

**Routledge-Cavendish Mooting Skills Guide**  
**SAMPLE HEADS OF ARGUMENT**

In the House of Lords

**Wholesome Foods Plc v Tasty Greens Plc**

**Heads of Argument**  
**for the Appellant**

**Lead Counsel – A Smith**

Section 2(2) of the Misrepresentation Act 1967 does permit an award of damages where rescission of the contract is no longer available, for the reasons given in Thomas Witter Ltd v TBP Industries Ltd [1996] 2 All ER 573;

- As it is no longer possible to restore the parties to their original positions through rescission as the contract has expired, damages are the only available remedy;
- The judge in Thomas Witter Ltd v TBP Industries Ltd [1996] 2 All ER 573 found that if rescission is no longer available, damages will provide an equitable alternative;
- As there is no exemption clause relating to misrepresentation within the contract, the dicta in Government of Zanzibar v British Aerospace (Lancaster House) Ltd. [2000] 1 WLR 2333 does not apply in this case; The exemption clause within that case was held to fair under the Unfair Contract Terms Act 1977;
- Filbert J. misinterpreted the dicta of Judge Jack Q.C. in Government of Zanzibar v British Aerospace (Lancaster House) Ltd. [2000] 1 WLR 2333;

**Junior Counsel – S Jones**

- The “cheque rule” should not apply to direct debits, for the reasons given by Simon Brown LJ in Esso Petroleum Co Ltd v Milton [1997] 1 WLR 938, 946B – 948F;
- Master Bowles’ interpretation of the Esso Petroleum Co Ltd v Milton [1997] 1 WLR 938 case was correct in Esso Petroleum Co Ltd v Ilanchelian [2001] WL 482999;
- In Esso Petroleum Co Ltd v Milton [1997] 1 WLR 938, Simon Brown LJ was reluctant to extend the “cheque rule” to direct debits due to technical differences in the methods of payment;
- Simon Brown LJ considered, but did not give judgment, on the possibility that direct debits may not be treated as cheques because they are not “...sums certain in money...” as required by s3 Bills of Exchange Act 1882;
- If contracting parties require that a direct debit should be treated as cash, it is sufficient to insert a clause excluding equitable rights of set-off;
- As the issue is currently unclear, it is submitted that it should be left to Parliament to legislate in the interest of certainty and financial probity and regulation.