Where the question goes

OPEN	Civil Liability Act 2002 (NSW) s 5O, Pt 4; Law Reform (Miscellaneous Provisions) Act 1946 (NSW) s 5; Law Reform (Miscellaneous Provisions) Act 1965 (NSW) Pt 3; Employees Liability Act 1991 (NSW); Home Building Act 1989 (NSW) Pt 2C; Design and Building Practitioners Act 2020 (NSW); Australian Consumer Law ss 18, 236; the judgments.
SOURCE	the topic list from the LAWS1017/5006 notes (second half); statutes read live 11 Nov 2026 as each page is built.

ROUTER · THE QUESTION INVOLVES → PAGE

A contract and a tort on the same facts; a lie that caused loss	LR(MP) Act 1965 Pt 3	**TORT · 1 Concurrent liability; deceit**
Money lost, nothing physically damaged: is there a duty?	judgments	**TORT · 2 Pure economic loss**
Careless advice or information relied on	ACL ss 18, 236	**TORT · 3 Negligent misstatement**
A professional's client or a disappointed beneficiary	CLA s 5O	**TORT · 4 Professional negligence**
Loss because someone else was hurt or their property damaged	judgments	**TORT · 5 Third-party injury or property**
A defective building or product; a later owner	HBA Pt 2C; DBPA s 37	**TORT · 6 Defective buildings**
Goods taken, touched or found: who may sue?	judgments	**TORT · 7 Goods: title and trespass**
Goods kept, sold or destroyed; a demand refused	judgments	**TORT · 8 Conversion and detinue**
Is the employer, principal or occupier liable for another?	judgments	**TORT · 9 Vicarious liability**
Two or more wrongdoers; who pays what share?	LR(MP) Act 1946 s 5; CLA Pt 4; Employees Liability Act s 3	**TORT · 10 Multiple wrongdoers**
Which case to cite	the judgments	**TORT · 11– Cases in the exam**

THE ANSWER, IN ORDER (EVERY PAGE)

1	The cause of action	Name the tort (or the contract claim alongside it) and who sues whom.
2	Duty or title	For negligence, whether a duty is owed for this kind of loss; for goods, the plaintiff's possession or right to it.
3	The elements	Apply each element to the facts in turn, from the page.
4	Defences and statute	Contributory negligence, the Civil Liability Act, proportionate liability, as the page lists them.
5	Damages; venture an answer	The measure of damages, then "[plaintiff] is entitled to [remedy] against [defendant]."

Concurrent liability; deceit LR(MP) Act 1965 Pt 3

USE THIS PAGE WHEN	a professional or contractor under a contract who was also careless; the plaintiff partly to blame on a contract claim; a lie that induced a deal; a claim for punitive damages for fraud.
OPEN	Law Reform (Miscellaneous Provisions) Act 1965 ss 8–9; the judgments.
FIRST QUESTION, ALWAYS	is the claim in contract, in tort, or both, and was the defendant dishonest?

RELATED PAGES · TORT·3 · TORT·4.

both
concurrent

A contract and careless performance; sue in contract or tort?
→ An action for professional negligence may be brought in both contract and tort, and the obligations are not necessarily co-extensive (Astley via Keddie, Beazley JA [87]). Plead both.

Astley (via Keddie [87]): Keddie not on the list
facts not verified

s 9
concurrent and co-extensive

The plaintiff was partly to blame; the claim is in contract
→ At common law contributory negligence is no defence to a contract claim (Astley via RTA v Fletcher [53]). Now damages are reduced for a "wrong" (s 9(1)), which includes "a breach of a contractual duty of care that is concurrent and co-extensive with a duty of care in tort" (s 8(b)). A defence under the contract survives (s 9(2)).

RTA v Fletcher: Handley JA; pre-amendment law, s 8(b) not considered ([53]); not on the list
the RTA's claim over against its contractor

deceit
five elements

A lie induced the deal
→ A false representation; known to be false, or made recklessly; intended to be relied on; relied on; damage caused by that reliance (Magill, Gummow, Kirby and Crennan JJ [114]). Each element is "strictly enforced" ([114]).

Magill: Gummow, Kirby and Crennan JJ; Gleeson CJ, Hayne J, Heydon J separately; not on the list
a husband's paternity claim; appeal dismissed

fraud
without belief in its truth

He believed it; careless, not dishonest
→ Fraud is proved by a false representation made "(1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false" (Derry v Peek via Magill [113]). Deceit is "a legal remedy for harm suffered in consequence of dishonesty" (Gleeson CJ [17]); an honest but careless statement goes to negligent misstatement (TORT·3).

Derry v Peek (via Magill [113]): Lord Herschell
facts not verified

damages
worse off

How much?; the deal cost more than it was worth
→ Measured by how much worse off the plaintiff is as a result of being fraudulently induced, including consequential losses and opportunities forgone (Henville, McHugh J [133]). Price minus value is common but not "universal or inflexible or rigid" (HTW [35], joint reasons; TPA s 82; not on the list).

Henville v Walker · TPA ss 52, 82: McHugh J, deceit stated at [133]; not on the list
an agent's misrepresented sale prices for home units

punish
contumelious disregard

Punish the fraud
→ Exemplary damages punish "conscious and contumelious disregard for the plaintiff's rights"; "There is no necessary proportionality" with compensatory damages (XL Petroleum, Brennan J, via James v Hill [66], [69]).

James v Hill: Tobias JA; not on the list
facts not verified

contrib
no defence to deceit

"She could have checked"
→ Contributory negligence is not a defence to deceit (Pascali [54], conceded); nor, at common law, to an intentional tort such as battery where the injury is its direct consequence (Irlam v Byrnes, N Adams J [58], not on the list). s 9 reaches only torts where the defence was available at common law (s 8(a)).

Pascali v Carr: Macfarlan JA; not on the list
home warranty certificates not covering all the work

DECIDE

Concurrent liability

1 Does a duty of care arise in tort as well as under the contract (Keddie [87])? →
YES plead both
NO contract only

2 Was the plaintiff careless, and is the contractual duty concurrent and co-extensive with one in tort (s 8(b))? →
YES reduce damages under s 9(1)
NO no reduction

Deceit

1 False representation, made knowingly, without belief or recklessly (Magill [113]–[114])? **NO** → not deceit; consider TORT·3

YES ↓

2 Intended to be relied on, relied on, and loss caused (Magill [114])? →
YES damages: how much worse off (Henville [133]); exemplary if contumelious
NO no deceit

SAY

P may sue D in contract and in tort; the duties are concurrent though not necessarily co-extensive. (Astley (via Keddie [87])) D 's contractual duty of care is concurrent and co-extensive with its duty in tort, so P 's damages are reduced by share . (LR(MP) Act 1965 ss 8(b), 9(1)) D represented that statement , knowing it false or recklessly , intending P to rely; P relied by act and lost sum . (Magill [114]) P is how much worse off for having been induced to act , including consequential loss . (Henville [133])

D 's conduct showed a conscious and contumelious disregard for P 's rights, warranting exemplary damages. (James v Hill [66])

MARKS LOST

1. Only one cause of action pleaded where both lie (Keddie [87]).
2. Contributory negligence applied to a strict contractual duty (s 8(b)).
3. Deceit found on carelessness alone (Magill [113]).
4. An element of deceit assumed rather than proved (Magill [114]).
5. Expectation damages given for deceit (Henville [133]).
6. Exemplary damages tied to the loss (James v Hill [69]).
7. Contributory negligence raised against deceit (Pascali [54]).