How to Use this Script:
These sample exam answers are based on problems done in past years. Since these answers were written, the law has changed and the subject may have changed. Additionally, the student may have made some mistakes in their answer, despite their good mark.

Therefore DO NOT use this script by copying or simplifying part of it directly for use in your exam or to supplement your summary. If you do so YOUR MARK WILL PROBABLY END UP BEING WORSE! The LSS is providing this script to give you an idea as to the depth of analysis required in exams and examples of possible structures and hence to provide direction for your own learning.

Please do not use them for any other purposes - otherwise you are putting your academic future at risk.
Mrs Dixon's liabilities and rights

Offer, acceptance and consideration are implied on the facts. [✓]

  o Is Mrs Dixon bound to the contract because she signed it?

A party is bound to a contract they have signed whether or not they have read and understood it, unless they are subject to fraud or misrepresentation (L'Estrange v Graucob). [✓]

Mrs Dixon did not read the contract but did sign it. This would imply she is bound by its terms. [✓] It will later be established, however, that Mrs Dixon was subject to misrepresentation and will therefore not be bound to the contract.

  o Did Mrs Dixon's breach of clause 10 of the contract warrant termination by the other party?

Mrs Dixon did indeed breach clause 10. [✓] Mrs Dixon, however, did not know that this was a term of the contract as she did not read the terms upon signing the contract and was not provided with a copy of the contract by Mr Snide (or any of his contact details).

It is also necessary to consider the nature of this term. The term is unlikely to be a condition as the contract would still have been entered into had the parties known the breach would occur. It is non-essential. (Associated Newspapers v Bancks) [✓]

The term may be considered intermediate why? but more likely to be considered non-essential, [✓] therefore as a warranty term because there is no variance of level of seriousness of breaching the term. [✓ good. Hong Kong Fir]

Given that the breach was breach of warranty, Mr Snide does not have the right to terminate the contract as warranty breaches only provide for damages. [✓]

There is an agreed damages clause in the contract which provides the amount payable in damages upon any type of breach. This sum ($10,000) is awarded for any type of breach, regardless of security and loss suffered to innocent party in varying breaches.

This agreed damages clause appears to be a penalty clause rather than a legal agreed damages clause because the amount payable is extravagant and disproportionate compared with loss suffered [What would the loss be?] that would reasonably flow from the breach (AMEV – UDU Finance v Austin) [✓] and the money payable is the same amount for serious and minor breaches ($ value does not reflect seriousness of breach). [✓]
This clause is likely to be considered a punitive penalty clause (illegal) and will therefore not be enforceable. [✓]

- Even if termination was a right of Mr Snide (Dodgy Bros), was Mrs Dixon given reasonable time to comply with the notice?

Dodgy brothers wrote Mrs Nixon a letter giving her two weeks within receipt of the letter to comply with their demands. The notice did specify the time constraints, requirements and consequences of non-compliance for Mrs Dixon but the amount of time given is contentious. Clause 10 did not specify that time was of the essence in giving notice of change of address so issuing a notice was correct procedure. [This wasn’t a notice to complete]

In Laurinda v Capalaba it was specified by the court that 14 days or more was reasonable time for notice of termination. While this amount of time was satisfied by Dodgy Bros, it is also important to note that Dodgy Bros knew of the financial situation of Mrs Dixon and would therefore recognise that 2 weeks was not enough time for an unemployed woman supporting 2 grandchildren, relying on Centrelink payments, to collect $10,000 to pay to Dodgy Bros.

In this situation, it would most likely be determined on the facts that ‘reasonable time’ was not given, and therefore the notice would be unable to enforce termination.

- Is Mr Snide guilty of unconscionable conduct in relation to negotiating the contract with Mrs Dixon?

Mrs Dixon must be shown to be in a position of special disadvantage and Mr Snide must be shown to have been aware of that special disadvantage [✓] and still taken unfair advantage of it. [✓]

Mrs Dixon can be likened to Mr and Mrs Amadio (CBA v Amadio). [✓] Both Mrs Dixon and the Amardio’s had little knowledge of English, were elderly, had no opportunity to seek legal advice, [✓] were inexperienced in business matters and were subject to misrepresentation (Amardio’s were lied to, Mrs Dixon was not told all relevant facts when there was a duty to). [Was there a duty?]

The Amardio’s were found to be at special disadvantage and so should Mrs Dixon. Mr Snide was largely aware of Mrs Dixon’s special disadvantage [why?] but continued with the contract, encouraging her to agree to a contract involving payments Mr Snide did not make Mrs Dixon aware of. [✓]
Section 51AB prevents corporations in acting unconscionably towards consumers. Dodgy Bros Pty Ltd is a corporation under the act (s4) and Mrs Dixon is a consumer (s4B). [*]

*also no certainty and completeness as terms were not in the minds of both parties when signing.

This case is analogous to Amardio, in which unconscionable conduct was found. Due to Mrs Dixon’s special disadvantage, it is likely that unconscionable conduct would be found in this case. [*]

Related to this, is the statutory issue of misleading and deceptive conduct.

- Was Dodgy Bros guilty of misleading conduct?

Many actions for misrepresentation are made under the TPA, section 52, which states that a corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive. Would the conduct be likely to mislead a reasonable person?

Silence may also constitute misleading conduct where there is a duty to reveal relevant facts (Henjo v Collins). [*]

The failure of Mr Snide to inform Mrs Dixon of many of the contracts essential terms, including payable costs, length of contract etc., given that she was at special disadvantage, indicates a failure in his duty to the weaker party to reveal relevant facts. [Does this mean S had a duty to inform for misleading conduct?] For these reasons, and the suggestion in Taco Co v Taco Bell that the ‘reasonable person test’ applied under section 52 should be widened to include gullible, unintelligent, poorly educated people, perhaps such as Mrs Dixon, it is likely that Dodgy Bros would be found guilty of misleading conduct and Mrs Dixon would be able to recover damages.

- What damages would Mrs Dixon be likely to be able to recover?

Mrs Dixon would likely be able to sue Dodgy Bros for wrongful termination [✓] for the contract is she wished, due to their termination notice failure. [Therefore she could terminate or seek damages]

Mrs Dixon may be able to claim reliance loss damages for wasted expenditure (if she didn’t intend to spend almost $1,000 since she signed the contract) and failure to receive promised goods but perhaps nominal damages would be more likely to be awarded as actual loss is unclear (if it even occurred). [✓]
More favourable to Mrs Dixon would be to claim damages arising from the unconscionable conduct and misleading conduct. Under the TPA, Mrs Dixon could claim damages under section 82. Mrs Dixon could elect to rescind the contract under section 87. [✓] This is discretionary, however, and can only take place if the parties can be put in the position they would be in had the contract never occurred.
[Common law remedy of rescission too]
[You did a really good job with this]