CHAPTER 12

ESSAY / DISCUSSION QUESTIONS

QUESTION 1

Two law students were overheard discussing equitable relief. One student said to the other:

‘The only remedy at common law is damages—whereby a sum of money is awarded to put the parties in the position they would have occupied if the contract had been fulfilled or the tort had never occurred. If damages at common law are not an appropriate remedy, then you can come to equity since equity follows the common law.’

Do you agree? Critically discuss this statement. Are there any other limitations imposed on the use of equitable relief?

TIPS FOR QUESTION 1:

A good answer to this question will review the issues regarding the fusion of common law and equity – see Figure 1.1. Consideration should also be given to equitable relief and the process of tracing.

QUESTION 2

In Target Holdings v Redferns (1996) 1 AC 421 at 432 Lord Browne-Wilkinson noted:

‘[A]t common law there are two principles fundamental to the award of damages. The first, that the defendant’s wrongful act must cause the damage complained of. Second, that the plaintiff is to be put “in the same position as he would have
Critically discuss this statement. How similar or different is the assessment of damages at common law and in equity?

TIPS FOR QUESTION 2:

A detailed examination of the relevant principles for the award of damages at common law needs to be undertaken. Consideration then needs to be directed to the award of money in equity. See Figure 12.1 for further information.

QUESTION 3

In Austotel Pty Ltd v Franklins Selfserve Stores Pty Ltd (1989) 16 NSWLR 582 at 585–6 Kirby J noted:

‘[C]ourts should be careful to conserve relief so that they do not, in commercial matters, substitute lawyerly conscience for the hard-headed decisions of business people … If courts do not show caution here they will effectively force on commercial parties terms which the court may think to be reasonable and as ought commonly to govern such a contract but which the parties themselves held back from concluding. Moreover, the contract then enforced will not be that which the parties have concurred in but a different one, determined by the court ...

The wellsprings of the conduct of commercial people are self-evidently important for the efficient operation of the economy. Their actions typically depend on self-interest and profitmaking not conscience or fairness. In particular circumstances protection from unconscionable conduct will be entirely appropriate. But courts should, in my view, be wary lest they distort the relationship of substantial, well advised corporations in commercial transactions by subjecting them to the overly tender consciences of judges’.

When should equitable remedies be available in commercial matters? Discuss relevant cases.

TIPS FOR QUESTION 3:

All equitable principles need to be reviewed, including but not limited to fiduciary obligations and joint ventures. Note that the emphasis is upon commercial and not personal relationships. This question is similar to the first essay / discussion question in Chapter 1 The Nature and History of Equity. It would be appropriate to review your answer to this question.