Topic List:
T1: Termination by agreement
T2: Termination by breach
T3: Repudiation
T4: Delay
T6: Consequences of Affirmation or termination
T7: Restrictions on RTT
T8: Damages
T9: Liquidates Damages
T10: Specific Performance
T11: Action for debt
T13: Frustration
T14: CL Vitiating factors
T15: Recession
T16: Misleading or deceptive conduct
T17: Statutory Unconscionability
T18: Remedies under statue

Topic 2: Termination for Breach

Red Flag - D no longer wants to perform contractual obligations	
Step 1 - Express RTT ot CL RTT	➢ CL RTT co-exists with express RTT (***Shevill***) ○ Failure of breach under express does not give rise to CL RTT ○ Exception: unless expressly excluded or express terms comprehensive
Step 2 - what type of breach?	*Not every breach gives rise to RTT (but does give rise to damages) RTT Breaches ➢ Breach of a condition ➢ Serious breach of an intermediate term ➢ A Repudiation NO RTT for a warranty* ➢ Warranty: Not common due to intermediate terms, A term will only be a warranty **if no breach could deprive the aggrieved party of the whole of the benefit of the contract** (unless clearly expressed otherwise or prescribed by legislation)
Plaintiff Actions	
Step 3 - Identity what P has elected	1. **Terminate** the contract and sue for damages; **or** 2. **Affirm** the contract and **lose RTT** (CANNOT get damages for loss of bargain but can get damages for the particular breach)
Step 4 - Are	1. Affirmation

there any restrictions on RTT?	2. P not ready + willing to perform 3. Estoppel 4. Waiver 5. Relief against forfeiture would be granted
1. Is it a breach of a condition Condition - An essential term going to the root of the contract. Any breach gives the innocent party a right to terminate and claim damages.	
Test	If it appears from the general nature of the K as a whole, or from some particular term, that the promise is of such importance to the promisee that they would have not entered into it unless they were assured of its strict performance ***(Tramways Advertising, per Jordan CJ (NSWSC), as accepted by the HCA in Associated Newspapers).*** ➢ **Any breach** of a condition confers a RTT, **even if it causes no loss** (***Arcos***) ➢ Parties **can** stipulate that certain clauses are essential (and a condition) (***Shevill***), but the **word "condition"** is **not decisive** ***(L Schuler)*** ➢ Clause classified as condition by **statue** ***(Arcos)*** ○ **Analogies**: ***Arcos*** - K required wood to be half an inch thick, but some pieces were fractionally different. The court held that correspondence with description was a condition under sale of goods statute (UK), entitling the buyer to terminate despite the breach being trivial and the wood remaining suitable for its intended purpose. **Factors as to whether a clause is a condition** ➢ **The language:** clear and precise language ("**guarantee**" in ***Tramways Advertising*** vs "**as soon as possible"** in ***Amann Aviation***) ➢ **Other clauses (K as a whole):** termination clauses in other parts of the contract ***(L Shuler).*** ➢ **Character of the breach:** if it can be breached in a wide variety of ways → **intermediate term** ***(Hong Kong Fir)*** ➢ **Damages:** more likely a condition if **damages are inadequate** ***(Ankar)*** ➢ **Unreasonable:** more unreasonable the result of the construction, less likely a condition ***(L Shuler)***
Relevant cases/analogies	**Breach of a condition - successful** ***Associated Newspapers v Bancks -*** a 10-year contract required Bancks' cartoons to appear on the front page of the comic section, but the newspaper repeatedly published them elsewhere. The HCA held this was a condition, as prominent placement was essential to Bancks and he would not have entered the contract without assurance of strict performance. Bancks was therefore entitled to terminate. **Breach of condition - UNSUCCESSFUL** ***L Shuler*** - although the contract expressly labelled the 1400 weekly visit requirement a "condition", the court held this was not conclusive. If it was a condition in the technical legal sense, any breach would allow termination; if used

	only in the ordinary, layman's sense, breach would not automatically give a right to terminate.
Is it sufficiently serious of an intermediate term Intermediate term - A term where the RTT depends on the **seriousness and consequences of the breach** ***(Hong Kong Fir).***	
Test	If there is a breach of the K which deprives the innocent party of substantially the whole benefit of the K (***Hong Kong Fir (UK)***, as accepted by the HCA in ***Koompahtoo***) → primarily a matter of construction. ❖ ***Typically can be breached in a variety of ways*** **Factors as to whether a breach is "sufficiently serious"** ➢ "**seriousness** of the breach" (***Koompahtoo***); ➢ "**adequacy** of **damages**" (***Koompahtoo***); ➢ "after considering the **benefit** to which the **injured party is entitled** under the [K]" (***Koompahtoo***) ○ "the nature of the [K] and the relationship it creates" (***Koompahtoo***) ○ "the **nature** of the term" (***Koompahtoo***) ○ "the **kind** and **degree** of the breach (***Koompahtoo***) ○ "the **consequences** of the breach for the other party" (***Koompahtoo***) ➔ ***Hongkong Fir Shipping (1962),*** the court classified the seaworthiness clause as an intermediate term, as breaches could range from minor to serious. Although the ship was out of action for 20 weeks, this did **not** deprive the charterer of substantially the whole benefit of the two-year contract. Therefore, the breach did not justify termination, although damages could be claimed. ➔ ***Koompahtoo v Sanpine (2007),*** the HCA recognised intermediate terms as part of Australian law. Sanpine's breaches of its obligations to properly manage joint venture funds and maintain financial records were sufficiently serious, going to the root of the contract and depriving Koompahtoo of a substantial part of its contractual benefit. Therefore, Koompahtoo was entitled to terminate.