair)
s234
grounds are that need conduct under s232. Test includes no board acting reasonably would have done so.
s1324 injunction
ASIC or person whose rights are affected.
Member
s461 winding up
contributory (so member, former member within last 12 mths), company, creditor, ASIC - s461
s233 lists potential remedies
Right to inspect books - s247A
books defined in s9.
member
Right to call a meeting - s249D
members with 5% of voting shares or 100 members - s249D.
consider: Which remedy will solve your client's problem?

Members' Remedies

Start with s 234 – members have standing etc. So does the person have standing?

A court can make an order under s 233 if there is oppression/unfair prejudice/discrimination etc. HOWEVER these are not in the definitions section so you need to look to case law.

Section 233 then has the possible remedies.

Foss v Harbottle – The company is the proper plaintiff. Exception is personal rights such as altering class rights other than by proper procedure etc. SH also has personal right to bring an action where it is alleged that an issue of shares was made for an improper purpose – *Residues Treatment & Trading Co v Southern Resources*.

Common law remedies are abolished by s 236(3), unless it is a personal right.
Directors cannot vote at SH meeting which consider approval of financial benefits to directors – s 224

Statutory oppression under part 2F.1:
-who has standing – s 234.
-grounds include conduct of company's affairs (defined in s 53), actual or proposed act or omission, resolution or proposed resolution of members or class – s 232(a)-(c)
-needs to be contrary to the interests of members as a whole – s 232(d) OR oppressive, unfairly prejudicial, or unfairly discriminatory against member(s) whether in that capacity or any other – s 232(e). *Re Spargos* suggests that 2 separate limbs and prove either one.
-member has standing to apply even if the oppressive conduct occurred when they were not a member – *Re Spargos*.

<u>Oppressive and unfair:</u>
-'harsh, burdensome and wrongful' – *Scottich Co-Operative Wholesale Society v Meyer*
-'overbearing act by oppressor' – *John H Starr v Robert R Andrew*
-'unfairness may lie in harm suffered as a result of conduct of management , any prejudice caused, lack of reasonable commercial justification for the course taken, or simply in the company's decision making processes' – *Re Spargos*.
-'was it a decision no board (with the skills of the alleged oppressors) acting reasonably, would have made?' – *Wayde v NSW Rugby League*
-An objective test comes from *Wayde* – are the actions commercially unfair? So even if the directors' decision is in good faith and for a proper purpose, but a reasonable director would think it to be unfair.
Some examples include:
-Diversion of business opportunities – *Scottish Co-Operative*
-Failure to declare/distribute dividends in SOME circumstances (e.g. if usual practice)– *Thomas v Thomas*
-excessive remuneration of directors where previously profits had been paid as dividends – *Roberts v Walter Developments, Sanford v Sanford Courier Service*
-Failure to revise dividend policy where profits are increasing etc – *Shamsallah v CBD Refrigeration*
-Deprivation of info, oppressive conduct at board meetings – *John H Starr*