

## Exam notes

WE won't have sub questions. Just one question: advise xxx

Mark and time breakdown:

Exam duration: 180 minutes

Assume 3000 words

Reading time 30 minutes

Reading time: 8:30 – 9:00

Exam Time: 9:00 – 12:15

Q1: 35 marks – hypo

1050 words / 63 minutes

9:00 – 10:03

Q2: 35 marks - hypo

1050 words / 63 minutes

10:03 – 11:06

Q3: 30 marks – essay

900 words / 54 minutes

11:06 – 12:00

<p><u>A. Contract:</u></p>	<p>Step 1: Identify the breach or vitiating</p> <ul style="list-style-type: none"> <li>(1) breach of contract / obligation or</li> <li>(2) vitiating factors then jump to step 10 rescission</li> </ul> <p>Step 2: Identify the loss</p> <p>Step 3: general principle</p> <p>Step 4: How to measure damages?</p> <ul style="list-style-type: none"> <li>(1) difference in value</li> <li>(2) rectification in construction contract</li> <li>(3) reliance loss</li> <li>(4) loss of chance and loss of opportunity</li> <li>(5) disappointment and distress (this is a kind of aggravated)</li> <li>(6) Exemplary damages not available</li> <li>(7) nominal damages or declaration</li> </ul> <p>Step 5: limiting factors</p> <ul style="list-style-type: none"> <li>(1) Causation and NIA</li> <li>(2) Remoteness</li> <li>(3) Mitigation</li> </ul> <p>Step 6: liquidated damages or debt (self-help)</p> <p>Step 7: conclusion: If damages adequate, then stop here, you get compensation Or maybe you get nominal damages or declaration</p> <p>Step 8: If damages inadequate, then go with Specific performance</p> <ul style="list-style-type: none"> <li>(1) for what type of interest? Is damages inadequate?</li> <li>(2) discretionary considerations <ul style="list-style-type: none"> <li>a. generally</li> <li>b. specific to SP</li> </ul> </li> </ul> <p>Step 9: if damages inadequate and this is service contract, cannot SP, can you seek injunction for negative covenant</p> <p>Step 10: If SP or injunction not available, or impossible, can we seek Lord Cairns Act?</p> <ul style="list-style-type: none"> <li>(1) jurisdiction</li> <li>(2) when will court award?</li> <li>(3) reasonable fee?</li> <li>(2) or do we have reasonable fee in first stage as primary compensation?</li> </ul>
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	<p>Step 11: Account of profit not available for contract</p> <p>Step 12: Now consider rescission if there was vitiating factors (also self-help)</p> <ul style="list-style-type: none"> <li>(1) common law</li> <li>(2) equitable</li> <li>(3) partial rescission</li> <li>(4) discretionary considerations for equitable rescission</li> <li>(5) proprietary consequences of rescission</li> </ul>
<u>B. ACL</u>	<p>Step 1: identify the breach. Most likely s18 MDC</p> <p>Step 2: Compensatory damages – s236</p> <p>Step 3: how to measure?</p> <ul style="list-style-type: none"> <li>(1) reliance loss vs expectation loss?</li> <li>(2) loss of opportunity?</li> <li>(3) damages for distress?</li> </ul> <p>Step 4: limiting factors</p> <ul style="list-style-type: none"> <li>(1) causal connection and Berry</li> <li>(2) NIA (new intervening act)</li> <li>(3) contributory negligence</li> <li>(4) mitigation?</li> </ul> <p>Step 4: can we get an injunction – s232 (you can choose s236 or this or s243)</p> <p>Step 5: can we get a rescission – s243 (choose)</p> <p>Step 6: account of profit not available</p> <p>Step 7: exemplary damages not available</p> <p>Step 8: aggravated damages generally available for ACL</p>
<u>C. Tort</u>	<p>Step 1: identify the wrong</p> <ul style="list-style-type: none"> <li>(1) trespass to land</li> <li>(2) private nuisance</li> <li>(3) Trespass to good</li> <li>(4) detainee</li> <li>(5) conversion</li> <li>(6) deceit (fraud)</li> <li>(7) negligent misrepresentation</li> </ul> <p>Step 2: compensatory damages (when it is adequate)</p>

	<p>Step 3: how to measure damages?</p> <ul style="list-style-type: none"> <li>(1) damage to land</li> <li>(2) damage to goods</li> <li>(3) deceit</li> <li>(4) negligent misstatement</li> </ul> <p>Step 4: limiting factors – different for all above wrongs</p> <ul style="list-style-type: none"> <li>(1) causation</li> <li>(2) remoteness</li> <li>(3) mitigation</li> <li>(4) contributory negligence only apply to negligence!!!</li> </ul> <p>Step 5: If damages adequate, you get damages Or you might have nominal damages or declaration if no real damages</p> <p>Step 6: aggravated damages Step 7: exemplary damages</p> <p>Step 8: if damages inadequate, you got for injunctions</p> <ul style="list-style-type: none"> <li>(1) damage to land?</li> <li>(2) damage to goods?</li> <li>(3) discretionary bars</li> <li>(4) interlocutory injunctions?</li> </ul> <p>Step 9: Can we get Lord Cairns Act in lieu of injunction?</p> <ul style="list-style-type: none"> <li>(1) reasonable fee in LCA</li> <li>(2) or do we have reasonable fee in first stage as primary compensation ?</li> </ul> <p>Step 10: Account of profits not available Step 11: Self-Help</p>
<u>D. Equitable wrongs</u>	<p>Step 1: general principle for equitable compensation</p> <p>Step 2: identify the breach</p> <ul style="list-style-type: none"> <li>(1) misapplication of trust assets</li> <li>(2) conflict of duty and interest</li> <li>(3) equitable duty of care and skill breached</li> </ul> <p>Step 3: three situations where limiting factors apply differently</p> <ul style="list-style-type: none"> <li>(1) causation</li> <li>(2) remoteness</li> <li>(3) mitigation</li> </ul>

	<p>(4) contributory negligence</p> <p>Step 4: account of profit if D made a profit</p> <p>(1) causation (2) discretionary bars</p> <p>Step 5: you can also get injunction As long as there is an ongoing breach of duty to be constrained</p> <p>Step 6 if you cannot get injunction can you get <b>LCA</b>?</p> <p>Step 7: equitable <b>rescission</b>?</p> <p>Step 8: <b>exemplary</b> damages</p> <p>Step 9: <b>aggravated</b> damages</p>
<u>E. essay</u>	<p>Essay questions</p> <p>Just use the cases and whatever Katy says in the lecture.</p> <p>Since we don't have a lot of secondary resources</p>

### The most Common grounds

#### Misrepresentation made to purchaser of business or other property (or during the sale of)

1. Damages for breach of **contract** if the misrepresentation (fraudulent or negligent) is a term of the contract. Damages can be based on the **loss of expected profit** of the business.
  2. **Rescind** the contract for misrepresentation (fraudulent or negligent), thus **restoring** the parties to their pre-contractual position.
  3. Damages for misrepresentation. Damage based on losses arising as a result of reliance on the false or negligent representation. NB: deceit has more generous remoteness.
  4. Damages under s 18 of the *ACL*
- In an exam problem, consider **all four** options and choose the best remedy. The best one will depend upon the facts.