Where the question goes

OPEN	Contracts Review Act 1980 (NSW); Civil Liability Act 2002 (NSW); Australian Consumer Law (Competition and Consumer Act 2010 (Cth) Sch 2); the judgments.
SOURCE	the topic list from the LAWS1017/5006 notes (lectures 2–10); statutes are read live as each page is built; the date is in each page's footer.

ROUTER · THE QUESTION INVOLVES → PAGE

Was the loss caused by the breach; is it too remote?	CLA ss 5A, 5D; judgments	**CON · 1 Causation; remoteness**
How much: expectation, reliance, a lost chance, distress	CLA	**CON · 2 Measure of damages**
Should the plaintiff have reduced the loss; damages after termination	judgments	**CON · 3 Mitigation; termination**
A sum fixed by the contract: the price, a fee, a penalty	judgments	**CON · 4 Debt; penalties**
Pressure from a trusted person; a guarantee by a spouse	judgments	**CON · 5 Undue influence**
A special disadvantage taken advantage of	judgments	**CON · 6 Unconscionable dealing**
An unjust contract; unconscionable or unfair terms under statute	CRA; ACL ss 20–24	**CON · 7 Statutory unfairness**
Threats to the person, to goods, to the business	judgments	**CON · 8 Duress**
Both or one were mistaken; the document is wrong; "not my deed"	judgments	**CON · 9 Mistake**
A false statement induced the contract	judgments	**CON · 10 Misrepresentation**
Misleading conduct in trade or commerce; statutory remedies	ACL ss 4, 18, 236, 237, 243; CLA Pt 4	**CON · 11 Misleading or deceptive conduct**
Which case to cite	the judgments	**CON · 12– Cases in the exam**

THE ANSWER, IN ORDER (EVERY PAGE)

1	The contract and the breach or flaw	Identify the term breached, or the vitiating factor, and who sues whom.
2	The doctrine or provision	State the rule with its elements, from the page.
3	The facts	Apply each element to the facts in turn.
4	Limits and bars	Remoteness, mitigation, affirmation, third-party rights, or a statutory limit, as the page lists them.
5	Remedy; venture an answer	Damages (and the measure), rescission, or a statutory order; then "[party] is entitled to [remedy]."

Damages (1): causation and remoteness CLA ss 5A, 5D

USE THIS PAGE WHEN	a breach followed by loss with other causes too; lost profits or a lost deal after late or defective performance; the defendant says it could not have foreseen the loss; special circumstances told (or not told) at contracting.
OPEN	Civil Liability Act 2002 ss 5A, 5D; the judgments.
FIRST QUESTION, ALWAYS	was the breach a cause of the loss, and was that kind of loss within the parties' contemplation when they contracted?

RELATED PAGES · CON·2 · CON·3.

cause
common sense

Several causes of the loss

→ Whether the breach caused the loss is judged "as a matter of ordinary common sense and experience" (March v Stramare at 522, via Edwin Davey [86]).

March v Stramare (via Edwin Davey [86]): Edwin Davey not on the list
▸ *facts not verified*

s 5D
necessary condition

Breach of a contractual duty of care

→ Pt 1A applies to a claim for harm from negligence "regardless of whether the claim is brought in tort, in contract" (s 5A(1)); so causation is the s 5D test: "a necessary condition of the occurrence of the harm" (s 5D(1)(a); Libra v Bhide [247]).

Libra v Bhide · CLA s 5D: McColl JA; Meagher JA, Ward JA agreeing; not on the list
▸ *facts not verified*

Hadley
two limbs

Was the loss too remote?

→ Damages "as arise naturally, that is, according to the usual course of things, from the breach of contract, or such damages as may reasonably be supposed to have been in the contemplation of both parties … as the probable result of the breach" (Hadley v Baxendale via European Bank [13]); the two limbs state "a single principle" (Amann via [13]).

European Bank v Evans: French CJ, Gummow, Hayne, Heydon and Kiefel JJ; not on the list
▸ *facts not verified*

likely
not unlikely

How likely must the loss have been?

→ It is "generally sufficient that that event would have appeared to the defendant as not unlikely to occur" (Lord Reid in Koufos at 388, via Edwin Davey [102]); it "has never been held to be sufficient in contract that the loss was foreseeable as 'a serious possibility'" (Lord Reid at 390, via Stuart v Condor [118], Ipp JA).

Stuart v Condor: Beazley JA; Ipp JA ([118] is his reasons), Tobias JA agreeing with both; not on the list
▸ *a fire from faulty work; lost profits*

kind
type of loss

More loss than anyone expected

→ The parties need contemplate only "the kind or type of loss or damage that was suffered", not its "degree or extent" (Edwin Davey [105], citing Alexander at 365–366, McHugh JA).

limb 2
contemplation

Special circumstances told at contracting

→ What was in contemplation depends on the terms of the contract "in the light of the matrix of circumstances in which it was made" (Amann, Mason CJ and Dawson J at 92, via Edwin Davey [101]).

Edwin Davey v Boulos: Gleeson JA; Macfarlan JA, Simpson AJA agreeing; not on the list
▸ *a mortgagee's discharge refused; a purchaser's deposit at risk*

DECIDE

Causation and remoteness

1 Is the claim for breach of a contractual duty of care (CLA s 5A)? →
- **YES** causation under s 5D: a necessary condition
- **NO** common law: did the breach cause the loss, as a matter of common sense (Edwin Davey [86])?

2 Did the loss arise naturally from such a breach, or from special circumstances known at contracting (European Bank [13])? **NO** → too remote

YES ↓

3 Was that kind of loss not unlikely to occur, judged at contracting (Edwin Davey [102], [105])? →
- **YES** recoverable
- **NO** too remote

SAY

As a matter of common sense, D 's breach in conduct caused P 's loss of loss . (Edwin Davey [86]) D 's duty was to take reasonable care in conduct , so causation is tested under CLA s 5D. (CLA ss 5A, 5D; Libra [247]) Loss arises naturally from such a breach, or was contemplated because D knew fact . (Hadley (via European Bank [13])) When the contract was made, kind of loss would have appeared to D not unlikely to occur. (Koufos (via Edwin Davey [102]))

It does not matter that P 's loss was greater than expected. (Edwin Davey [105])

MARKS LOST

1. Causation tested by anything but common sense (Edwin Davey [86]).
2. s 5D missed for a contractual duty of care (Libra [247]).
3. Tort's reasonable foreseeability applied to contract (Stuart [118]).
4. The two limbs treated as unrelated tests (European Bank [13]).
5. Remoteness judged at breach, not at contracting (Edwin Davey [102]).
6. The extent of loss required to be contemplated (Edwin Davey [105]).