**FORMATION** – Consideration (Part payment, Accord and Satisfaction and the ‘cheque cases’ and ‘practical benefits.

**Part Payment** – *[Pinnel’s Case, Coke CJ]* Payment of a smaller amount in full satisfaction of a debt is not consideration and does not remove obligation to pay.

**Unless** - *[Pinnel’s Case, Coke CJ]* Something else of value is provided as consideration for the forbearance to sue for the full amount or the payment is before the date the payment is due.

**Or** – [Judicature Amendment Act 1908, s92] The part payment is made and a receipt in writing and signed by the payee acknowledges that the part payment is in satisfaction of the full amount.

**Promissory Estoppel** – Provides an exception to the rule that a promise is not enforceable where it is given without consideration.

**Definition/Function** *[Central London Property Trust Ltd v High Trees House Ltd, Denning J]* If someone promises, without consideration, not to consideration, not to enforce a legal right, and -the other party acts on the promise –to the determent of that person, then the right that was forgone can only be resurrected on reasonable notice to the other party, as to future obligations.

**Test** *[Gillies v Keogh]* The New Zealand Promissory Estoppel test contains three elements: 1.Encouragement of a belief or expectation 2.Reliance on that belief or expectation 3.Detriment to the other party.

**Pre-contract** *[Burbery Mortgage and Finance and Savings Ltd v Hindsback Holdings Ltd]* Promissory Estoppel does not depend on there being a contract but can be used before the parties have entered into a contract.

**As a defence and cause of action** *[Goldstar Insurace Ltd v Gaunt]*Promissory Estoppel may be used as a defence, as in the *High Trees* case, and also be used as a cause of action(to start a court action).

**Requirements** – *[The Scraptrade Case]* A clear unambiguous representation or promise. –*[Gillies Case]* The other party having relied on the statement so that it is unconscionable for the promisor not to acknowledge the statement. –*[Emmanuel Ayodeji Ajayi v RT Briscoe (Nigeria) Ltd]* The promisor being able to reinstate the original position on reasonable notice unless the promisee is unable to resume the original position. –*[Homeguard Products Ltd v Kiwi Packaging Ltd]* That it cannot be used to reduce a debt that has already fallen due for payment. –*[Waltons Stores Interstate Ltd v Maher]* The remedy is to remove the inequity, whatever is necessary to prevent unconscionable conduct. –The application of the usual rules of equity to the part of the person seeking to apply the doctrine, that is “clean hands”, “laches”.

**Deeds** 1. Consideration is not necessary 2. A gratuitous promise is enforceable 3. An outsider who is given benefit in a deed can enforce the obligation.

**Cheque Cases**

**Old Law on Banking cheques** –[*Homeguard Case]* The banking of the cheque is satisfaction and accord.

**Where No Genuine Dispute** –*[HBF Dalgety Case]* No genuine dispute: “my estimate of costs on a work done basis”. Letter written stating amount not accepted in full settlement. Therefor no Accord & Satisfaction.

**New Law on Banking cheques** –*[Magnum Case]* Act of banking is not conclusive. It must be communicated that the banking of the cheque is not full settlement. Conduct must be linked to the offer. No accord unless meeting of the minds. Reasonable time or lapse of time is a factor to be considered.

**Accord and satisfaction** is a [contract law](http://en.wikipedia.org/wiki/Contract_law) concept about the purchase of the release from a [debt](http://en.wikipedia.org/wiki/Debt) obligation. The payment is typically less than what is owed and is not paid by the actual performance of the original obligation. The accord is the agreement to discharge the obligation and the satisfaction is the legal "[consideration](http://en.wikipedia.org/wiki/Consideration)" which binds the parties to the agreement.

**Misrepresentation** –*[Edgington v Fitzmaurice]* An untrue statement of fact about an existing or past matter.

**Change of intention** –*[Buxton v The Time Shares Resort Ltd]* Statement of intention that is true does not become misrepresentation under future change of intention.

**Future Statement** -*[Ware v Johnson]* A future statement that necessarily implies present misrepresentation is misrepresentation.

**Statement of Opinion** –*[Bissett v Wilkinson]* A statement of opinion is not a statement of fact and if untrue is not misrepresentation.

**Puff** –*[Scott v Hanson]* A puff is not a statement of fact and is therefore not misrepresentation. **Unless** Fair Trading Act 1986 Applies.

**Wrong Statement of Law** –*[Edgington Case]* A false statement of law is not misrepresentation. **Unless** The statement is an opinion of what the law is and the make of the statement knows that it is wrong.

**Silence** –*[Fox v Mackreth]* Silence is not misrepresentation. **Unless** –*[Thompson v Vincent]* Statement is a partial truth which distorts position. –*[With v O’Flanagan]* Statement was true when made but changing circumstances render it no longer true and the maker does not advise of the changing circumstances. –*[Dell v Beasley]* Silence cannot be seen to affirm a misrepresentation, or not remove one.

**Contract Term Misrepresentation** –*[Contractual Remedies Act 1979, s6(1)]* A contract term that is a misrepresentation that induces one into a contract is open to damages.

**Essential Matter Misrepresentation** –*[Remedies Act, 7(3),(4)]*A misrepresentation of essential/important matter to a party opens the right to cancel a contract or seek damages as a remedy. **Unless**–*[Remedies Act, s7(5)]* Party affirms contract in knowledge of misrepresentation.

**Inducement** –*[Savill v NZI Finance Ltd]* There is only inducement when a representation was made that intended to induce, or would usually induce someone. **No inducement when** –*[Re Northumberland and Durham District Banking Co, ex parte Bigge]* Plaintiff unaware of misrepresentation. –*[Smith v Chadwick]* Plaintiff did not rely on misrepresentation. –*[Buxton v The Birches Time Share Resort Ltd]* Plaintiff knew of misrepresentation before contract formation.

**Remedies** –*[Remedies Act, s6(1)]* Damages are calculated as if there was a breach of contract.

**Fair Trading Act** – A misrepresentation will introduce the Fair Trading Act 1986.

**Contracting out of Liability** –*[Remedies Act s4,5]* A contract may provide for the contracting out of liability for a misrepresentation made by or on behalf of a party.

**Agents** –*[Remedies Act, s6(2)]*Agents are open to be sued for fraud and negligence in tort if involved in misrepresentation of their client.

**Pracitcal Benefits** –*[Williams v Roffey Bros & Nicholls (contractors) Ltd]* The Court of Appeal held that Roffey Brothers must pay Williams the extra money, as they had enjoyed practical benefits from the promise they had made to Williams. The benefits they received from it include: Having the work completed on time, not having to spend money and time seeking another carpenter and not having to pay the penalty. In the circumstances, these benefits were sufficient to provide consideration for the promise made to Williams of additional payment.

**Undue Influence**

**Burden of Proof** –*[Royal Bank of Scotland plc v Etridge (no.2)]* The burden of proof lies with the person making claim of undue influence.

**Actual Undue Influence** –*[Etridge Case][R v Attorney-General for England and Wales]* Situations of undue influence where on party overtly uses improper pressure or coercion or lawful threats. In this situation all transactions are set aside.

**Presumed Undue Influence** –*[Etridge Case][R v AG England-Wales]* Where one party takes unfair advantage of trust and confidence.

**Special Relationships** –*[Etridge Case]* Irrebuttable presumption of trust and confidence between parent and child, guardian and ward, trustee and beneficiary, doctor and patient, solicitor and client. Husband and Wife do not have this.

**Prove trust and confidence** –*[Etridge]* In relationships not mentioned above, it must be proved there was trust and confidence of the stronger party to manage the financial affairs of the weaker.

**Free Will** – In relationships not mentioned above, the stronger party may rebut a presumption of trust and confidence by displaying that the weaker party entered into the contract by free will.

**Unconscionable Bargains** -*[O’Connor v Hart]* There is an Unconscionable Bargain where a poor or ignorant person enters into a contract which is not a fair or reasonable transaction, without independent advice. Only enforceable when other party was aware of the incapacity. **Equitable Fraud** refers to an unconscientious use of power arising from the circumstance, i.e. active extortion or passive acceptance of a benefit in unconscionable circumstances. **Relief** will be granted where a stronger party unconscientiously takes advantage of the other.

**[Gustav & Co Ltd v Macfield Ltd Case]**

–**Equity** will intervene to relieve a party from the rigours of the common law in respect of an unconscionable bargain. This **Equitable Jurisdiction** is not intended to relieve people from “hard” bargains or from their own foolishness. A **qualifying disability or disadvantage** does not arise simply from an inequality of bargaining power. Rather, it is a condition that inhibits a persons ability to assess their own best interests. I.e. Mental disability, age, lack of education and stress and anxiety. If one party is under a **qualifying disability or disadvantage** the focus shifts to the actions of the other party. **Essential Question** is whether it is unconscionable to permit the stronger party to take benefit of the bargain. **Before a finding of unconscionability** the stronger party must be aware of the disability/disadvantage and knowingly exploit it. The **Requisite Knowledge** may be that of the principal or an agent, and may be actual or constructive. Factors associated with the substance of a transaction (i.e. marked imbalance in consideration) or the way in which the transaction was concluded (i.e. failure of one party to receive independent advice in relation to a significant transaction) may lead to a finding that the stronger party had constructive knowledge, being put on inquiry. If inquiry is absent they (stronger) will be treated as though aware of disability or disadvantage.

**Unconscionable Victimisation** –*[Bowkett v Action Finance Ltd, Tipping J]* Unconscionable Victimisation will occur when there are: Circumstances which are either known or which ought to be known to the stronger party in which he has obligation to say to the weaker party: no, I cannot in all good conscience accept the benefit of this transaction in the circumstances either at all or unless you have full independent advice. **Burden on Stronger Party** –*[Gustav Case]* If these requirements are met the burden lies with the Stronger party to display that the transaction was fair and reasonable, therefore uphold able.

**Limiting Factors/Capacity/Minors**

**Property Law Act** –*[Property Law Act, s24]* A contract for the disposition of land is not available unless: 1.The contract is in writing; or 2. It’s terms are recorded in writing, and 3. The contract or written record of the terms is signed by the party against whom the contract is sought to be enforced.

**Previous Law** –*[Tweddell v Henderson]* Under the previous law the requirements of the writing were – a note or memorandum of the contract should: (i) Be in writing; (ii) Identify the parties to the contract; (iii)identify the nature of the consideration; (iv) Identify the subject matter of the contract; (v)Record any other material term that the parties have agreed.

**Joinder of documents** –*[Saunderson v Purchase]* Under the previous Act the Courts allowed joinder of documents. Where there is a document, signed by the party to be charged but it does not have sufficient information to satisfy the requirements of the act , two documents can be read together so as to constitute a sufficient memorandum for the purposes of the Act. The signed document must contain a reference, express or implied, to the other document. Because the two documents are linked on the face of it they can be read together to satisfy the requirements of the Act.

**Part Performance** *–[Property Law Act 2007, s26]* Courts have allowed proof of acts done in performance of the contract to be sufficient to create an enforceable contract.

**Part Performance Test** –*[T A Delleca Ltd v PDL Industries Ltd]* Established by Tipping J, it follows:

1. Was there a sufficient oral agreement such as would have to been enforceable but for the Act?
2. Has there been part performance of the oral agreement by the doing of something which: (a) Clearly amounts to a step in the performance of a contractual obligation or the exercise of a contractual right under the oral agreemet; or (b) when viewed independently of the oral contract was, on the probabilities, done on the footing that a contract relating to the land such as that alleged was in existence.

Do the circumstance in which part performance took place make it unconscionable (fraudulent in equity) for the defendant to rely on the Act?

**Part Performance Examples** –*[i.e. Steadman v Steadman]* Examples of actions that could be acts of part performance are payment and acceptance of a deposit on the sale of land, payment and acceptance of a deposit on the sale of land, payment and acceptance of rent (for a lease), and preparation of legal documents necessary to transfer legal ownership.

**NEW LAW FORM (PROPERTY LAW ACT)**

**Sale and Disposition of Land** – Sale of Land and dispositions of land will still have to be recorded in writing to be enforceable and signed by the party against whom the contract is sought to be enforced (s24 or by Agent) [s6].

**“Dispositions of Land”** –*[s24]* Disposition of Land will include most sales and leases of land, but will not include a short-term lease, for example, a lease of one year or less (s206).

**Guarantee** Old law (Contracts Enforcement Act) only required a guarantee to be signed by the guarantor. The new law (s27) requires the guarantor to write and sign the guarantee.

**Drunk Persons** –*[Kurth v McGavin]* Drunk persons are not in capacity to sign a contract.

**Minors bound to contract** –*[Minors’ Contracts Act 1969, s6]* Minors are not bound to a contract unless it is ‘fair and reasonable’.

**Life Insurance Contract Minors** *–[Minors’ Act, s5]* Enforceable unless ‘harsh and oppressive’ or consideration so inadequate as to be unconscionable.

**Remedies** –*[Co-operative Insurance Co Ltd v Argyll Stores (Holdings Ltd)]* Damages is the common remedy in contract Law.

**Repudiation** –*[Paper Reclaim Ltd v Aotearoa International Ltd]* Repudiation of a contract, unless accepted, cannot have legal effect on the existence of a contract. Damages are available for a breach of contract, not repudiation.

**Equitable Remedies** are available where damages does not provide adequate remedy.

**Measure of Damages** –*[Stirling v Poulgrain]* The amount of damages that the plaintiff is awarded. They are entitled to be put in a position that they would be, had the contract occurred.

**Expenditure & Lost Profit** –*[McRae v Commonwealth Disposals Commissioner]* Expenditure on a contract is recoverable but lost profit is not as it is too speculative.

**Single Recovery** A plaintiff may only recover damages for the same loss once **Therefore** –*[Herbinson v Papakura Video Ltd]* Where there is lawful cancellation the plaintiff may recover the purchase price or lost profits but not both. –*[Cycle Manufacturing Co Ltd v Williamson]* A plaintiff may not claim damages on loss of goodwill or loss of income.

**Quantifying Loss** –*[Ruxley Electronics Ltd v Forsyth]* When quantifying loss a plaintiff may claim on either the difference between what was promised and what was received OR the cost of curing the breach OR the loss of amenity. Where there is no difference between the first two, the courts will chose loss of amenity.

**Time Assessed** –*[Jackson v Royal Bank of Scotland plc]* The loss assessed at the time the contract is broken. **Unless** –*[Stirling v Poulgrain]* Justice requires another date. –*[Johnson v Agnew]* The innocent party tries to keep the contract alive in which case the assessed time is when the contract is loss. –*[East Ham Corporation v Bernard Sunley & Sons Ltd]* There is a claim for the repair of the premises and the plaintiff discovers the need for repairs some time later and then acts to repair in a reasonable time. –*[McElroy Milne v Commercial Enterprises Ltd]* The defendants breach makes the asset unsaleable and then there is a drop in the market or the asset is unsaleable.

**Amount of Damages** –*[Abrahams v Herber Reiach Ltd]* The amount of damages is based on the legal obligations of the defendant, not other factors. **Unless** –*[Lion Nathan Ltd v CC Bottlers Ltd]* The damages do not depend on how the defendant would have performed the contract.

**Loss of Chance/Opprotunity** –*[Chaplin v Hicks]* Where there is a claim of loss of chance or opportunity, damages will be awarded where it is proven there was a real or substantial chance that was lost.

**Tax Obligations** –*[North Island Wholesale Groceries Ltd v Hewin]* Damages will be awarded regardless of the tax obligations of the plaintiff (who must account for them to the IRD under tax legislation).

**Exemplary Damages** –*[Paper Reclaim Ltd Aotearoa International Ltd]* Exemplary (or punitive) damages will not be awarded for breach of contract.

**Remoteness of Damage** –*[Hadley v Baxendale]* Damages can be claimed for those things as may fairly and reasonably be considered either arising naturally from the breach of contract (the first part of the rule), or as being in the reasonable contemplation of the contracting parties to arise from a breach of the contract (the second part of the rule). –*[Victoria Laundry (Windsor) Ltd v Newman Industries Ltd]* Damages will be awarded for a loss actually arising that was at the time of the contract reasonably foreseeable to result from the breach. What is foreseeable depends on the knowledge possessed by the parties at the time of making the contract. The knowledge may be actually known or may be knowledge that a reasonable person is taken to know in the ordinary course of things.

**Actual Losses** –*[Addis v Gramophone Co Ltd]* Damages will be awarded for actual losses arising from the breach of contract. **Unless** –*[Wilson v United Counties Bank Ltd]* There is financial loss arising from the breach. –*[Baltic Shipping Co v Dillon]* The object of the contract is to provide peace of mind or enjoyment or the prevention of distress. –*[Attorney-General v Gilbert]* An employee receives physical or psychiatric harm from an unsafe workplace.

**Failure to pay money** –*[William v Reynolds]* Where the breach is a failure to pay money under a contract, the only damages will be the amount not paid. **Unless(interest)** –*[Broadbank Corporation Ltd v Mosgeil Ltd]* The contract provides for interest. The interest rate is the commercial value of money. –*[Judicature Act 1908, s87; Day v Mead]* The high court may award interest from the date of the cause of action until judgment where the claim is for a debt which is a capital sum which is unpaid at the completion of proceedings. –*[High Courts Rules, R 538]* A judgment debt in the High Court attracts interest from the date of judgment. –The second part of the rule in *Hadley v Baxendale* indicates that there is a further monetary loss that can be claimed.

**Plaintiff Mitigate Loss** –*[British Westington Electric and Manufacturing Co Ltd v Underground Electric Railway Co Ltd]* The plaintiff must take reasonable steps to mitigate (lessen) the loss suffered by the breach of contract.

**Mitigation Costs** –*[Andros Springs (Owners) v World Beauty (Owners)]* Where a plaintiff takes reasonable steps to mitigate a loss and incurs further costs or damages, they may be added to an award od damages. This is further exception to the rule of *William v Reynolds.*

**Mitigation Benefits** –*[British Westington Case]* Where mitigation places a plaintiff in a better position then would have been the case if the contract were completed by the defendant, the betterment is deducted from the loss claimable.

**Unaccepted Repudiation** –*[White and Carter (Councils) Ltd v McGregor]* Where a defendant repudiates a contract and the plaintiff does not accept the repudiation but keeps the contract alive and waits for a breach, there is no duty on the plaintiff to mitigate the loss until there is an actual breach of contract.

**Contributory Negligence Act** –*[Forsikringsaktieselskapet Vesta v Butcher]* The Contributory Negligence Act 1947 applies where there is a loss in both contract and in tort out of the same event where there the claim is brought under the contract only (and the loss arose partly as a result of the fault of the plaintiff).

**Contract specifying Cost of Breach** –*[Wallis v Smith]* Where a contract applies a sum or calculation as damages for breach of a contract which is a genuine pre-estimate of the cost of breach (liquidated damages), that is the only amount that can be claimed. **Unless** –*[Workers Trust & Merchant Bank Ltd v Dojap Investments Ltd]* The amount is more than a genuine estimate of loss (a penalty). A penalty will not be enforced and the plaintiff must claim actual losses.

**Contract specifying Remedy** –*[Remedies Act, s5]* Where a contract provides a remedy for a misrepresentation, a repudiation, or a breach of contract, the provision takes precedence over the relief provisions in the Contractual Remedies Act 1979.

**Common Law Rules** –*[Yoon v Cullen]* The common law rules will be applied where they provide a just balance between the parties. **Unless** –*[Remedies Act, s9(1)]* They do not provide a just balance between the parties. A court may then apply such remedy as it thinks just and practical.

**Where Financial Remedy is inadequate** –*[Attorney-General for England and Wales]* Specific performance is discretionary an is not available as of right (in Common Law jurisdictions) but will be awarded where damages or other financial relief is inadequate. **Example** –*[Pusey v Pusey]* If the contract is for sale of goods and the article is of particular (sentimental) value or importance.

**Injunction** –*[Martin v Nutkin]* An injunction may be ordered where damages or other financial relief in inadequate, either as a prohibition to enforce a negative covenant or a mandatory injunction to direct a defendant to undo what has been done in a breach of contract.

**Examples of when a discretion to exercise an equitable remedy has not been exercised are when:** -*[A-G for England & Wales v R]* There was unfairness in making the contract. –*[Co-operative insurance society Ltd v Argyll Stores (Holdings) Ltd]* There would be hardship to the defendant. –*[Rigby v Connol]* The contract was to perform personal services. –*[Ryan v Mutual Tontine Westminster Chambers Association]* Constant supervision is required. –*[Eastern Services Ltd v No 68 Limited]* Although delay by itself is no bar to relief in equity, laches is an equitable defence that arises when the plaintiff has delayed in seeking a remedy and the defendant also has an equity which on balance outweighs the plaintiff’s right (the balance of equities).

**Accounting of Profits** –*[A-G v Blake]* It is possible in some circumstances for a plaintiff to obtain an accounting of profits for breach of contract, where damages are not an adequate remedy, and specific performance would be oppressive.

**Repudiation/Cancellation of Contract**

**Frustration** –*[Davis Contractors Ltd v Fareham UDC]* Frustration arises when an external event, not contemplated by the parties, and for which neither is responsible, supervenes and that event so significantly changes the nature of the outstanding contractual rights and/or obligations that the venture is radically different from that originally contemplated.

**Self-induced Frustration** –*[Maritime National Fish Ltd v Ocean Trawlers Ltd]* A party cannot rely on frustration that is self-induced.

**Less-profitable Events** –*[Davis Case]* Supervening events that simply make the contract less profitable are not enough for frustration.

**Frustration and Termination** –*[Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd]* The occurrence of frustration automatically terminates the contract as to the future.

**Frustrated Contracts Act** –*[Frustrated Contracts Act 1944, s3(2)]* The Frustrated Contracts Act gives the Court the discretion to adjust the relative financial consequences of the discharge of a frustrated contract to the parties concerned. Money due at the time of discharge need not be paid and money already paid may be recovered. However, the Court does have discretion to authorise the retention of money for expenses for work already done (where the money has already been paid) or the recovery of expenses for work already done (where the money has not yet been paid). **–*[Frustrated Contracts Act 1944, s3(2)]*** Valuable benefits received (other than payment of money) may have to be paid for – a party can recover payment for valuable benefits received by the other party for such sum as the Court considers just. The benefit must have been obtained before discharge.

**RULES FOR DISCHARGE UNDER CONTRACTUAL REMEDIES ACT** – These rules apply to all contracts except: **Sale of Good Contracts** –*[Remedies Act, s15]* The appropriate law for breach of contract for the sales of goods is found in the Sales of Goods Act 1908. **Contracts that provide own remedies** –*[Remedies Acts, s5]* The parties to a contract can agree their own remedies and these will prevail over the Act as long as they are expressly stated in the contract. **Cancellation Reasons** –*[Remedies Act, s7]* A contract can be cancelled for repudiation, substantial misrepresentation, and substantial breach. **Repudiation of Contract** –*[Remedies Act, s7(2)]* A party may cancel a contract if, by words or conduct, another party repudiates the contract by making it clear that he or she does not intend to perform the obligations (or complete the obligations as the case may be).  **Substantial Misrepresentation** –*[Remedies Act, s7(4)]* A party to a contract may cancel if he or she has been induced to enter into it by a misrepresentation by the other party **(**s7(3)(a)) but only if the misrepresentation is essential or substantial. **Substantial Breach of Term** –*[Remedies Act, s7(4)]* A party to a contract may cancel if a term in the contract is broken by another party to the contract (s7(3)(b)), or it is clear that a term will be broken (s7(3)(c)) , but only if the breach is substantial or essential. **“Essential” Criterion** –*[Remedies Act, s7(4)(a)]* If the parties have expressly or impliedly agreed that the truth of the representation or, as the case may require, the performance of the term is essential to the party seeking to exercise the right to cancel. **“Substantial” Criterion** –*[Remedies Act, s7(4)(b)]* The effect of the misrepresentation or the breach is to: (i) Substantially increase the burden; or (ii) Substantially reduce the benefit; or (iii) Substantially change the benefit or burden, of the cancelling party under contract. **Stipulations as to time** -*[MacIndoe v Mainzeal]* Time under a contract is not of the essence just because a date is given for completion of performance. Time will only be considered to be of essence where: 1. The parties expressly stipulate that the conditions as to time must be strictly complied with; or 2. The surrounding circumstances show that time should be considered to be of the essence; or 3. A party who has been subjected to unreasonably delay gives notice to the party in default making time of the essence. However, the time fixed in such a notice must be reasonable from both parties’ points of view, taking into account all circumstances. **Failure to perform by a time** –*[MacIndoe v Mainzeal]* Failure to perform by a time that the parties have agreed is of the essence, is grounds for cancellation under s7(3) and (4). In relation to a notice given by a party who has been subject to unreasonable delay, the notice can be seen as making any delay beyond the reasonable specified date fixed in the notice evidence of repudiation and therefore a ground for cancellation under s7(2) or alternatively show a substantial breach under s7(4)(b). **Waiver Time of Essence** –*[Charles Rickards Ltd v Oppenhaim]* Time of the essence can be lost by waiver but can be reinstated by the same kind of notice as mention above, one that is reasonable to both parties. **Affirmation** –*[Remedies Act, s7(5)]* A party will lose the right to cancel if he or she, with full knowledge of the repudiation or misrepresentation or breach elects to affirm the contract. **No cancellation without notice** –*[Remedies Act, s8]* The cancellation of a contract will not take effect until notice is given. **Effect of Cancellation** - Upon cancellation: (i)[8(3)(a)] No party is obliged or entitled to perform the contract further; (ii)[s8(3)(b)] but relief (including payment of money and transfer of property) is available from the Court at the Court’s discretion[s9], and damages may still be claimed [s8(4) & 10].

**Contents of Cotract**

**Expressed terms**: What did the parties say/write? **Implied terms**: What did the courts/statute add? **Parol Evidence Rule** Extrinsic evidence will not be admitted to “add to, vary, or contradict” a written document. **Factual Matrix** The facts of a case that play a fact in determining fault or guilt of a party i.e. wrongdoings of defendant and mitigating factors.