CHAPTER 10

5 FORMS OF BREACH OF CONTRACT

- Default by Debtor
- Prevention of Performance
- Repudiation
- Positive Malperformance
- Default by Creditor
DEBTOR & CREDITOR

Used in relation to specific obligation - not contract as whole

Where obligations from both parties - will in turn be debtor & creditor

Creditor = entitled to performance

Debtor has to perform obligation
DEFUALT BY DEBTOR

DEBTOR COMMITS BREACH OF CONTRACT

2 x REQUIREMENTS

IN DEFAULT = IN MORA

MORA DEBITORIS

(2) DELAY DUE TO DEBTORS FAULT

(1) PERFORMANCE = DELAYED
DELAYED PERFORMANCE

MORA DEBITORIS - POSSIBLE TO PERFORM @ LATER STAGE

IF TIME = LINKED TO PERFORMANCE - NOT IN MORA - PREVENTION OF PERFORMANCE - NO LONGER POSSIBLE

DEMAND NECESSARY IF PERFORMANCE SPECIFIED FOR CERTAIN DAY, BUT UNCERTAIN WHEN DAY WILL ARRIVE

DEBTOR IN MORA WHEN FAILS TO PERFORM BY CERTAIN DATE (MORA EX PERSONA)

CREDITOR MUST ALLOW DEBTOR REASONABLE TIME IN WHICH TO PERFORM

(1) SPECIFIC DATE / TIME FOR PERFORMANCE STIPULATED - DEBTOR FAILS TO PERFORM ON TIME = IN MORA (MORA EX RE)

(2) NO EXACT DATE - CREDITOR DEMAND PERFORMANCE BEFORE / ON CERTAIN DATE

DATE MUST BE CERTAIN
DELAY DUE TO DEBTOR'S FAULT

BREACH OF CONTRACT ONLY WHEN PARTY TO CONTRACT CULPABLY, INTENTIONALLY / NEGLIGENTLY NOT HONOUR OBLIGATION

IF DEBTOR WARRANTED PERFORMANCE - WILL BE BREACH OF CONTRACT - BY GIVING GUARANTEE - DEBTOR ASSUMES RISK OF DELAY

NO BREACH - CIRCUMSTANCES BEYOND CONTROL
CONSEQUENCES OF DEBTOR'S FAULT

ENTITLES CREDITOR TO REMEDIES FOR BREACH OF CONTRACT

EFFECT ON LIABILITY, SHOULD PERFORMANCE BECOME IMPOSSIBLE WHILE DEBTOR IS IN MORA

SUPERVENING IMPOSSIBILITY OF PERFORMANCE EXTINGUISHES OBLIGATION - RELEASING DEBTOR FROM DUTY TO PERFORM

IF IMPOSSIBLE AFTER IN MORA SUPERVENVING POSSIBILITY OF PERFORMANCE - NOT HAVE EFFECT OF EXTINGUISING OBLIGATION

IN MORA DEBTOR MAY NOT CLAIM TO BE RELIEVED OF OBLIGATION WHERE PERFORMANCE BECAME IMPOSSIBLE
MORA CREDITORIS

CREDITOR'S CO-OPERATION REQUIRED FOR DEBTOR TO BE ABLE TO RENDER PERFORMANCE

CREDITOR CAUSES DEBTOR'S PERFORMANCE TO BE DELAYED

DEFAULT BY CREDITOR
**ELEMENTS OF MORA CREDITORIS**

(A) **Performance**
- **Performance must be dischargeable**
- Performance not dischargeable until any related suspensive condition is fulfilled / until time for performance

(B) **Debtor**
- **Debtor must tender performance**
- Debtor offer proper performance & request creditor's cooperation

(C) **Creditor**
- **Creditor must fail to give cooperation & thereby delay performance**
- If performance = defective & creditor refuse to accept - not breach of contract

**Default must be due to fault of creditor**

**No exact date - Debtor demand & set date - If not performed - Mora ex persona**

**Exact date for creditor performance not performed - Mora ex re**
CONSEQUENCES
OF CREDITOR'S
DEFAULT

(A) DEBTOR'S DUTY OF CAR
= DIMINISHED IF CREDITOR IN MORA

(B) RECIPROCAL AGREEMENTS - DEBTOR REMAINS ENTITLED TO PERFORMANCE DUE TO HIM

(C) SHOULD PERFORMANCE BECOME IMPOSSIBLE - OTHER THAN THROUGH INTENTION / GROSS NEGLIGENCE WHILE IN MORA DEBTOR RELEASED FROM OBLIGATION TO PERFORM

(D) DEBTOR IN MORA - REMOVED BY SUBSEQUENT DEFAULT OF CREDITOR

IF EARLIER MORA = EXTINGUISED, LIABILITY FOR IT = NOT EXTINGUISHED

OBLIGATIONS OF PARTIES NOT TERMINATED BY MORA CREDITOR

CREDITOR REMAINS LIABLE FOR COUNTER-PERFORMANCE

DEBTOR RESPONSIBLE ONLY FOR INTENTIONAL LOSS & LOSS OCCASIONED BY GROSS NEGLIGENCE

DEBTOR ALSO REMAINS LIABLE FOR PERFORMANCE - PERFORM LATER
POSITIVE MALPERFORMANCE

(1) DEBTOR TENDERS DEFECTIVE / IMPROPER PERFORMANCE

(2) DEBTOR DOES SOMETHING MAY NOT DO INTO AGREEMENT

DEBTOR COMMITS ACT WHICH = CONTRARY TO TERMS OF CONTRACT

PERFORMANCE = PERSON DO SOMETHING / REFRAIN FROM DOING SOMETHING

2 SITUATIONS:
Any behaviour by party indicating that may not honour obligations under contract.

Existence of contract = denied; tries to withdraw from contract without justification; gives notice that cannot / will not perform.

Possible to repudiate only part of obligation.

Innocent party not expected to wait & bear risk that other party might not honour obligations.

Entitles innocent party to usual remedies for breach of contract.
PREVENTION OF PERFORMANCE BY DEBTOR

WHERE DEBTOR CULPABLY RENDERS OWN PERFORMANCE IMPOSSIBLE

PAY DAMAGES INSTEAD OF PERFORMING

DEBTOR NOT RELEASED FROM OBLIGATION
PREVENTION OF PERFORMANCE BY CREDITOR

CREDITOR CULPABLY RENDERS PERFORMANCE BY DEBTOR IMPOSSIBLE - BREACH OF CONTRACT

DEBTOR STILL ENTITLED TO CREDITOR'S PERFORMANCE

DEBTOR DEEMED TO HAVE DISCHARGED OBLIGATION

DEBTOR'S PERFORMANCE CAN NEVER BE RENDERED

DEBTOR MUST BRING INTO ACCOUNT EXPENSES WHICH HAVE BEEN SAVED