Generally: breach > loss > causation + remoteness > object + assessment of damages > mitigating factors > recovery of sums.

Remedies can be *cumulative*, but Ps cannot get double recovery. E.g. **damages** for breach – principal remedy for breach of contract; **debt** – an unconditionally accrued obligation to pay money; restitution; specific performance; injunction.

[Does the plaintiff have a cause of action in contract?]

1. Identify the **breach** and **loss** (in contract law – financial loss).

*Where P claims to have suffered loss or damage by reason of the D's breach, the **onus** of proving the extent of loss or damage rests on the P (Luna Park v Tramways Advertising).*

*P does not need to prove loss/actual harm to get damages. All breaches give rise to a right to damages. But, if loss is not proven, the sum awarded will be **nominal**.*

- For example, in *Luna Park,* 1 shilling was awarded against T for breach. To recover substantial damages, P must have suffered some loss and be able to prove the extent of that loss. The **general rule** in *McAlphine* states that substantial damages can only be claimed by a party who has suffered substantial loss.

*In identifying the loss, we compare the situation of the P prior to and after the breach of contract (**Alfred McAlpine Constructions v Panatown**). We are concerned with what has been lost by P, not what has been gained by D as a result of breaching the contract.*

- In moulding a remedy to overcome circumstances in which there is **no financial loss,** there is emphasis on protecting the *performance* interest of a promisee: that interest may be distinct from an *expectation* interest.

F	Employer (Panatown) entering into a building contract with McAlpine (building contractor). The actual site owner (Unix) had a DOC deed with McAlpine. By that deed, owner acquired a direct remedy against the McAlpine in respect of any failure by the McAlpine to exercise reasonable skill, care and attention to matters within the scope of the contractor's responsibilities under the contract. Serious defects were found in the building and Panatown served notice of arbitraion claiming damages from McAlpine for defective work and dealy.
H	P not entitled to reover substantial damages. There was already a DOC deed between McAlpine and the person who's actually out-of-pocket, i.e. the owner → no justification for P to recover damages on behalf of Unix, when Unix had its own cause of action against McAlpine. • Would introduce new problem of **double liability** (unanimously agreed). • But, if not for the contract, P would have been able to recover substantial damages as they did not receive their **promised performance**.

*Once established that the loss flowed from the breach of contract, the **onus** then falls on D to negate causation i.e. show that the loss did not flow from the breach.*

1. If ***performance-based*** i.e. failure to take reasonable care → see ***CLA*** i.e. statutory test.
   i. Was the negligence (s 5A) a necessary condition of the harm (causation) (s 5D(1)(a))?
      1. Applies when there is a harm caused by breach of duty to exercise reasonable care.
      2. s 5D(1)(a): 'but for' test (*March v Stramare*);
   ii. Is it appropriate for the scope of liability to extend to the harm so caused (s 5D(1)(b))?
      1. Was it the likely sort of result to occur from the act (*Home Dorset Yacht*)?
      2. s 5D(1)(b) - *Novus actus interveniens*, given that it was a result of third-party negligence.
2. **If ***strict obligation*** [e.g. tutorial 4]→ *CLA s 5D does not apply as there was no evident breach of duty to exercise reasonable care i.e. negligence. X is claiming damages for **breach of contract**, not negligence.*

2. Common law **causation** [factual/objective standard – did breach cause loss?]

*To recover damages for BOC, P must show a causal connection between D's breach and the loss for which P is seeking compensation. Causation is a question of fact. D is only liable for the extent of loss caused by the breach. A break in the chain of causation is a **complete defence.***

1. *Sufficient connection whill be met where P can show that '**but for'** the breach, the loss would not have occured (**Reg Glass Pty Ltd v Rivers Locking Systems Pty Ltd**).*

- **Apply test:** whether on the balance of probabilities a certain harm would not have occurred 'but for' the breach i.e. the act must be a (1) necessary condition (not the only/main one) to complete the harm, and must (2) materially contribute to the harm.

F	D (Rivers) contracted to supply a 'rear single door' at P's shop premises. Purpose of door was to prevent burglaries, but thieves broke in, forcing door out of position (spent 45min-1h dismantling door out of position) and once in, they stole a large quantity of stock. Reg Glass sued for breach of contract. ● No express term in the contract regarding this – but in any contract for SOGs, there is an **implied term** that the goods would be fit for purpose.
H	3:2 accepted that but for that breach (i.e. gap between doorway and wall), the theft would not have occurred. The thieves exploited that breach (that was where they put the crowbar). Court held that once breach is established, and it appears that the claimed loss flows from that breach, it is presumed that the breach *caused* that loss. Ps could recover damages. ● Contract contained an **implied term** that D's door would provide 'reasonable protection' which was breached (differing opinion in the courts as to whether term was breached). ○ Found that the door did not provide 'reasonable protection', but it is arguable that even if it did, the thieves would have found another way to break in. ● **Owen J (dissenting):** No breach → causation not determined. Took them an hour an a half to break down door – unreasonable to expect more. ● **Windier J (dissenting):** Loss did not flow from breach because it was not clear, that had the warranty been complied with that the burglars would not have broken in i.e. we do not know that they would have got in anyway.

It is open to D to negative causation (Reg Glass). D must show that the harm would still have occurred without the breach.

However, the 'but for' test may not apply:

i. Where multiple causes contributed to the loss; or
ii. Where the chain of causation is broken.
   1. Where some extraneous event or third party act breaks the causal chain between the breach and loss, P can only claim **nominal damages** (*Lexmead v Lewis*).

- **Limited** by reference to 'common sense' and 'policy' → where the 'but for' test produces absurd results, consult common sense (*March v Stramare*).

2. *Where multiple causes contributed to the loss, use* ***common sense*** (*McHugh JA in* ***Alexander v Cambridge Credit Corporation***) *to determine whether the berach was the 'decisive' or 'dominant' cause (Monarch SS Co.).*

- In *Alexander,* although 'but for' test was satisfied, McHugh and Mahoney JA held that the auditor's breach was not the **legal cause** of the company's losses and the claim for the $145 million difference in losses failed on causation.

F	Auditors of CCC negligently overstated the company's value, which was a breach of contract. If the assets had been properly valued, CCC would have been put into receivership in 1971, but it continued trading until 1974. Due to their negligent audit, they failed to identify they the company was insolvent. If the company had gone into receivership in 1971, its losses would have totalled approx. $10 million. Instead, losses were approx. $155 million.
H	'But for' test failed – claim failed on causation. More connection is required to be shown than simply that the company stayed in business – need to show reliance on auditor's certificate for making decisions. ● Distinguished from *Reg Glass,* where there was evidence they **exploited** the breach. Here, there was no evidence that the breach was used to make a decision which led to the loss. ● **McHugh JA:** ○ **Focused on ***"common sense"*** – the auditor's negligence was sufficiently superseded in potency by supervening events as to not be a (legal) cause. ■ Even though *factual* causation was present, no *legal* causation since common sense tells us that it cannot just be the auditor's negligence that caused the extent of the loss. ■ If you were to say that the auditor's negligence was the legal cause, you'd be saying that the company's continued existence was the legal cause of the loss, and this doesn't make sense as a matter of the common sense.

	○ Also found the loss 'too remote' because the loss CCC suffered between 1973-74 was not of a "kind … which the parties would have contemplated as being a serious possibility … in 1970". ● **Glass JA (dissent):** auditor's negligence was a common sense (legal) cause because it was a 'but for' cause – equating legal with factual causation. ○ Losses not 'too remote' because auditors were aware that decisions regarding receivership depended on their findings and that failure to close the company down when there was a breach of the relevant ratios created a 'serious possibility' that market movements would cause serious losses.

Overall, Australian courts prefer a more ***normative*** *approach, looking at the 'scope of the defendant's obligation in the particular circumstance' instead of just common sense (Travel Compensation Fund v Tambree), i.e.* ***legal causation.***

1. *Reg glass:* Intervening act won't be a new act if D's obligation was specifically to prevent intruders, e.g. the door.
   i. Evidence of the thieves exploiting the breach supoprting the finding that the breach was the legal cause.
2. *Alexander:* Chain of causation broken because –
   i. Causing company to exist ≠ common sense for 1974 loss;
   ii. Supervening market crash in 1974 was a better common-sense cause; and
   iii. Had been audited multiple times between 1971 and 1974.

3. Common law **remoteness** [subjective – whether the person who caused breach should be liable?]

P's loss must not be too remote. D is only expected to compensate for losses which were reasonably within his or her contemplation as likely to flow from the failure to perform contract. Generally, ***direct*** *losses caused by a breach are not too remote.*

*Loss must be '****contemplated****' at the time of the contract (H Parsons v Uttley). The test for assessing whether or not a particular loss is too remote comes from* ***Hadley v Baxendale****, where Alderson B held that losses are recoverable if they fall within either the:*

F	Ps (owners of flour mill) contracted with Ds (carriers) to have a broken crankshaft conveyed to Greenwcih where a replacement would be made. Delivery of shaft was delayed nd the consequence for the P was that the mill was stopped for 5 days longer than it should have → lost profits. P sought damages to compensate for loss incurred while the mill was idle.
H	Losses not recoverable as it was too remote. ● Carrier wasn't expected to know mill didn't have a spare shaft so their delay = complete shutdown. ○ Don't need to know every intricate detail of the business on the other side of the contract, about whether you have a general idea. ● Different position if D's had been made aware that the mill would be inoperable without the part; but they were not.

a. ***First limb*** *('general damages') – loss arising naturally, according to the ordinary course of things, from the BOC itself. This loss requires no special or expert knowledge as it was implicitly within the foresight and contemplation of parties; or*

- E.g. the **ordinary loss of business profits** falls within this limb, as it was likely within the 'foresight' and 'contemplation' of both parties. In *Victoria Laundry*, it was not necessary for D's to have been specifically informed as a pre-condition of being liable for loss of business. A reasonable person must be taken to foresee that a laundry business would suffer in pocket from a five month delay of boiler.
  i. Imputed or actual knowledge *is needed for this test i.e. things a reasonable person is taken to know 'in the ordinary course of things' i.e. loss that would be suffered regardless (****Victoria Laundry v Newman Industries****).*
  - E.g. if something is common knowledge, or a widely accepted fact, imputed knowledge is satisfied.

F	Sale of a boiler to launderers and dryers to be delivered 5 June. Buyers told sellers they intended to put boiler to use 'in the shortest possible time' – no further information conveyed as to why they needed the boiler when they did. Delivery delayed over 5 months; until 8 November. Buyer