

# Lawyers and Actuaries Contact through being sued Acting as an expert witness Working jointly on deals (share sales/restructuring) Advising or reporting to in house legal team Personal life

### What lawyers do

- Advise on the law
- Advise on commercial matters
- Draft documentation to reflect a deal
- Act for or against litigants

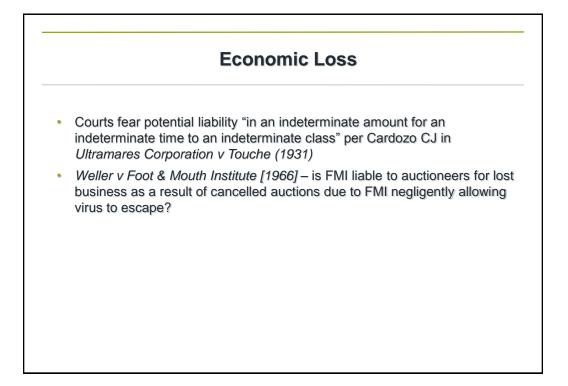
# A Duty of Care

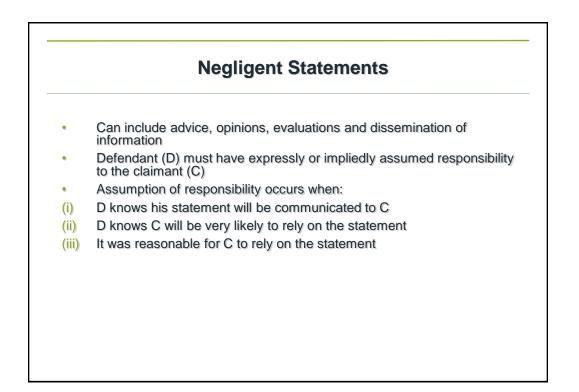
- Foreseeability of damage
- Proximity of relationship

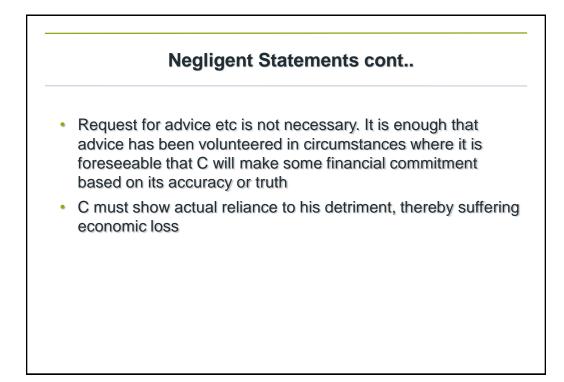
Justice and fairness
 Caparo Industries plc v Dickman [1990]

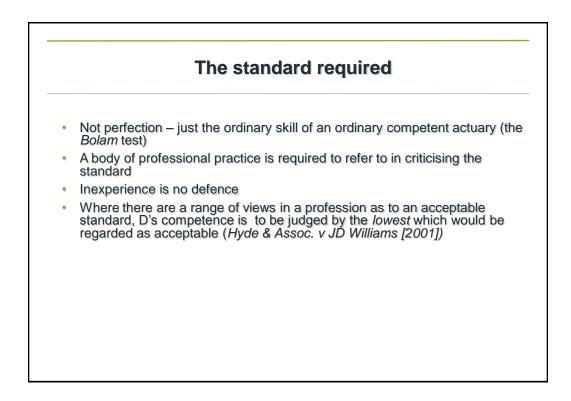
### The "nervous shock" cases – Alcock v Chief Constable of South Yorks Police [1991]

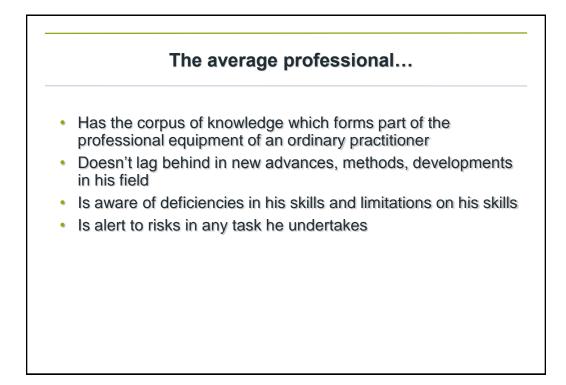
- Persons present who suffer physical injury
- Persons present who suffer psychiatric injury as a result of fear for their own safety
- Persons present who suffer psychiatric injury as a result of fear for someone else's safety
- Persons not present who suffer psychiatric injury as a result of fear for someone else's safety

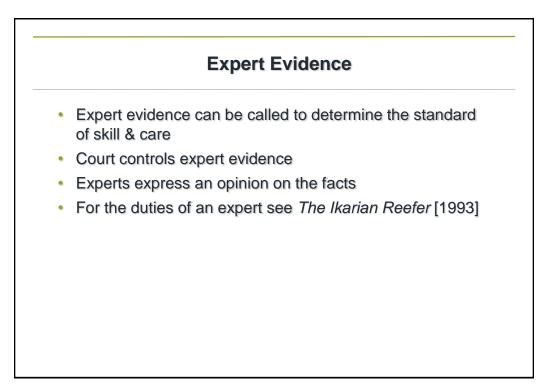


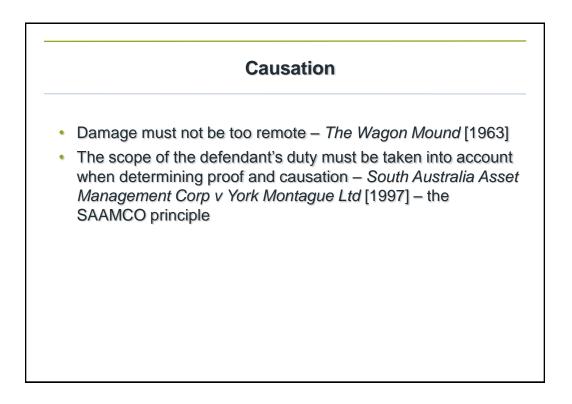






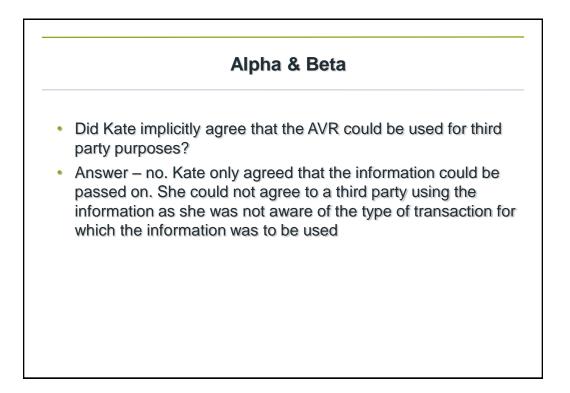


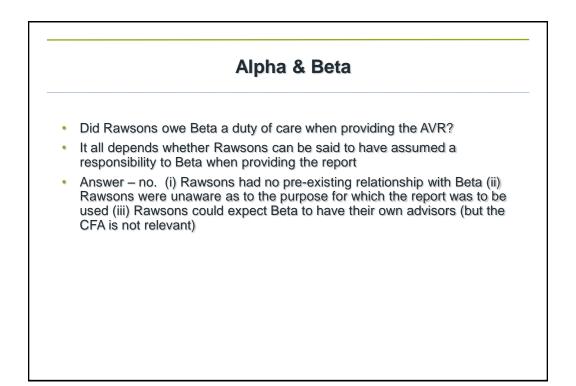


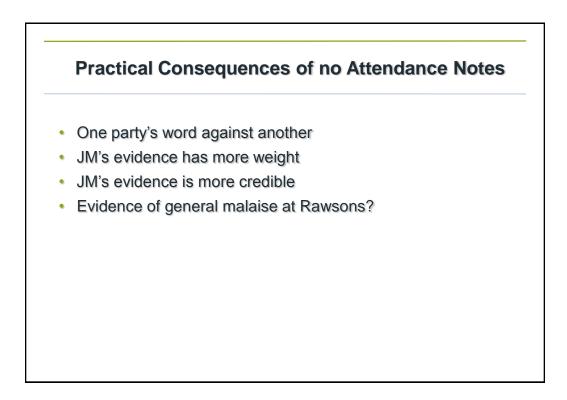




- Was the purpose for which Beta used the information in the AVR (to calculate the offer price for A's shares) a purpose expressly permitted in the AVR?
- Answer no. Para 2.2 of the AVR envisages the AVR being used for purposes connected with management of the fund, not a review which third parties might wish to undertake for their own purposes

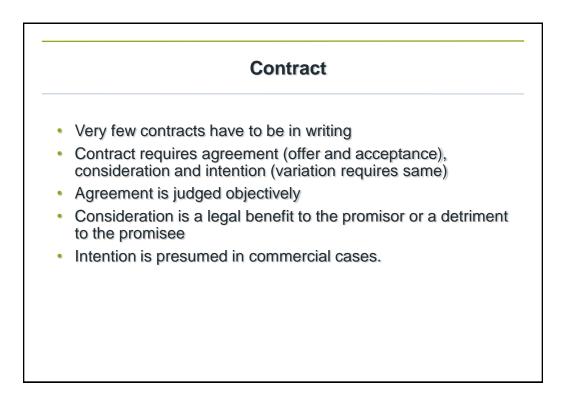






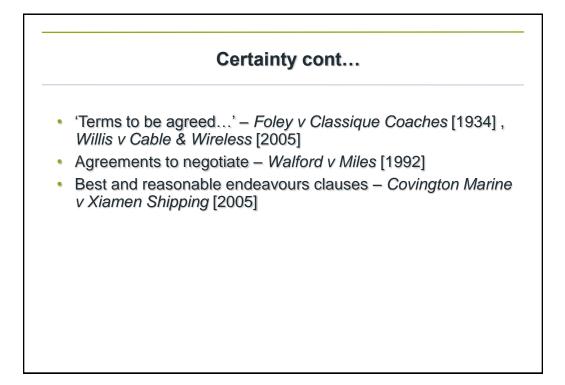


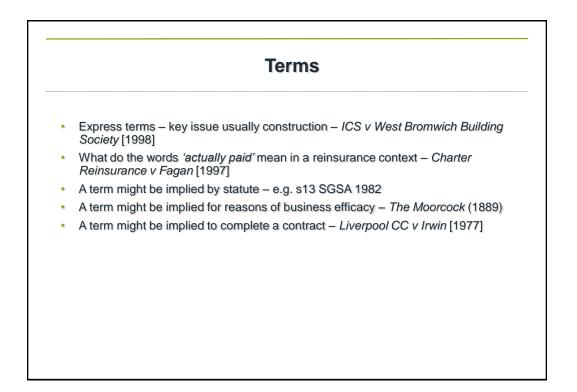
- What was Rawson's breach of duty?
- Answer it was negligent in respect of the advice relating to the position if S&E became insolvent. The reason JM lost out was not because of S&E's insolvency, but was due to an unrelated legal ruling
- Applying SAAMCO no liability

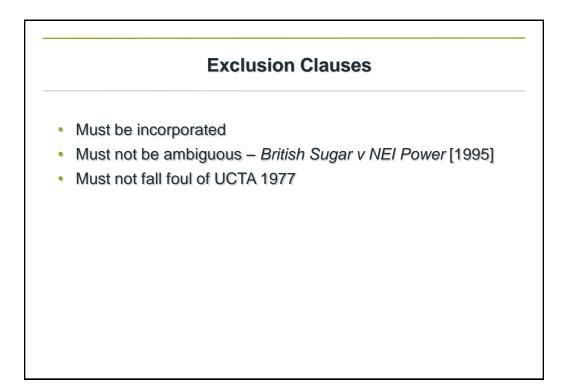


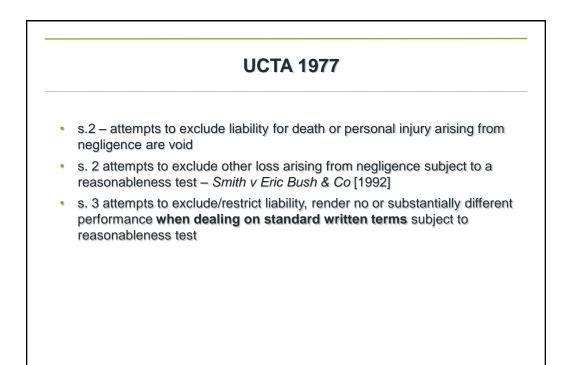
## Certainty

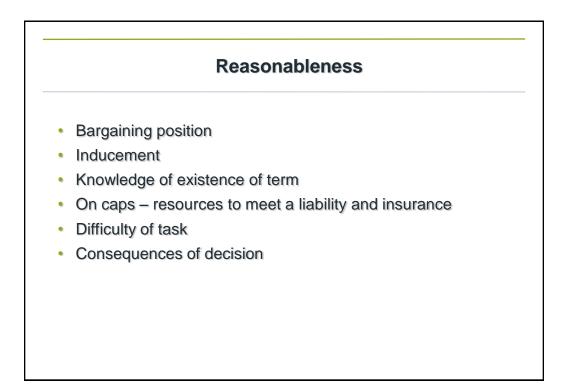
- 'Agreement in principle...'
- 'Agreement subject to resolution of points X, Y and Z'
- 'Subject to Contract' Rugby Group v Pro-Force [2005]
- Comfort Letters Klienwort Benson v Malaysia Mining Corp [1989]





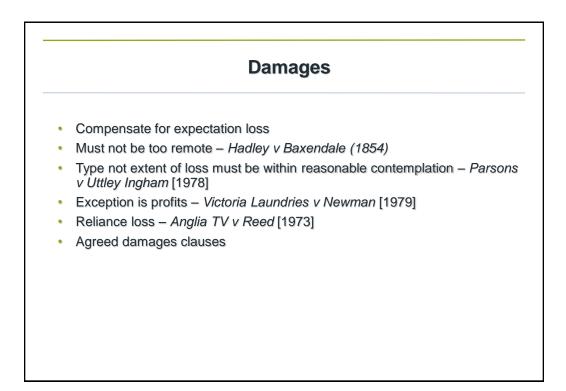






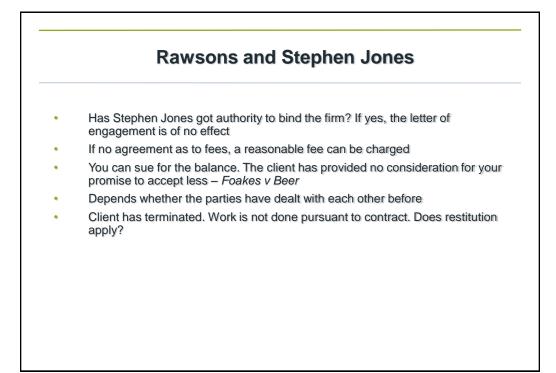
### **Discharge of Contract**

- By performance
- By frustration
- By agreement
- By breach



### **Misrepresentation**

- A false statement of fact which induces another to enter a contract *Peekay v ANZ Banking Group* [2006]
- Can be fraudulent, negligent or innocent
- Rescission is primary remedy
- · Damages might be available

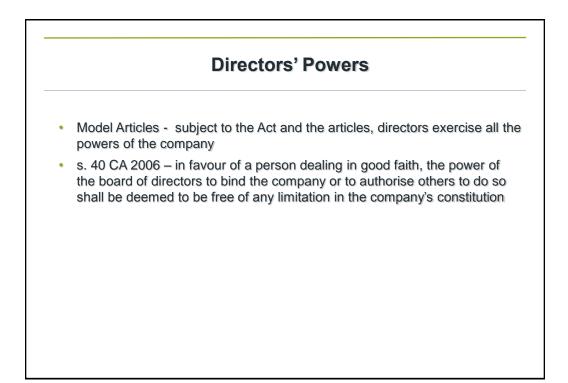


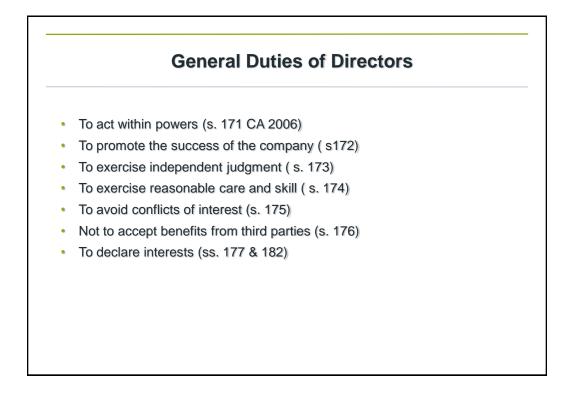
### **Rawsons & UG**

- · The two limbs are to be read together
- · Limb one is a positive statement of that for which Rawsons accept liability
- The word 'other' in the second limb means limb one takes precedence.
- 'all other liability' includes losses in limb one which exceed the cap
- Loss and damage are excluded by limb two only if not covered by limb one

### **Company Law – Capacity of Company**

- · Capacity unlimited unless there is a restriction in the articles
- s. 39 CA 2006 protects third parties where a company lacks capacity





### Who is a Director

- De jure directors
- De facto directors (s. 250 CA 2006)
- Shadow directors (s. 251 CA 2006)

