MLP219 Contract B — Sample

Contract B (Sample)

MLP219

2026 Edition

EXAM STUDY GUIDE

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Too — The Contract B Method: Issue-Spotting and Answer Frameworks

1. Overview

Contract B asks three questions about a contract already formed: can it be undone, has it ended, and what does the injured party get? Most problems raise all three. Marks turn less on knowing any single doctrine than on spotting every live issue, ordering the issues defensibly and carrying each to a remedy. A competent answer states each test with authority, applies it element by element, deals with onus and bars, and ends with advice tied to the client's objective. This chapter supplies that method; the doctrine sits in the chapters it cross-refers to.

> 📖 **Reading Guide:** *First pass:* §§ 2–3 and Figure 0.1 before T01; revisit the triggers after each chapter. *Deep revision:* § 4, Figure 0.2 and § 10, alongside T13. *Critical thinking:* § 5.4 on unsettled law and divergence from England.

> 🔄 **Currency Check:** Law stated as at 19 September 2026. **(1)** For contracts made, renewed or varied since 9 November 2023, proposing or relying on an unfair term in a standard form consumer or small business contract attracts penalties; the term is not merely void. A small business party has fewer than 100 employees or turnover under $10 million.[1] **(2)** *Productivity Partners* (2024): ACL s 21 reaches systems of conduct without an identified victim; the majority's standard has no 'moral obloquy' requirement.[2] **(3)** *Mann v Paterson* (2019): a builder terminating for repudiation has debt or damages for completed stages and, by 4:3, a quantum meruit for uncompleted work capped by the contract price; uncapped claims in older notes are wrong.[3] Not yet law: the unfair trading practices prohibition (from 1 July 2027) and the federal non-compete ban (exposure draft only).[4]

2. The Architecture of Contract B

Organise every problem around three questions asked in order. Order matters: rescission unwinds a contract from the start, whereas termination operates only for the future, leaving accrued rights standing.[5]

QUESTION	DOCTRINES	EFFECT ON CONTRACT	CORE REMEDY	CHAPTER
A Consent impaired?	Duress; undue influence; unconscionable dealing; misrepresentation	Voidable until the innocent party elects to rescind[6]	Rescission; deceit damages for fraud[7]	T01, T02, T04
A Statute engaged?	ACL ss 18, 21; unfair contract terms ('UCT')	Unfair term void; otherwise as the court orders[8]	Damages; orders; declarations	T03, T05
A No real agreement?	Mistake; non est factum; rectification	Rarely void; may be voidable in equity[9]	Rescission; rectification	T06
A Illegal or against policy?	Statutory illegality; public policy; restraint of trade	Unenforceable so far as the statute's purpose requires[10]	Severance; restitution	T07
B Performed or ended by agreement?	Entire obligations; time; release; abandonment	Discharged or varied	Price; quantum meruit	T08
B Breached?	Essential term; serious breach of intermediate term; repudiation	Innocent party may terminate, prospectively	Damages; restitution	T09
B Frustrated?	Supervening event; radical difference	Automatic discharge[11]	Statutory adjustment	T10
C What remedy?	Damages; agreed sums; debt; specific performance; injunction	—	Figure 0.2	T11, T12

3. Issue-Spotting Triggers

Read the facts once for the story and once for these triggers; list every doctrine engaged, then prune using § 4.

FACT TRIGGER	DOCTRINE(S) TO TEST	CHAPTER
Threat of violence, a police report or stopped supply unless terms change; payment under protest	Duress (person or economic); money paid under compulsion; ACL s 21	T01, T03
Elderly, ill or dependent person, or a spouse-guarantor, deals with a carer, adviser or lender	Undue influence; surety principle; special disadvantage; ACL s 21	T02, T03
Standard form lets the supplier vary the price or exit at will	UCT; civil penalties	T03
Brochure overstates turnover; forecast made without basis	Misrepresentation; ACL ss 18, 4	T04, T05
Silence about a known problem; entire-agreement or non-reliance clause	Half-truth; misleading silence; effect of the clause	T04, T05
Shared false assumption; pricing error snapped up; document signed unread or misrecording the deal	Common or unilateral mistake; non est factum; rectification	T06
Unlicensed work; scheme to evade a statute; wide non-compete	Illegality; restraint of trade	T07
Completion date passes; 'time of the essence' clause; notice served	Time; notice to complete	T08
Builder leaves the job 90 per cent done	Entire obligations; termination; quantum meruit	T08, T09
Party refuses to perform, or insists on its own reading	Repudiation; election	T09
Ship requisitioned; premises destroyed; government order	Frustration; force majeure clause	T10
Lost profit or distress; sum fixed on default; unique asset withheld	Damages; penalty; specific performance	T11, T12

4. Overlapping Causes of Action

Plead every supported claim in the alternative, leading with the one giving most for the least contestable proof.

CHOICE	WHY IT MATTERS	RULE OF THUMB
Misrepresentation or ACL s 18	Section 18 needs trade or commerce;[12] silence can mislead;[13] non-reliance clauses are not conclusive.[14] Misrepresentation needs no trading context; inducement is inferred from a material statement[15]	Section 18 first in trade or commerce; misrepresentation in the alternative
Duress, undue influence, unconscionable dealing or ACL s 21	Duress: illegitimate pressure (NSW: unlawful conduct only);[16] undue influence: impaired will; unconscionable dealing: exploitation of a known special disadvantage;[17] s 21: a statutory norm reaching systems.[18] One set of facts can satisfy several[19]	Run every supported claim, strongest first
Mistake or misrepresentation	Unilateral mistake needs the other party's knowledge and deliberate concealment;[20] misrepresentation needs only inducement	If the other side caused the error, lead with misrepresentation or s 18
Rescission or termination	Rescission unwinds the contract, subject to substantial restitution;[21] on termination 'the contract is not rescinded as from the beginning'[22]	Formation defect: rescind (T01). Breach: terminate (T09)
Frustration or breach	Frustration discharges without default by either party;[23] wrongly invoking a right to end the contract may itself repudiate it[24]	Test risk and radical difference before a client stops performing
Contract damages, deceit or ACL s 236	Contract protects the expectation;[25] deceit and s 236 usually restore the no-transaction position[26]	Good bargain: contract. Bad bargain: deceit or s 236

Figure 0.2 reverses the inquiry: objective first, then routes, then bars.

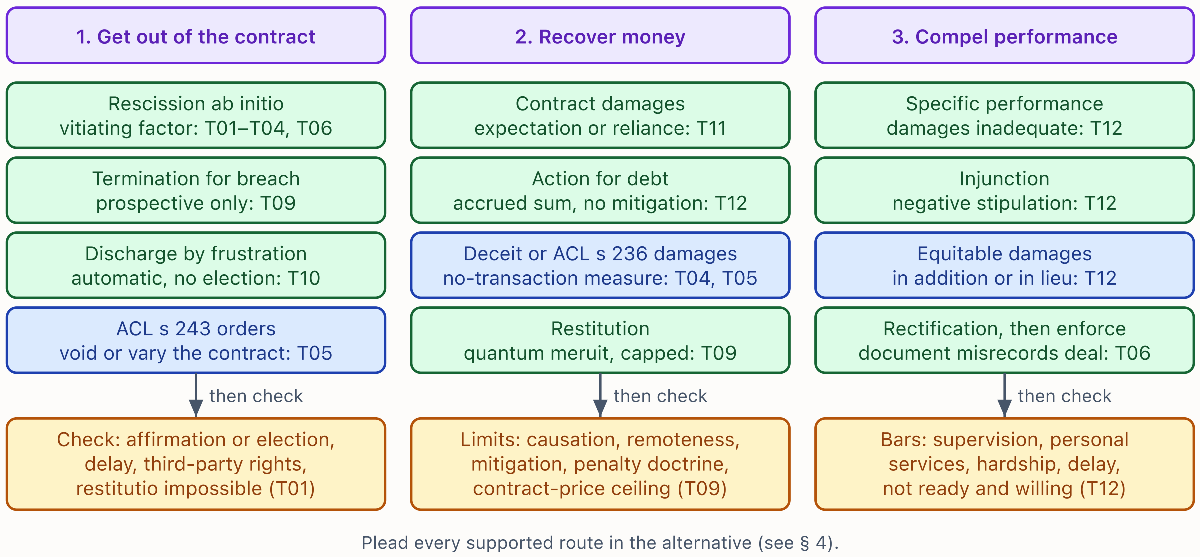

Figure 0.2: Remedy selection by client objective, with the bars or limits to check for each route.

5. Answer Technique

5.1 ILAC for Advice Questions

Frame each issue as a question about the client ('Can the buyer avoid the guarantee?'), not a topic label. State the test and one leading authority, apply it element by element using facts that cut both ways, and dispose of uncontested elements in a sentence. Conclude on likelihood and remedy. In an advice answer, open with a two-sentence summary and close with next steps, such as an unequivocal election made with knowledge of the facts.[27]

5.2 Order of Issues

Work validity, then discharge, then remedy (Figure 0.1). Within validity, lead with the claim giving the fullest relief on the least contestable facts, usually the statutory claim if the conduct is in trade or commerce. Within discharge, go in date order: rights accrue and elections occur at identifiable moments. Argue discharge in the alternative in case a bar defeats rescission.

5.3 Onus and Standard

The claimant proves each element on the balance of probabilities; note where the burden shifts.

- **Duress:** once illegitimate pressure is shown, the party who applied it must prove it contributed nothing.[28]
- **Presumed undue influence:** the stronger party must prove the weaker party's free, independent and well-understood act.[29]
- **Unconscionable dealing:** once special disadvantage and knowledge are shown, the stronger party must prove the transaction fair, just and reasonable.[30]
- **Wasted expenditure:** where the breach creates uncertainty, proof is facilitated by assuming the plaintiff would have recouped its reasonable outlay.[31]

5.4 Handling Unsettled Law

State the Australian position first, then the competing view; apply both where outcomes differ, and say which should prevail.

- **Lawful but illegitimate pressure:** *Crescendo* (unlawful or unconscionable pressure) against *Karam* (unlawful conduct only); the High Court has left it open.[32]
- **Equitable rescission for common mistake:** unresolved by the High Court,[33] rejected in England.[34]
- **Penalties outside breach:** available in Australia[35] but not in the United Kingdom; both ask whether the detriment is out of all proportion to legitimate interests.[36]
- **Performing after repudiation to claim the price:** English authority never endorsed by the High Court.[37]

5.5 Using Authority and Managing Time

Give one leading authority per proposition (High Court first, then the Victorian Court of Appeal, then English decisions), pinpointed where possible, and recount facts only when the outcome turns on comparison. Do not over-claim:

> 'Repudiation of a contract is a serious matter and is not to be lightly found or inferred' — Wilson J, *Shevill* (1982) 149 CLR 620, 633.

Spend about a tenth of the time mapping issues against Figure 0.1, allocate the rest by how contestable each issue is, and always reach remedy.

6. Decision Tree

The steps below supply the authority for each stage of Figure 0.1.

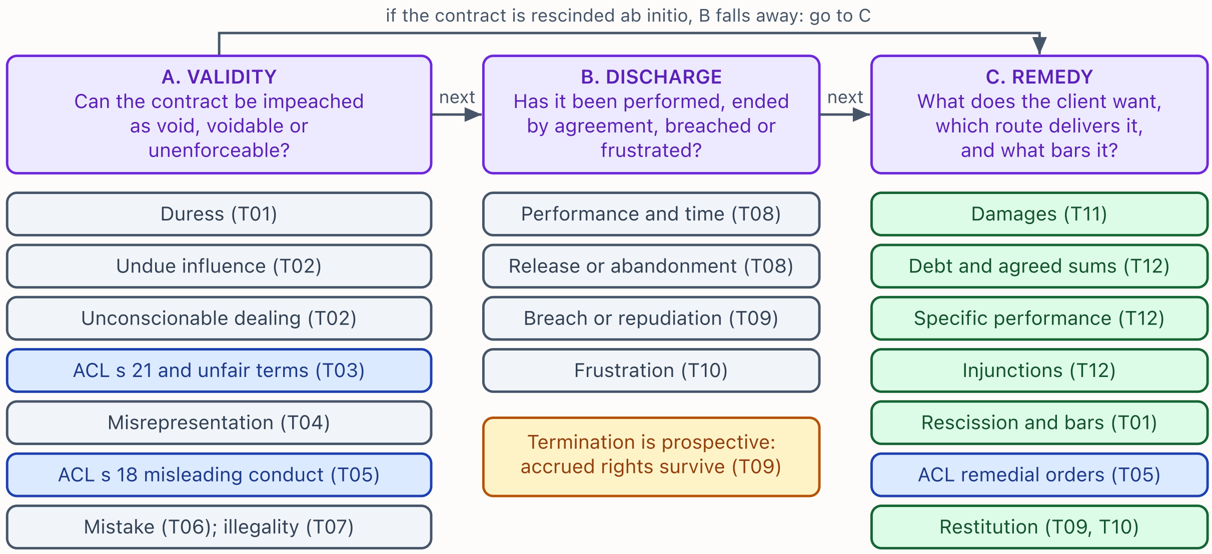

Figure 0.1: Master issue map — A (validity), then B (discharge), then C (remedy); rescission for a formation defect goes straight to C.

1. **Frame:** parties, contract, what went wrong and when, and the client's objective (Figure 0.2).
2. **A — Validity.** For each triggered factor: elements, onus, bars, consequence.
   - Duress: a contract induced by illegitimate pressure.[38]
   - Unconscionable dealing: special disadvantage, knowledge, exploitation.[39]
   - Mistake: the equitable test; illegality: the statute's purpose.[40]
   - If voidable: elect, communicate, and check affirmation, delay, third-party rights and restitution.[41]
3. **B — Discharge**, in date order.

  - Notice to complete: other party in breach or unreasonable delay; notifier free of default; reasonable time.[42]
  - Termination: essential term, serious breach of intermediate term, or renunciation; then election. [43]
  - Frustration: radical difference; not self-induced; risk not assumed.[44]
4. **C — Remedy.** Expectation damages within remoteness;[45] agreed sums, debt, specific performance and equitable damages;[46] restitution;[47] ACL orders on proof of a contravention.[48]
5. **Advise:** rank the routes, flag each one's main risk, and give immediate steps.

7. Worked Issue Map

Scenario (invented). V Pty Ltd sells its landscaping-supplies business to P, a first-time owner, for three instalments. V's brochure overstates turnover by about 40 per cent, and V says nothing of the landlord's refusal, already made, to renew the yard lease. The contract has an entire-agreement clause and makes all unpaid instalments plus 25 per cent payable if any instalment is late. After completion, a council order closes the access road for six weeks; P misses an instalment, and V's director threatens to report P to the tax authorities over an unrelated matter unless P's spouse guarantees the debt, which she does. P wants out.

Issue map, in order of analysis:

- **A — Validity**
  1. Brochure and lease silence under ACL s 18 (lead claim): trade or commerce, silence, entire-agreement clause, causation; ss 236, 237 and 243 remedies (T05).
  2. Same conduct as misrepresentation, in the alternative; rescission of an executed contract and its bars (T04, T01).
  3. Guarantee: duress (an unlawful, or merely illegitimate, threat?); the surety principle for the spouse (T01, T02).
  4. Unfair terms: dismiss briefly unless a standard form is shown (T03).
- **B — Discharge**
  5. Road closure: frustration, or a risk P bore? (T10).
  6. Missed instalment: breach, essentiality of time, V's election (T08, T09).
- **C — Remedies**
  7. Acceleration plus 25 per cent: penalty (T12).
  8. P's damages or restitution; V's claim for accrued instalments (T05, T11, T12).
  9. Advice: rank P's routes; immediate steps.

8. Exam Tips & Traps

> ✓ Do

- Start from the client's objective and end every issue with a remedy.
- State the test and its authority before applying it.
- Plead overlapping claims in the alternative and choose between them.
- Deal with onus, bars and limitation: six years for contract and ACL damages.[49]
- Flag unsettled law, giving the Australian position first.

✗ Don't

- Use 'rescind' or 'repudiate' for the innocent party's termination for breach.[50]
- Treat an 'overborne will' as the test for duress.[51]
- Present *Cavendish* or *Great Peace* as Australian law.
- Call a post-2023 unfair term merely void, or demand moral obloquy under s 21.
- Retell case facts, or discuss doctrines the facts do not raise.

⚠️ Watch Out For

- **Executed land sales:** no rescission for innocent misrepresentation after completion, absent fraud;[52] consider ACL s 243 orders.
- **Termination clauses:** terminating under a clause alone carries no loss-of-bargain damages.[53]
- **Accrued rights:** rights unconditionally acquired before termination survive it; conditional rights may not.[54]
- **Foreseeability:** highly foreseeable events rarely frustrate.[55]
- **Victoria:** frustration adjustment is under ACLFTA pt 3.2; contributory negligence reduces contract damages only where a concurrent tort duty exists.[56]

9. How the Chapters Connect

CHAPTER	TITLE	SCOPE
T00	The Contract B Method: Issue-Spotting and Answer Frameworks	Method
T01	Vitiation, Rescission and Duress	Rescission and its bars; duress
T02	Undue Influence and Unconscionable Dealing in Equity	Influence; sureties; *Amadio*
T03	Statutory Unconscionable Conduct and Unfair Contract Terms	ACL ss 20–22; UCT regime
T04	Misrepresentation at Common Law and in Equity	Elements; types; remedies
T05	Misleading or Deceptive Conduct under the ACL	Section 18; silence; disclaimers; remedies
T06	Mistake	Mistake; non est factum; rectification
T07	Illegality, Public Policy and Restraint of Trade	Statutory purpose; policy; restraints
T08	Performance, Time and Termination by Agreement	Entire obligations; time; notices; abandonment
T09	Termination for Breach and Repudiation	Three routes; election; consequences
T10	Frustration	Radical difference; limits; adjustment
T11	Damages for Breach of Contract	Measures; remoteness; mitigation
T12	Agreed Damages, Debt and Equitable Remedies	Penalties; debt; specific relief
T13	Revision and Cross-Topic Synthesis	Comparisons; final checklist

10. Quick Reference Card

CH	TEST	ELEMENTS (COMPRESSED)	LEADING AUTHORITY
T01	Duress	Pressure induced the contract and was illegitimate (NSW: unlawful only); no 'overborne will'	*Crescendo*; *Karam*; *Thorne*
T02	Unconscionable dealing	Special disadvantage; actual or constructive knowledge; unconscientious advantage; onus shifts	*Amadio*
T03	ACL s 21	Trade or commerce; goods or services; unconscionable in all the circumstances; systems caught	ACL ss 21–22; *Productivity Partners*
T04	Misrepresentation	False statement of existing fact; induced entry; fraud if knowing or reckless	*Gould*; *Derry v Peek*
T05	Misleading conduct	Trade or commerce; conduct misleading or likely to mislead; loss 'because of' it	ACL ss 18, 236; *Concrete Constructions*
T06	Unilateral mistake	Serious mistake as to a fundamental term, known to the other party, who deliberately keeps it hidden	*Taylor v Johnson*
T07	Statutory illegality	Unenforceable only if the statute's purpose requires	*Equuscorp*
T08	Notice to complete	Other party in breach or delay; notifier free of default; reasonable time	*Neeta*
T09	Termination	Essential term, serious breach of intermediate term, or renunciation; election	*Koompahtoo*; *Sargent*
T10	Frustration	Supervening event; radically different performance; not self-induced; automatic	*Codelfa*; *Hirji Mulji*
T11	Damages	Position as if performed; kind of loss a serious possibility	*Robinson v Harman*; *Hadley*; *Elisha*
T12	Penalty	Collateral detriment out of all proportion to legitimate interests	*Andrews*; *Paciocco*

MLP219 Contract B — T00. Document version 1.0. Law stated as at 19 September 2026.

Footnotes

1. *Competition and Consumer Act 2010* (Cth) sch 2 ('ACL') ss 23(1), (2A), (2C), (4), 224, 305.
2. ACL s 21(4)(b); *Productivity Partners Pty Ltd v Australian Competition and Consumer Commission* [2024] HCA 27, [60] (Gageler CJ and Jagot J).
3. *Mann v Paterson Constructions Pty Ltd* (2019) 267 CLR 560, [105] (Gageler J), [110] (Nettle, Gordon and Edelman JJ).
4. *Competition and Consumer Amendment (Unfair Trading Practices) Act 2026* (Cth) s 2(1). Restraints remain governed by the common-law doctrine (T07).
5. *McDonald v Dennys Lascelles Ltd* (1933) 48 CLR 457, 476–7 (Dixon J).
6. *Alati v Kruger* (1955) 94 CLR 216, 224.
7. *Derry v Peek* (1889) 14 App Cas 337, 374.
8. ACL ss 23(1)–(2), 237, 243.
9. *Svanosio v McNamara* (1956) 96 CLR 186, 195; *Taylor v Johnson* (1983) 151 CLR 422, 432–3.
10. *Equuscorp Pty Ltd v Haxton* (2012) 246 CLR 498, [23].
11. *Hirji Mulji v Cheong Yue Steamship Co Ltd* [1926] AC 497; *Australian Consumer Law and Fair Trading Act 2012* (Vic) pt 3.2 ('ACLFTA').
12. *Concrete Constructions (NSW) Pty Ltd v Nelson* (1990) 169 CLR 594, 603.
13. *Miller & Associates Insurance Broking Pty Ltd v BMW Australia Finance Ltd* (2010) 241 CLR 357, [19]–[20].
14. *Campbell v Backoffice Investments Pty Ltd* (2009) 238 CLR 304, [130].
15. *Gould v Vaggelas* (1984) 157 CLR 215, 236.
16. *Crescendo Management Pty Ltd v Westpac Banking Corporation* (1988) 19 NSWLR 40, 46; *Australia and New Zealand Banking Group Ltd v Karam* (2005) 64 NSWLR 149, 168 [66].
17. *Thorne v Kennedy* (2017) 263 CLR 85, [32], [38]; *Commercial Bank of Australia Ltd v Amadio* (1983) 151 CLR 447, 461–2.
18. ACL s 21(4); *Productivity Partners* [2024] HCA 27.
19. *Thorne* (2017) 263 CLR 85.
20. *Taylor v Johnson* (1983) 151 CLR 422, 432–3.
21. *Alati v Kruger* (1955) 94 CLR 216, 223–4.
22. *McDonald v Dennys Lascelles* (1933) 48 CLR 457, 476–7.
23. *Codelfa Construction Pty Ltd v State Rail Authority of New South Wales* (1982) 149 CLR 337, 357.

24. *Commonwealth v Amann Aviation Pty Ltd* (1991) 174 CLR 64.

25. *Robinson v Harman* (1848) 1 Ex 850, 855; 154 ER 363, 365.

26. *Gould* (1984) 157 CLR 215; *Gates v City Mutual Life Assurance Society Ltd* (1986) 160 CLR 1.

27. *Sargent v ASL Developments Ltd* (1974) 131 CLR 634.

28. *Barton v Armstrong* [1976] AC 104; *Crescendo* (1988) 19 NSWLR 40.

29. *Johnson v Buttress* (1936) 56 CLR 113, 134–5.

30. *Amadio* (1983) 151 CLR 447, 474–5.

31. *Cessnock City Council v 123 259 932 Pty Ltd* [2024] HCA 17, [61].

32. *Thorne* (2017) 263 CLR 85, [29].

33. *Svanosio* (1956) 96 CLR 186, 195–6.

34. *Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd* [2003] QB 679.

35. *Andrews v Australia and New Zealand Banking Group Ltd* (2012) 247 CLR 205, [10].

36. *Paciocco v Australia and New Zealand Banking Group Ltd* (2016) 258 CLR 525; *Cavendish Square Holding BV v Makdessi* [2016] AC 1172, [32].

37. *White and Carter (Councils) Ltd v McGregor* [1962] AC 413.

38. *Crescendo* (1988) 19 NSWLR 40, 45–6.

39. *Amadio* (1983) 151 CLR 447, 461–2.

40. *Taylor v Johnson* (1983) 151 CLR 422; *Equuscorp* (2012) 246 CLR 498, [23].

41. *Alati v Kruger* (1955) 94 CLR 216, 223–4.

42. *Neeta (Epping) Pty Ltd v Phillips* (1974) 131 CLR 286, 299.

43. *Koompahtoo Local Aboriginal Land Council v Sanpine Pty Ltd* (2007) 233 CLR 115, 135–6 [44], [47]–[54]; *Sargent* (1974) 131 CLR 634.

44. *Codelfa* (1982) 149 CLR 337; *Maritime National Fish Ltd v Ocean Trawlers Ltd* [1935] AC 524.

45. *Robinson v Harman* (1848) 1 Ex 850; 154 ER 363; *Hadley v Baxendale* (1854) 9 Ex 341, 354; 156 ER 145, 151; *Elisha v Vision Australia Ltd* [2024] HCA 50, [64].

46. *Supreme Court Act 1986* (Vic) s 38.

47. *Mann* (2019) 267 CLR 560.

48. ACL ss 236, 237, 243.

49. *Limitation of Actions Act 1958* (Vic) s 5(1)(a); ACL s 236(2).

50. *Koompahtoo* (2007) 233 CLR 115; *McDonald v Dennys Lascelles* (1933) 48 CLR 457, 476–7.

51. *Thorne* (2017) 263 CLR 85, [26].

52. *Svanosio* (1956) 96 CLR 186.

53. *Shevill v Builders Licensing Board* (1982) 149 CLR 620.

54. *McDonald v Dennys Lascelles* (1933) 48 CLR 457, 476–7.

55. *oOh! Media Roadside Pty Ltd v Diamond Wheels Pty Ltd* (2011) 32 VR 255, [74].

56. ACLFTA ss 35–44; *Wrongs Act 1958* (Vic) ss 25, 26.

T01 — Vitiation, Rescission and Duress

1. Overview

A contract that satisfies every rule of formation may still be impeached because of how one party's consent was obtained. This chapter supplies the vocabulary (void, voidable, unenforceable, terminable), the rescission rules later chapters borrow, and the first vitiating factor: duress. Rescission is the innocent party's own act. It must be elected, communicated and free of any bar, and equity then restores the parties substantially rather than precisely.[1] Duress asks whether pressure induced the contract and whether that pressure was illegitimate, and Australian law is divided on whether lawful pressure can satisfy the second question.[2] A competent answer identifies the vitiating factor, proves each element, tests every bar, and states the consequential orders and any statutory alternative.

> 📖 **Reading Guide:** *First pass:* §2, §§5.1–5.3 and Figure 1.2, which T02–T06 rely on. *Deep revision:* §§5.4–5.6, then §§6–7. *Critical thinking:* §5.7 on the *Crescendo*/*Karam* divergence and English lawful-act duress.

> 🔄 **Currency Check:** The High Court last addressed duress in *Thorne v Kennedy* (2017). No overborne will is required, but whether lawful yet illegitimate pressure can be duress was expressly left open.[3] As at 19 September 2026 *Karam* (NSWCA, 2005) is neither approved nor overruled; England's narrow lawful-act duress in *Times Travel* (2021) is persuasive only.[4] Contraventions of ACL s 50 or s 21 committed on or after 28 March 2026 carry a corporate maximum penalty of the greater of $100 million and three times the benefit (or, if the benefit cannot be determined, 30% of adjusted turnover).[5] Older notes are wrong if they state an 'overborne will' test, date *Crescendo* to 1998 (it is 1988), treat *Smith v William Charlick* as a successful recovery, or present *Skeate v Beale* as current law.[6]

2. Key Definitions

TERM	DEFINITION	AUTHORITY
Vitiating factor	A matter affecting formation (impaired consent, mistake, illegality) that makes a contract void, voidable or unenforceable	*McDonald v Dennys Lascelles*
Void	No contract ever existed; nothing to elect; title does not pass	*Goods Act 1958* (Vic) s 11
Voidable	Valid and effective, including to pass title, until the innocent party rescinds	*Clough*
Unenforceable	Valid, but not enforceable by action (eg for want of signed writing)	*Instruments Act 1958* (Vic) s 126(1)
Rescission	Setting the contract aside from the beginning with mutual restoration; the act of the party, not the court	*Alati v Kruger*
Termination	Prospective discharge for breach or repudiation; accrued rights survive	*McDonald v Dennys Lascelles*
Election and affirmation	A final choice between affirming and rescinding, made by unequivocal conduct with knowledge; affirmation bars rescission	*Sargent*; *Coastal Estates*
Restitutio in integrum	Restoration of the pre-contract position; equity needs only substantial restoration, using accounts and allowances	*Alati*; *Erlanger*
Relief on terms	Equity's power to confine or condition relief to what is practically just ('partial rescission')	*Vadasz*
Duress	Pressure that induced entry and was illegitimate; no overborne will is required	*Crescendo*; *Thorne*
Practical compulsion	Payment under protest to avert threatened interference with a lawful business; recoverable, unlike a voluntary payment	*Mason v NSW*; *Smith v William Charlick*

3. Legal Framework

SOURCE	WHAT IT SUPPLIES
Common law	Rescission for fraud and duress by the party's own act, revesting title; precise restoration; recovery of money paid under duress
Equity	Rescission on wider grounds; substantial restoration through accounts, allowances and indemnities; relief on terms; discretionary bars
Duress cases (*Barton*, *Crescendo*, *Karam*, *Thorne*)	Inducement, onus, and the meaning of 'illegitimate' pressure
ACL s 50	Prohibits force, undue harassment or coercion in connection with supply of, or payment for, goods, services or land; civil penalty
ACL ss 21–22	Statutory unconscionable conduct; 'undue influence or pressure' is a listed factor (T03)
ACL ss 236, 237, 243; ACLFTA s 8	Damages and orders, including declaring a contract void ab initio or in part (T05); application in Victoria

These two provisions are the statutory counterparts of rescission and of duress.

> **ACL s 243** (extract)
>
> Without limiting section 237(1), 238(1) or 239(1), the orders that a court may make under any of those sections against a person (the respondent) include all or any of the following:
>
> (a) an order declaring the whole or any part of a contract made between the respondent and a person (the injured person) who suffered, or is likely to suffer, the loss or damage referred to in that section, or of a collateral arrangement relating to such a contract: (i) to be void; and (ii) if the court thinks fit—to have been void ab initio or void at all times on and after such date as is specified in the order (which may be a date that is before the date on which the order is made); ...
>
> (d) an order directing the respondent to refund money or return property to the injured person;

> **ACL s 50(1)** (opening words)
>
> 'A person must not use physical force, or undue harassment or coercion, in connection with' [the paragraphs that follow cover the supply of, or payment for, goods, services or interests in land].

4. Key Cases

CASE	CITATION	PRINCIPLE	EXAM APPLICATION
Alati v Kruger	(1955) 94 CLR 216	Rescission is the party's act; substantial restoration suffices	Property has declined or changed
Vadasz v Pioneer Concrete (SA) Pty Ltd	(1995) 184 CLR 102	Relief on terms	Claimant would have accepted a narrower bargain
Brown v Smitt	(1924) 34 CLR 160	Price, indemnity and allowances after rescission for fraud	Quantifying orders
Car and Universal Finance Co Ltd v Caldwell	[1965] 1 QB 525	Election communicated, or evinced if the rogue absconds	Rescission races a resale
Coastal Estates Pty Ltd v Melevende	[1965] VR 433	Affirmation needs knowledge of facts and of the right	Victorian affirmation argument
Barton v Armstrong	[1976] AC 104	Threats need be only *a* reason; onus shifts	Mixed motives
Smith v William Charlick Ltd	(1924) 34 CLR 38	Payment to avert a lawful refusal to supply is voluntary	Sole supplier's extra charge
Mason v New South Wales	(1959) 102 CLR 108	Payment under practical compulsion is recoverable	Protest payment to keep trading
North Ocean Shipping Co Ltd v Hyundai Construction Co Ltd	[1979] QB 705	Threatened breach can be duress; lost by affirmation	Mid-contract price rise
Crescendo Management Pty Ltd v Westpac Banking Corporation	(1988) 19 NSWLR 40	Inducement plus illegitimacy; 'overborne will' rejected	Structure of every answer
Australia and New Zealand Banking Group Ltd v Karam	(2005) 64 NSWLR 149	Duress confined to unlawful conduct	Lawful threats: go to T02, T03
Thorne v Kennedy	(2017) 263 CLR 85	No overborne will; lawful-act duress left open	Present the split as unresolved

Case Summaries

Alati v Kruger

Facts: A purchaser bought a fruit business, with its lease and stock, after the vendor fraudulently overstated its weekly takings. Before judgment the business declined and was closed, and the vendor argued that restitution had become impossible.

Issue: Could the purchaser rescind without precise restoration?

Held: Yes. The joint judgment (Dixon CJ, Webb, Kitto and Taylor JJ; Fullagar J wrote separately) held that rescission is the party's act, which equity upholds if accounts and allowances can restore the parties substantially to the status quo. The vendor's appeal was dismissed.[7]

Why it matters: An apparent bar becomes a question of money adjustments.

Vadasz v Pioneer Concrete (SA) Pty Ltd

Facts: A supplier required a director's guarantee as the price of continued supply to his indebted company, representing that it covered future supplies only. It in fact secured all indebtedness, past and future.

Issue: Had the guarantee to be set aside entirely?

Held: No. The High Court upheld relief on terms: the guarantee was unenforceable for past debts but binding for future supplies, because the director would have given that narrower guarantee anyway. His appeal was dismissed.[8]

Why it matters: Relief tracks the bargain the claimant would have made; call it relief on terms.

Barton v Armstrong

Facts: Armstrong threatened Barton, a company's managing director, with death to induce him to execute a deed under which the company paid Armstrong and bought his shares. Barton also had commercial reasons for signing.

Issue: Must the threats be the decisive reason?

Held: The Privy Council majority (Lord Cross of Chelsea, with Lord Kilbrandon and Sir Garfield Barwick) held the deed voidable. The threats need be only a reason; once shown, the threatener must prove they contributed nothing. Barton's appeal was allowed.[9]

Why it matters: It supplies the causation test and onus shift used in economic duress.

Crescendo Management Pty Ltd v Westpac Banking Corporation

Facts: A bank customer's company gave the bank a mortgage and later sought to set it aside, alleging that the bank's economic pressure had extracted it.

Issue: What establishes economic duress?

Held: McHugh JA rejected the 'overborne will' theory and asked whether the pressure induced the contract and whether it was illegitimate, meaning unlawful threats or unconscionable conduct, with the categories not closed. On the facts the claim failed.[10]

Why it matters: It is the standard Australian two-question structure.

Australia and New Zealand Banking Group Ltd v Karam

Facts: Customers in financial difficulty sought to set aside dealings with their bank entered into under pressure from the bank, which was acting within its legal rights.

Issue: Can lawful pressure be 'illegitimate'?

Held: The Court of Appeal confined duress to threatened or actual unlawful conduct. Lawful pressure is analysed as undue influence, unconscionable dealing or a statutory contravention, and financial difficulty alone is not special disadvantage. The claims failed.[11]

Why it matters: It binds in New South Wales; *Thorne* left it open.

5. Substantive Content

5.1 Void, voidable, unenforceable and terminable

The effect of a vitiating factor decides whether an election is needed, whether title passed and which remedy is available (Figure 1.1).

- A **void** contract never existed. A sale of specific goods that, unknown to the seller, had already perished is void by statute.[12] Common mistake and some illegality have the same effect (T06, T07).
- A **voidable** contract is valid, passes title and is enforceable until the innocent party rescinds.[13] Duress, misrepresentation, undue influence and unconscionable dealing work this way, so §§5.2–5.3 govern all of them.
- An **unenforceable** contract is valid but cannot be sued on, as with a guarantee or land contract lacking signed writing.[14] Benefits conferred under it are recovered, if at all, in restitution for unjust enrichment.[15]
- A **terminable** contract is valid; a serious breach or repudiation lets the innocent party end it for the future (T09).

On termination 'the contract is not rescinded as from the beginning', and accrued rights survive. Where a contract is rescinded 'because of matters which affect its formation', the parties 'are to be rehabilitated and restored, so far as may be, to the position they occupied before the contract was made'.[16] Use 'rescind' only for vitiation.

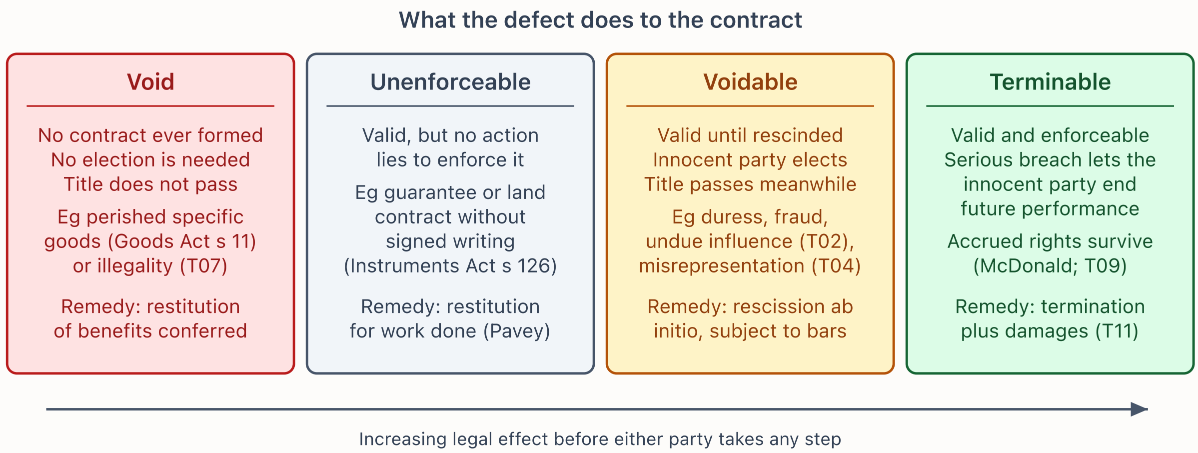

Figure 1.1: The four states of a defective contract. Only a voidable contract calls for an election, and only rescission operates from the beginning.

5.2 The right to rescind and the election

Law and equity. At common law, rescission for fraud or duress operates by the innocent party's act and revests title, but precise restoration is required. Equity rescinds on wider grounds, including innocent misrepresentation, undue influence and unconscionable dealing, and, because it can take accounts and make allowances, acts where only substantial restoration is possible.[17]

Election. A voidable contract stands until the innocent party chooses. The choice may be kept open, but conduct and delay can evidence affirmation, and once made the choice is final.[18] It is made by conduct unequivocally consistent with only one course, by a party who knows the relevant facts.[19]

The party's act. 'Rescission for misrepresentation is always the act of the party himself'; the court declares that the party has rescinded and gives consequential relief.[20] A representee, even of an innocent misrepresentation, rescinds by disaffirming, and an effective rescission answers a claim on the contract.[21]

Communication. The election must ordinarily be communicated. Where a fraudster deliberately absconds, an unequivocal act evincing the election (such as notifying the police) suffices and defeats a later purchaser.[22] That English decision is persuasive only.

5.3 Restoration, consequential orders and the bars

Substantial restoration. The starting point is:

> 'equity has always regarded as valid the disaffirmance of a contract induced by fraud even though precise restitutio in integrum is not possible, if the situation is such that, by the exercise of its powers, including the power to take accounts of profits and to direct inquiries as to allowances proper to be made for deterioration, it can do what is practically just between the parties, and by so doing restore them substantially to the status quo' — Dixon CJ, Webb, Kitto and Taylor JJ, *Alati v Kruger* (1955) 94 CLR 216, 223–4.

The House of Lords had taken the same practical approach.[23] Consequential orders therefore include return of the price and property, an account of profits, allowances for deterioration and for permanent improvements made before the fraud was discovered, and an indemnity against obligations incurred under the contract.[24] Rescission restores; it does not compensate. Trading losses are not recoverable as restitution and must be claimed in deceit or under ACL s 236 (T04, T05).[25]

Relief on terms. Equity may confine relief so that it is just to both sides. In *Vadasz* the guarantor stayed bound for the future supplies he would have guaranteed anyway, and was relieved only as to past debts.[26]

The bars. Rescission is lost if any one of five bars applies (Figure 1.2).

1. *Affirmation.* Unequivocal affirming conduct, with knowledge, ends the right. The Victorian Full Court requires knowledge of both the facts and the legal right to rescind.[27] High Court authority emphasises knowledge of the facts and imputes a solicitor's knowledge to the client.[28] In duress cases, time runs from when the pressure ends; delay without protest after that affirms.[29]
2. *Lapse of time.* The right to rescind for innocent misrepresentation is lost after a reasonable time even before the truth is discovered; five years was too long for the buyer of a painting.[30] Courts are slower to bar rescission for fraud: in *Brown v Smitt* rescission survived arguments of affirmation and delay.[31]
3. *Third-party rights.* Rescission cannot divest rights acquired in good faith and for value before the election.[32] A seller who rescinds before the rogue resells defeats the later buyer.
4. *Impossibility of substantial restoration.* If what was received cannot be returned even in substance, rescission fails. For an executed contract, ask whether substantial restitution is possible and whether relief is timely and just.[33]
5. *Executed contracts.* A contract for land, once conveyed, will not be rescinded for innocent misrepresentation; the rule never applies to fraud, is heavily criticised, and its extension beyond land is contested (T04).[34]

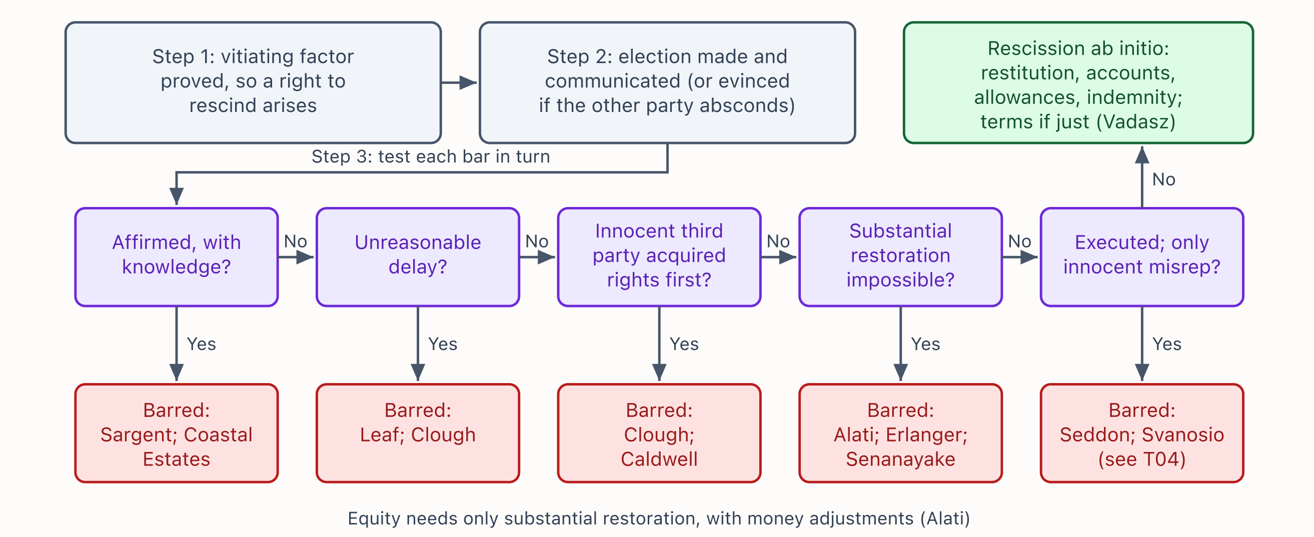

Figure 1.2: The rescission ladder. Establish the right and the election, then clear every bar before stating the consequential orders.

The statutory alternative. Where rescission is barred or too blunt, ACL ss 237 and 243 allow a court, on proof that a contravention of chapter 2, 3 or 4 caused or is likely to cause loss, to declare the contract void in whole or in part, from the start or from a nominated date, vary it, refuse to enforce it, or order refunds.[35] The discretion turns on compensating for, or preventing, the loss rather than on the equitable bars; applications must be made within six years (T05).[36]

5.4 Duress: inducement and illegitimacy

Duress concerns the character and effect of pressure, not a destroyed will. McHugh JA rejected the 'overbearing of the will theory' because a person under duress 'usually knows only too well what he is doing' and chooses to submit.[37] The High Court has confirmed the point:

> 'The vitiating factor of duress focuses upon the effect of a particular type of pressure on the person seeking to set aside the transaction. It does not require that the person's will be overborne.' — Kiefel CJ, Bell, Gageler, Keane and Edelman JJ, *Thorne v Kennedy* (2017) 263 CLR 85, [26].

(1) Did the pressure induce the contract? It need be only *a* reason, not the main or 'but for' reason. Once illegitimate pressure is shown, the party that applied it must prove it contributed nothing.[38] English cases require a 'significant cause' and the absence of any practical alternative.[39] The Privy Council's factors (protest, alternative remedies, independent advice, prompt avoidance) remain useful evidence in Australia; its 'coercion of the will' language does not.[40]

(2) Was the pressure illegitimate? McHugh JA's formulation is the orthodox starting point:

> 'Pressure will be illegitimate if it consists of unlawful threats or amounts to unconscionable conduct. But the categories are not closed. Even overwhelming pressure, not amounting to unconscionable or unlawful conduct, however, will not necessarily constitute economic duress.' — McHugh JA, *Crescendo Management Pty Ltd v Westpac Banking Corporation* (1988) 19 NSWLR 40, 46.

Karam narrowed this, holding that vagueness 'can be avoided by treating the concept of "duress" as limited to threatened or actual unlawful conduct'.[41] Lawful but oppressive pressure then goes to undue influence, *Amadio* unconscionable dealing or statute.[42] The High Court in *Thorne* left the question open; only Nettle J, writing alone, criticised *Karam* as a significant departure from earlier Australian authority.[43] The Victorian Court of Appeal has rejected economic duress claims on their facts, and in *Doggett* discussed *Karam* without resolving the divergence.[44] Where pressure was lawful, argue both and plead the alternatives.

5.5 The categories of duress

Duress to the person. Actual or threatened violence or imprisonment against the party or their family is plainly unlawful, and *Barton* makes inducement easy to establish.[45]

Duress of goods. The old rule that a threat to goods could not avoid an agreement, although money paid was recoverable, has been abandoned.[46] Money paid to release goods wrongfully detained or threatened with seizure is recoverable.[47] Money paid under a contractor's threat to withhold a customer's helicopter was recovered, applying *Crescendo*.[48]

Economic duress. A threat to break an existing contract unless the price rises can be economic duress; in *North Ocean Shipping* the buyer lost the right to avoid a 10% price rise only because it waited months without protest after delivery.[49] The House of Lords treated a union's blacking of a ship until the owner paid into a welfare fund as illegitimate pressure, and a majority allowed recovery of the payment.[50] But commercial pressure is inherent in bargaining: in *Equiticorp* no pressure of the *Crescendo* kind was shown.[51] A variation supported by a practical benefit binds unless extracted by duress or fraud.[52] A threatened breach of contract is unlawful conduct, so this category survives the *Karam* test.

Threats of lawful action and hard bargaining. Most contested cases involve pressure the defendant was free to apply.

- A wheat board's refusal to supply further wheat unless a miller paid a sum not owed produced a voluntary, irrecoverable payment. The board had no duty to supply (Higgins J dissented on that point), and paying to avert a serious detriment does not itself make a payment involuntary.[53]
- A bank's threat to appoint a receiver, exercising its legal rights, is not illegitimate.[54]
- A supplier's demand for a director's guarantee, backed by a threat to support a winding-up application, was legitimate.[55]
- '[G]ood conscience does not require parties to contractual negotiations to forfeit their advantages, or neglect their own interests'.[56]
- English lawful-act duress is confined to reprehensible conduct such as a bad-faith demand; a demand honestly believed to be owed is rarely illegitimate between commercial parties.[57]

In *Thorne v Kennedy*, pre-nuptial terms extracted by the lawful threat that the wedding would not proceed were set aside for undue influence and unconscionable conduct, not duress (T02).[58]

5.6 Consequences, recovery of payments and statutory overlays

Voidable, not void. The victim must elect, and every §5.3 bar applies; affirmation runs from when the pressure lifts.[59]

Money paid. Money paid under duress is recoverable as money had and received.[60] Payment under protest to avoid threatened interference with a lawful business, under an invalid law, is recoverable as paid under practical compulsion.[61] By contrast, in *Smith v William Charlick* a payment demanded without right, but made to avert a *lawful* refusal to deal, was voluntary, and the claimant lost.[62]

No damages for duress as such. Compensation requires an independent cause of action, such as a claim under ACL s 236 for loss caused by a contravention.[63]

ACL s 50 prohibits physical force, undue harassment or coercion in connection with the supply of, or payment for, goods, services or interests in land. Contravention attracts a civil penalty, s 236 damages and ss 237 and 243 orders; the statutory words, not the common-law meaning of 'illegitimate', govern.[64]

ACL s 21 prohibits unconscionable conduct in trade or commerce in connection with goods or services. It is not limited by the unwritten law, and a listed factor is whether 'any undue influence or pressure was exerted on, or any unfair tactics were used against' the customer.[65] Lawful commercial pressure that fails the *Karam* test may therefore still contravene s 21 (T03).

5.7 Critical Perspectives

The central controversy is how far duress should police lawful pressure, and what it should leave to the unconscionability doctrines.[66]

PERSPECTIVE	SOURCE	ARGUMENT	COUNTER-ARGUMENT
Unlawfulness filter	*Karam* (2005) 64 NSWLR 149, 168 [66]	Confining duress to unlawful conduct gives certainty and sends lawful pressure to doctrines with structured elements	Nettle J in *Thorne*: a significant departure from earlier authority; reprehensible lawful demands may fall between doctrines
Open-ended illegitimacy	*Crescendo* (1988) 19 NSWLR 40, 46	Open categories let courts respond to novel coercion	Kirby P, dissenting in *Equiticorp*, criticised 'legitimate' as too vague for commercial parties
Narrow lawful-act duress	*Times Travel* [2021] UKSC 40	A middle path: lawful threats count only when reprehensible, such as bad-faith demands	ACL s 21 and *Amadio* already do this work in Australia
Flexible restoration	*Alati*; *Vadasz*	Substantial restoration and relief on terms achieve practical justice	A competing view: relief on terms rewrites the bargain, hence the contested label

6. Decision Tree / Answer Framework

1. **Classify:** formation defect (rescission) or breach (termination, T09; *McDonald v Dennys Lascelles*).
2. **Identify the factor and its effect** (Figure 1.1). If the contract is voidable, apply steps 4–6.
3. **Duress** (Figure 1.3).
   - *Q1:* was the pressure *a* reason for entry? Once illegitimate pressure is shown, its author must prove it contributed nothing (*Barton*; *Crescendo*).
   - *Q2:* violence, detention of goods, crime, tort or threatened breach is duress on both Australian approaches.
   - *Q3:* lawful but unconscionable pressure is duress on *Crescendo*, not in New South Wales (*Karam*); the point is open (*Thorne* [29]), so argue both.
   - Legitimate commercial pressure is not duress (*Smith v William Charlick*; *Cockerill*; *Beerens*).
4. **Election:** unequivocal and communicated, or evinced if the other party absconded (*Car and Universal Finance*).
5. **Bars** (Figure 1.2): affirmation (*Coastal Estates*; *North Ocean Shipping*); delay (*Leaf*); third parties (*Clough*); restoration (*Alati*); executed contracts (*Svanosio*).
6. **Orders:** price, property, accounts, allowances, indemnity (*Brown v Smitt*); terms (*Vadasz*); money paid under duress (*Maskell*; *Mason*) unless voluntary (*Smith v William Charlick*).
7. **Statutory overlays:** ACL s 50, s 21 and s 236; ss 237 and 243 where rescission is barred.

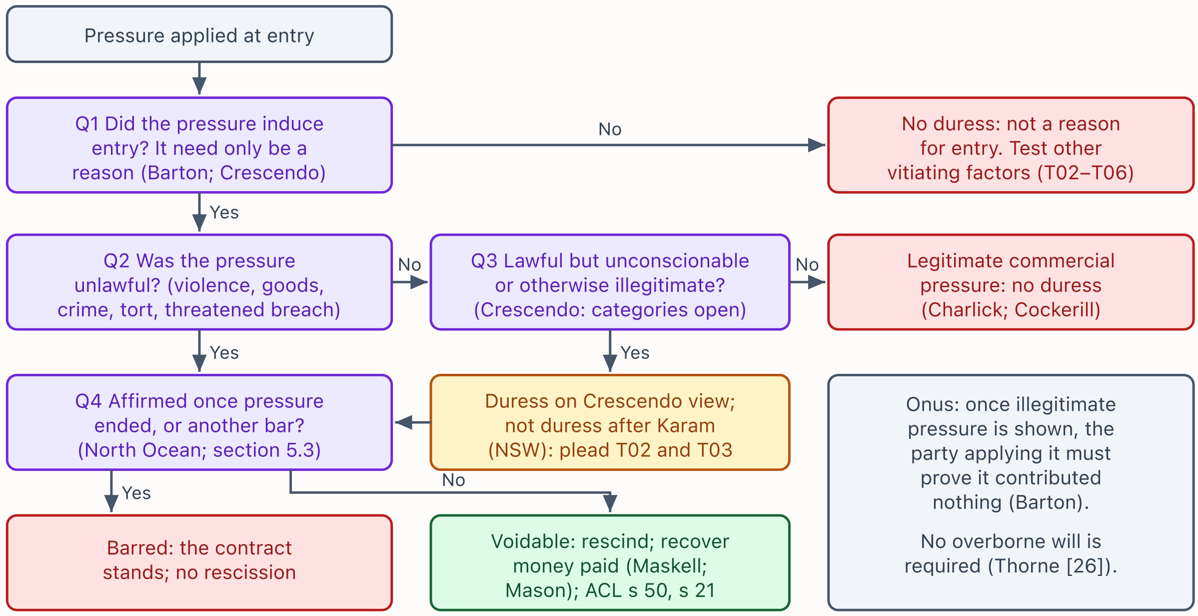

Figure 1.3: Duress decision tree. Unlawful pressure is duress on both Australian approaches; lawful pressure divides Crescendo from Karam, so argue both and plead the equitable and statutory doctrines in the alternative.

7. Exam Application

Common Fact Patterns

FACT PATTERN	ISSUE TRIGGERED	KEY AUTHORITY
Contractor refuses to finish unless the price rises; no substitute is available in time	Economic duress by threatened breach	*North Ocean Shipping*; *Crescendo*
Equipment held until an extra fee is paid	Duress of goods; recovery of money	*Hawker Pacific*; *Maskell v Horner*
Sole supplier demands an extra charge for future supply	Lawful threat; voluntary payment	*Smith v William Charlick*; *Karam*
Bank threatens receivership unless a director guarantees	Enforcing legal rights; legitimate pressure	*Cockerill*; *Beerens*
Violent threats to a director who also has commercial reasons to sign	Duress to the person; onus	*Barton v Armstrong*
Victim performs the variation for months after the pressure ends	Affirmation	*North Ocean Shipping*; *Coastal Estates*
Business bought through fraud has declined or been improved	Substantial restoration; allowances	*Alati*; *Brown v Smitt*
Rogue buyer absconds and resells	Communication; third-party bar	*Car and Universal Finance*; *Clough*

Worked Scenario 1 — Price rise under threat of non-delivery

A supplier contracts to deliver 40 ovens to a new hotel at a fixed price. Shortly before the publicised opening, knowing no one else can deliver in time, it refuses to deliver unless the operator accepts a 15% increase. The operator signs that day, emailing that it signs 'under protest', pays in full on delivery, and five weeks after opening demands repayment of the increase.

Approach: Treat the variation as the impeached contract; answer Q1–Q4 in Figure 1.3; then remedy.

Key Points: Threatened breach is unlawful; protest proves inducement; time runs from the end of the pressure.

Model Analysis: The issue is whether the operator can avoid the variation for economic duress and recover the increase. Duress requires pressure that induced the variation and was illegitimate; an overborne will is unnecessary.[67] The supplier threatened to break its existing contract. That is unlawful pressure, illegitimate on McHugh JA's formulation and under the narrower *Karam* test alike.[68] Inducement is readily shown: the operator signed the same day, protested in writing and had no practical alternative, indicators the Privy Council treated as significant.[69] Once illegitimate pressure is proved, the supplier must show it contributed nothing, which it cannot do.[70] The supplier will say that paying on delivery affirmed the variation. However, the operator paid under protest and acted within five weeks of the pressure ending, unlike the buyer in *North Ocean Shipping*, which waited months without protest.[71] The operator may rescind the variation, leaving the original price payable, and recover the excess as money had and received.[72] Alternatively, it may allege coercion in connection with the supply of goods (ACL s 50) or unconscionable conduct (s 21), grounding damages under s 236.[73] The operator is likely to succeed.

Worked Scenario 2 — Rescinding a fraudulently induced business sale

A purchaser buys a café, with its lease, equipment and stock, after the vendor fraudulently overstates turnover. Over six months the purchaser installs a permanent refit, trades at a loss and uses up the stock. On discovering the true figures, the purchaser stops trading within a fortnight and writes disaffirming the sale. The vendor says restoration is impossible and that trading after discovery was affirmation.

Approach: Right to rescind (fraud, T04), election, bars, orders.

Key Points: Communicated election; equivocal wind-down; substantial restoration; allowances.

Model Analysis: The issue is whether the purchaser has validly rescinded and on what terms. Fraud makes the sale voidable, and rescission is the purchaser's own act, to which the court gives effect.[74] The letter was an unequivocal election, communicated to the vendor.[75] Affirmation requires conduct consistent only with keeping the contract, by a party who knew the facts and, in Victoria, the right to rescind.[76] Winding down over a fortnight after discovery is equivocal, and courts are slow to find that delay bars rescission for fraud.[77] The vendor's stronger point is that the stock has gone and the premises have changed. However, equity requires only substantial restoration: the lease can be reassigned and the equipment returned, while the purchaser accounts for the stock used and any profits.[78] The purchaser should recover the price, with an allowance for the refit made before discovery and an indemnity against liabilities assumed under the lease.[79] Trading losses are not restitutionary; they must be claimed in deceit or under ACL s 236 (T04, T05).[80] The rescission is likely to be upheld on those terms.

Worked Scenario 3: Multi-Issue Problem

Scenario: A regional bakery chain buys all its flour from a miller under a three-year supply contract at a fixed price per tonne. Eighteen months in, during a poor harvest, the miller says it will stop deliveries on Monday unless the chain signs a variation raising the price by 25% for the rest of the term. No other miller can supply that volume at short notice, and the chain's bakeries would close within days. The chain signs, writing 'signed under protest' beside its signature. Four months later a second miller offers the full volume at the original price, but the chain, wary of disrupting production, keeps paying the varied price without complaint for another nine months. It now wants to undo the variation and recover the increases.

Issues in answer order:

1. Economic duress in procuring the variation (this chapter)

2. Affirmation and recovery of the increases (this chapter)
3. Statutory unconscionable conduct under ACL s 21 (T03)
4. Statutory orders and damages under ACL ss 236, 237 and 243 (T05)

Answer Plan:

Issue 1 — Economic duress. Duress requires pressure that induced the variation and was illegitimate; an overborne will is unnecessary.[81] The miller threatened to break its contract, which is unlawful and so illegitimate on both the *Crescendo* and the narrower *Karam* view.[82] The written protest and the lack of any practical alternative prove inducement, and the miller cannot show that its threat contributed nothing.[83] The variation was voidable.

Issue 2 — Affirmation and recovery. The right to avoid is lost by affirmation, and after duress time runs from when the pressure ends.[84] The pressure arguably ended when full supply at the original price became available; nine further months of payment without protest resembles the conduct that defeated the buyer in *North Ocean Shipping*. In Victoria the chain may say it did not know of its right to avoid, but having protested in writing it will struggle to deny that knowledge.[85] If the variation was affirmed, the increases were contractually due and are not recoverable as money had and received; prompt avoidance would have allowed recovery of them all.[86]

Issue 3 — ACL s 21. The miller's conduct was in trade or commerce and connected with a supply of goods, so s 21 asks whether it was unconscionable in all the circumstances, unconfined by the equitable elements.[87] The miller's stronger bargaining position, its pressure and the chain's lack of alternative supply are listed factors, and exploiting a shortage to extract a price rise the original contract did not permit goes beyond hard bargaining.[88] The threshold is conduct offensive to conscience, judged against societal norms of commercial behaviour; a deliberate threat of breach aimed at a dependent customer is a strong candidate, and coercion under s 50 is a further claim.[89]

Issue 4 — Statutory relief. If s 21 or s 50 was contravened, the chain may apply within six years for orders declaring the variation void from the start, or varying it, and directing a refund, or it may claim the increases as damages.[90] Those orders aim to compensate for or prevent loss rather than applying the equitable bars, so affirmation is not fatal, although increases paid after cheaper supply became available may be attributed to the chain's own choice.[91]

Advice: The chain should immediately give written notice avoiding the variation, preserving its argument that it has not affirmed. Its best route to the money is an application within six years under ss 237 and 243 for a declaration that the variation was void from the start and a refund, with s 236 damages in the alternative.

Marker's Eye

Marks come from classifying the remedy (rescission, not termination), applying both duress questions with the onus, handling the *Crescendo*/*Karam* split in a few precise sentences, testing each bar against the facts, and naming the consequential orders. Words are wasted on the history of duress of goods, on the 'overborne will' beyond a line rejecting it, and on 'damages for duress'.

8. Exam Tips & Traps

✓ Do

- Classify first: rescission is retrospective; termination is prospective.
- Apply the *Crescendo* questions in order and state who bears the onus (*Barton*).
- For lawful pressure, argue *Crescendo* and *Karam*, then plead undue influence, *Amadio* and ACL s 21.
- Measure affirmation in duress cases from the end of the pressure.

- Name the consequential orders.

✗ Don't

- Don't state an 'overborne will' or 'coercion of the will' test.
- Don't cite *Smith v William Charlick* as a successful claim.
- Don't say the High Court approved or overruled *Karam*.
- Don't claim 'damages for duress' without an independent cause of action.
- Don't use 'rescind' for discharge by breach.

⚠️ Watch Out For

- The executed-contract rule applies to innocent misrepresentation, not fraud.
- An uncommunicated election is ineffective unless the rogue absconded.
- A good-faith purchaser who acquires title before rescission defeats it.
- In Victoria, *Coastal Estates* requires knowledge of the right to rescind as well as the facts.
- Relief on terms may leave the claimant bound to part of the bargain (*Vadasz*).

9. Connections to Other Topics

CHAPTER	CONNECTION
T00 The Contract B Method: Issue-Spotting and Answer Frameworks	Vitiation is the first question in the answer sequence
T02 Undue Influence and Unconscionable Dealing in Equity	Home for lawful pressure that fails *Karam*; *Thorne v Kennedy*
T03 Statutory Unconscionable Conduct and Unfair Contract Terms	ACL s 21 and the 'undue influence or pressure' factor
T04 Misrepresentation at Common Law and in Equity	Commonest ground of rescission; executed-contract rule; deceit
T05 Misleading or Deceptive Conduct under the ACL	ACL ss 236, 237 and 243 as the statutory alternative
T09 Termination for Breach and Repudiation	Prospective termination; election after breach

10. Quick Reference Card

Duress

ELEMENT	TEST	AUTHORITY
Inducement	Pressure was *a* reason	*Barton*; *Crescendo*
Onus	Party applying pressure proves it contributed nothing	*Barton*
Illegitimacy	Unlawful or unconscionable; categories open (NSW: unlawful only)	*Crescendo*; *Karam*; *Thorne* [29]
Will	No overborne will required	*Thorne* [26]
Legitimate pressure	Lawful refusal to deal; enforcing rights; hard bargaining	*Smith v William Charlick*; *Cockerill*; *Berbatis*

Rescission

RULE	CONTENT	AUTHORITY
Election	Unequivocal, with knowledge, final; communicated unless the other party absconds	*Clough*; *Sargent*; *Car and Universal Finance*
Affirmation	Knowledge of facts (Vic: and of the right); runs from end of pressure	*Coastal Estates*; *North Ocean Shipping*
Delay	Reasonable time for innocent misrepresentation; fraud treated leniently	*Leaf*; *Brown v Smitt*
Third parties	Good-faith rights for value acquired first	*Clough*
Restoration	Substantial is enough in equity	*Alati*; *Erlanger*; *Senanayake*
Executed contracts	Land, once conveyed: no rescission for innocent misrepresentation (wider reach contested)	*Seddon*; *Svanosio* (T04)

Remedies and time limits

REMEDY	SOURCE	TIME
Rescission with consequential orders; terms	Equity (*Alati*; *Brown v Smitt*; *Vadasz*)	Before affirmation or unreasonable delay
Recovery of money paid	Restitution (*Maskell*; *Mason*)	Voluntary payments irrecoverable
Damages for s 50 or s 21 contravention	ACL s 236	Six years (s 236(2))
Void, vary, refuse enforcement, refund	ACL ss 237, 243	Six years (s 237(3))

11. Rule Statement Bank

Exam-ready statements of this chapter's rules, in answer order. Adapt the wording to the facts and cite as shown.

1. **Rescission or termination.** Rescission for a formation defect operates from the beginning; termination for breach operates only for the future, and accrued rights survive. — *McDonald v Dennys Lascelles Ltd* (1933) 48 CLR 457, 476–7 (Dixon J).
2. **Duress and onus.** Duress needs illegitimate pressure that was one reason for entry, not an overborne will; once such pressure is shown, its author must prove it contributed nothing. — *Crescendo Management Pty Ltd v Westpac Banking Corporation* (1988) 19 NSWLR 40, 45–6; *Barton v Armstrong* [1976] AC 104.
3. **Illegitimacy.** Violence, wrongful detention of goods and threatened breach are illegitimate on both Australian approaches; lawful but unconscionable pressure is duress under *Crescendo*, not *Karam* (unsettled: the High Court has left it open). — *Australia and New Zealand Banking Group Ltd v Karam* (2005) 64 NSWLR 149, 168 [66]; *Thorne v Kennedy* (2017) 263 CLR 85, [29].
4. **Legitimate pressure.** A lawful refusal to deal is not, without more, illegitimate pressure, so a payment made to avert it is voluntary and irrecoverable. — *Smith v William Charlick Ltd* (1924) 34 CLR 38.
5. **Election.** The innocent party rescinds by an unequivocal election communicated to the other party, or merely evinced if that party has absconded. — *Car and Universal Finance Co Ltd v Caldwell* [1965] 1 QB 525.
6. **Affirmation.** Affirmation bars rescission; in Victoria it requires knowledge of the facts and of the right to rescind, and after duress time runs from the end of the pressure. — *Coastal Estates Pty Ltd v Melevende* [1965] VR 433; *North Ocean Shipping Co Ltd v Hyundai Construction Co Ltd* [1979] QB 705.
7. **Delay and third parties.** Unreasonable delay bars rescission for innocent misrepresentation, and rescission cannot defeat rights acquired in good faith for value before the election. — *Leaf v International Galleries* [1950] 2 KB 86; *Clough v London and North Western Railway Co* (1871) LR 7 Ex

26.

8. **Substantial restoration.** Equity rescinds if accounts and allowances can restore the parties substantially, although precise restitution is impossible. — *Alati v Kruger* (1955) 94 CLR 216, 223–4.

9. **Executed contracts.** A conveyed land sale is not rescinded for innocent misrepresentation; beyond land the bar is unsettled, *Seddon* applying it and *Leason* declining to. — *Svanosio v McNamara* (1956) 96 CLR 186; *Seddon v North Eastern Salt Co Ltd* [1905] 1 Ch 326; *Leason Pty Ltd v Princes Farm Pty Ltd* (1983) 2 NSWLR 381.

10. **Orders and terms.** Rescission restores the price with allowances and an indemnity, not trading losses, and may be granted on terms reflecting the bargain the claimant would have made. — *Brown v Smitt* (1924) 34 CLR 160; *Sibley v Grosvenor* (1916) 21 CLR 469; *Vadasz v Pioneer Concrete (SA) Pty Ltd* (1995) 184 CLR 102.

11. **Money paid.** Money paid under duress or practical compulsion is recoverable as money had and received. — *Maskell v Horner* [1915] 3 KB 106; *Mason v New South Wales* (1959) 102 CLR 108.

12. **Statutory overlays.** Coercion or unconscionable conduct in connection with a supply supports damages and orders voiding or varying the contract, within six years and free of the equitable bars. — ACL ss 21(1), 50(1), 236, 237, 243.

MLP219 Contract B — T01. Document version 1.0. Law stated as at 19 September 2026.

Footnotes

1. *Alati v Kruger* (1955) 94 CLR 216, 223–4.
2. *Crescendo Management Pty Ltd v Westpac Banking Corporation* (1988) 19 NSWLR 40, 46 (McHugh JA); *Australia and New Zealand Banking Group Ltd v Karam* (2005) 64 NSWLR 149, 168 [66].
3. *Thorne v Kennedy* (2017) 263 CLR 85, [26], [29].
4. *Pakistan International Airline Corporation v Times Travel (UK) Ltd* [2021] UKSC 40.
5. *Competition and Consumer Act 2010* (Cth) sch 2 ('ACL') ss 224(3A), 310, applied in Victoria by *Australian Consumer Law and Fair Trading Act 2012* (Vic) s 8 ('ACLFTA').
6. *Crescendo* (1988) 19 NSWLR 40, 45–6; *Smith v William Charlick Ltd* (1924) 34 CLR 38; *Skeate v Beale* (1841) 11 Ad & E 983; 113 ER 688; *Thorne* (2017) 263 CLR 85.
7. *Alati* (1955) 94 CLR 216, 223–4.
8. *Vadasz v Pioneer Concrete (SA) Pty Ltd* (1995) 184 CLR 102.
9. *Barton v Armstrong* [1976] AC 104.
10. *Crescendo* (1988) 19 NSWLR 40, 45–6.
11. *Karam* (2005) 64 NSWLR 149, 168 [66].
12. *Goods Act 1958* (Vic) s 11.
13. *Clough v London and North Western Railway Co* (1871) LR 7 Ex 26.
14. *Instruments Act 1958* (Vic) s 126(1).
15. *Pavey & Matthews Pty Ltd v Paul* (1987) 162 CLR 221.
16. *McDonald v Dennys Lascelles Ltd* (1933) 48 CLR 457, 476–7 (Dixon J).
17. *Alati* (1955) 94 CLR 216, 223–4; *Car and Universal Finance Co Ltd v Caldwell* [1965] 1 QB 525; see generally JD Heydon, MJ Leeming and PG Turner, *Meagher, Gummow and Lehane's Equity: Doctrines and Remedies* (LexisNexis Butterworths, 5th ed, 2014).
18. *Clough* (1871) LR 7 Ex 26.
19. *Sargent v ASL Developments Ltd* (1974) 131 CLR 634.
20. *Alati* (1955) 94 CLR 216, 224.
21. *Academy of Health and Fitness Pty Ltd v Power* [1973] VR 254.
22. *Car and Universal Finance* [1965] 1 QB 525.
23. *Erlanger v New Sombrero Phosphate Co* (1878) 3 App Cas 1218.
24. *Brown v Smitt* (1924) 34 CLR 160.
25. *Sibley v Grosvenor* (1916) 21 CLR 469.
26. *Vadasz* (1995) 184 CLR 102.
27. *Coastal Estates Pty Ltd v Melevende* [1965] VR 433.
28. *Sargent* (1974) 131 CLR 634.
29. *North Ocean Shipping Co Ltd v Hyundai Construction Co Ltd* [1979] QB 705.
30. *Leaf v International Galleries* [1950] 2 KB 86.
31. *Brown v Smitt* (1924) 34 CLR 160.
32. *Clough* (1871) LR 7 Ex 26; *Car and Universal Finance* [1965] 1 QB 525.
33. *Senanayake v Cheng* [1966] AC 63.
34. *Seddon v North Eastern Salt Co Ltd* [1905] 1 Ch 326; *Svanosio v McNamara* (1956) 96 CLR 186.
35. ACL ss 237(1)–(2), 243.
36. ACL s 237(3).
37. *Crescendo* (1988) 19 NSWLR 40, 45–6; see also *Westpac Banking Corporation v Cockerill* (1998) 152 ALR 267.
38. *Barton* [1976] AC 104; *Crescendo* (1988) 19 NSWLR 40.
39. *Universe Tankships Inc of Monrovia v International Transport Workers' Federation* [1983] 1 AC 366, 383–4 (Lord Diplock), 400–1 (Lord Scarman); *DSND Subsea Ltd v Petroleum Geo-Services ASA* [2000] BLR 530.
40. *Pao On v Lau Yiu Long* [1980] AC 614; *Thorne* (2017) 263 CLR 85, [26].
41. *Karam* (2005) 64 NSWLR 149, 168 [66].

42. Ibid; *Commercial Bank of Australia Ltd v Amadio* (1983) 151 CLR 447.

43. *Thorne* (2017) 263 CLR 85, [29], [71]–[72] (Nettle J).

44. *Beerens v Bluescope Distribution Pty Ltd* (2012) 39 VR 1; *Doggett v Commonwealth Bank of Australia* (2015) 47 VR 302, 321 [73] (Whelan JA).

45. *Barton* [1976] AC 104.

46. *Thorne* (2017) 263 CLR 85.

47. *Maskell v Horner* [1915] 3 KB 106.

48. *Hawker Pacific Pty Ltd v Helicopter Charter Pty Ltd* (1991) 22 NSWLR 298.

49. *North Ocean Shipping* [1979] QB 705.

50. *Universe Tankships* [1983] 1 AC 366.

51. *Equiticorp Finance Ltd (in liq) v Bank of New Zealand* (1993) 32 NSWLR 50; *Karam* (2005) 64 NSWLR 149, [57].

52. *Musumeci v Winadell Pty Ltd* (1994) 34 NSWLR 723.

53. *Smith v William Charlick* (1924) 34 CLR 38.

54. *Cockerill* (1998) 152 ALR 267.

55. *Beerens* (2012) 39 VR 1.

56. *Australian Competition and Consumer Commission v CG Berbatis Holdings Pty Ltd* (2003) 214 CLR 51, 64 [11] (Gleeson CJ).

57. *CTN Cash and Carry Ltd v Gallaher Ltd* [1994] 4 All ER 714; *Times Travel* [2021] UKSC 40.

58. *Thorne* (2017) 263 CLR 85, [29], [70]–[72].

59. *North Ocean Shipping* [1979] QB 705.

60. *Maskell* [1915] 3 KB 106; *Universe Tankships* [1983] 1 AC 366; *Hawker Pacific* (1991) 22 NSWLR 298.

61. *Mason v New South Wales* (1959) 102 CLR 108.

62. *Smith v William Charlick* (1924) 34 CLR 38.

63. ACL s 236(1); compare *Sibley* (1916) 21 CLR 469.

64. ACL ss 50(1), 224(1), 236, 237, 243.

65. ACL ss 21(1), 21(4)(a), 22(1)(d).

66. See generally Rick Bigwood, *Exploitative Contracts* (Oxford University Press, 2003).

67. *Crescendo* (1988) 19 NSWLR 40, 45–6; *Thorne* (2017) 263 CLR 85, [26].

68. *Crescendo* (1988) 19 NSWLR 40, 46; *Karam* (2005) 64 NSWLR 149, 168 [66]; *North Ocean Shipping* [1979] QB 705.

69. *Pao On* [1980] AC 614.

70. *Barton* [1976] AC 104.

71. *North Ocean Shipping* [1979] QB 705.

72. *Maskell* [1915] 3 KB 106; *Hawker Pacific* (1991) 22 NSWLR 298.

73. ACL ss 21, 50(1), 236(1).

74. *Alati* (1955) 94 CLR 216, 224.

75. *Academy of Health and Fitness* [1973] VR 254.

76. *Sargent* (1974) 131 CLR 634; *Coastal Estates* [1965] VR 433.

77. *Brown v Smitt* (1924) 34 CLR 160.

78. *Alati* (1955) 94 CLR 216, 223–4.

79. *Brown v Smitt* (1924) 34 CLR 160.

80. *Sibley* (1916) 21 CLR 469.

81. *Crescendo* (1988) 19 NSWLR 40, 45–6; *Thorne* (2017) 263 CLR 85, [26].

82. *Crescendo* (1988) 19 NSWLR 40, 46; *Karam* (2005) 64 NSWLR 149, 168 [66]; *North Ocean Shipping* [1979] QB 705.

83. *Barton* [1976] AC 104; *Pao On* [1980] AC 614.

84. *Clough* (1871) LR 7 Ex 26; *North Ocean Shipping* [1979] QB 705.

85. *North Ocean Shipping* [1979] QB 705; *Coastal Estates* [1965] VR 433.

86. *North Ocean Shipping* [1979] QB 705; *Maskell* [1915] 3 KB 106.

87. ACL s 21(1), (4)(a).

88. ACL s 22(1)(a), (d), (e); *Australian Competition and Consumer Commission v Seal-A-Fridge Pty Ltd* (2010) 268 ALR 321; *Berbatis* (2003) 214 CLR 51, 64 [11].

89. *Productivity Partners Pty Ltd v Australian Competition and Consumer Commission* [2024] HCA 27, [60]; ACL s 50(1).

90. ACL ss 236, 237(1), (3), 243(a)–(b), (d).

91. ACL ss 236(1), 237(2).

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